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2004-2005-2006

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Tax Laws Amendment (2006 Measures  
No. 1) Bill 2006**

**No. , 2006**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**

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1     **A Bill for an Act to amend the law relating to**  
2     **taxation, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5             This Act may be cited as the *Tax Laws Amendment (2006*  
6             *Measures No. 1) Act 2006.*

7     **2 Commencement**

8             This Act commences on the day on which it receives the Royal  
9             Assent.

10    **3 Schedule(s)**

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12            repealed as set out in the applicable items in the Schedule

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

1  
2 **Schedule 1—Foreign source income**  
3 **exemptions for temporary residents**

4 **Part 1—Main amendments**

5 *Income Tax Assessment Act 1997*

6 **1 At the end of Division 768**

7 Add:

8 **Subdivision 768-R—Temporary residents**

9 **Guide to Subdivision 768-R**

10 **768-900 What this Subdivision is about**

11 This Subdivision modifies the general tax rules for people in  
12 Australia who are temporary residents, whether Australian  
13 residents or foreign residents.

14 Generally foreign income derived by temporary residents is  
15 non-assessable non-exempt income and capital gains and losses  
16 they make are also disregarded for CGT purposes. There are some  
17 exceptions for employment-related income and capital gains on  
18 shares and rights acquired under employee share schemes.

19 Temporary residents are also partly relieved of record-keeping  
20 obligations in relation to the controlled foreign company and  
21 foreign investment fund rules.

22 Interest paid by temporary residents is not subject to withholding  
23 tax and may be non-assessable non-exempt income for a foreign  
24 resident.

25 **Table of sections**

26 **Operative provisions**

27 768-905 Objects

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**Schedule 1** Foreign source income exemptions for temporary residents  
**Part 1** Main amendments

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3		disregarded
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20		trust estates
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22	768-980	Interest paid by temporary resident

23 **Operative provisions**

24 **768-905 Objects**

- 25 The objects of this Subdivision are to:
- 26 (a) provide \*temporary residents with tax relief on most foreign
- 27 source income and capital gains; and
- 28 (b) relieve the burdens associated with complying with certain
- 29 record-keeping obligations and interest withholding tax
- 30 obligations.

31 **768-910 Income derived by temporary resident**

- 32 (1) The following are \*non-assessable non-exempt income:
- 33 (a) the \*ordinary income you \*derive directly or indirectly from a
- 34 source other than an \*Australian source if you are a
- 35 \*temporary resident when you derive it;
- 36 (b) your \*statutory income (other than a \*net capital gain) from a
- 37 source other than an Australian source if you are a temporary
- 38 resident when you derive it.

1 This subsection has effect subject to subsections (3) and (5).

2 Note: A capital gain or loss you make may be disregarded under  
3 section 768-915.

4 (2) For the purposes of paragraph (1)(b):

5 (a) if you have statutory income because a particular  
6 circumstance occurs, you derive the statutory income at the  
7 time when the circumstance occurs; and

8 (b) if you have statutory income because a number of  
9 circumstances occur, you derive the statutory income at the  
10 time when the last of those circumstances occurs.

11 *Exception to subsection (1)*

12 (3) However, the following are not \*non-assessable non-exempt  
13 income under subsection (1):

14 (a) the \*ordinary income you \*derive directly or indirectly from a  
15 source other than an \*Australian source to the extent that it is  
16 remuneration, for employment undertaken, or services  
17 provided, while you are a \*temporary resident;

18 (b) your \*statutory income (other than a \*net capital gain) from a  
19 source other than an Australian source to the extent that it  
20 relates to employment undertaken, or services provided,  
21 while you are a temporary resident;

22 (c) an amount included in your assessable income under  
23 Division 86;

24 (d) an amount that, but for subsection (1), would be included in  
25 your assessable income under Division 13A of Part III of the  
26 *Income Tax Assessment Act 1936*.

27 Note: This subsection only makes an amount not non-assessable non-exempt  
28 income under subsection (1). It does not prevent that amount from  
29 being non-assessable non-exempt income under some other provision  
30 of this Act or the *Income Tax Assessment Act 1936*.

31 *Section 26AAC employee share schemes*

32 (4) This subsection applies if:

33 (a) an amount would otherwise be included in your assessable  
34 income under section 26AAC of the *Income Tax Assessment*  
35 *Act 1936* (about shares and rights acquired by employees);  
36 and

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- 1 (b) the applicable time mentioned in subsection 26AAC(15) of  
2 that Act for the relevant \*share occurs while you are a  
3 \*temporary resident.
- 4 (5) If subsection (4) applies, the amount is \*non-assessable  
5 non-exempt income to the extent to which you acquired the  
6 relevant \*share under a scheme for the acquisition of shares by  
7 employees in respect of, or for or in relation (directly or indirectly)  
8 to:  
9 (a) any employment you undertook outside Australia; or  
10 (b) any services you provided outside Australia;  
11 prior to becoming a \*temporary resident.
- 12 (6) Subsection (5) does not limit paragraph (1)(b).

13 **768-915 Certain capital gains and capital losses of temporary**  
14 **resident to be disregarded**

- 15 A \*capital gain or \*capital loss you make from a \*CGT event is  
16 disregarded if:  
17 (a) you are a \*temporary resident when, or immediately before,  
18 the CGT event happens; and  
19 (b) you would not make a capital gain or loss from the CGT  
20 event if you were a foreign resident when, or immediately  
21 before, the CGT event happens.
- 22 Note: Division 136 deals with capital gains and capital losses by foreign  
23 residents.

24 **768-920 Capital gains and losses on employee shares and rights**  
25 **where taxation of discount not deferred**

26 *When this section applies*

- 27 (1) This section applies to a \*share or right if:  
28 (a) you \*acquire the share or right under an \*employee share  
29 scheme; and  
30 (b) you engage in employment, or render services, that affect the  
31 holding or acquisition of the shares or rights while you are a  
32 \*temporary resident; and  
33 (c) the share or right does not have the \*necessary connection  
34 with Australia; and
-



- 1 (d) either:  
2 (i) the share or right is not a \*qualifying share or  
3 \*qualifying right; or  
4 (ii) the share or right is a qualifying share or qualifying  
5 right and you have made an election under section 139E  
6 of the *Income Tax Assessment Act 1936* covering the  
7 share or right; and  
8 (e) a \*CGT event happens in relation to the share or right; and  
9 (f) if the CGT event is CGT event I1—you are not a temporary  
10 resident immediately before the event happens; and  
11 (g) you would make a \*capital gain or \*capital loss from the CGT  
12 event, and the capital gain or capital loss would not be  
13 disregarded, if you were an Australian resident (but not a  
14 temporary resident) when the CGT event happens; and  
15 (h) this section has not previously applied to you in relation to a  
16 CGT event in relation to the share or right.

17 Note: Paragraph (a)—section 139DQ of the *Income Tax Assessment Act*  
18 *1936* applies for the purposes of this Subdivision to treat a matching  
19 share or right issued as part of a 100% takeover or restructure as a  
20 continuation of the share or right it matches.

- 21 (2) This section also applies to a \*share (the *derived share*) if:  
22 (a) you \*acquire a right (the *original right*) under an \*employee  
23 share scheme; and  
24 (b) you engage in employment, or render services, that affect the  
25 holding or acquisition of the original right, or the derived  
26 share, while you are a \*temporary resident; and  
27 (c) you acquire the derived share by exercising the original right;  
28 and  
29 (d) the derived share does not have the \*necessary connection  
30 with Australia; and  
31 (e) either:  
32 (i) the original right is not a \*qualifying right; or  
33 (ii) the original right is a qualifying right and you have  
34 made an election under section 139E of the *Income Tax*  
35 *Assessment Act 1936* covering the original right; and  
36 (f) a \*CGT event happens in relation to the derived share; and  
37 (g) if the CGT event is CGT event I1—you are not a temporary  
38 resident immediately before the event happens; and

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- 1 (h) you would make a \*capital gain or \*capital loss from the CGT  
2 event, and the capital gain or capital loss would not be  
3 disregarded, if you were an Australian resident (but not a  
4 temporary resident) when the CGT event happens; and  
5 (i) this section has not previously applied to you in relation to  
6 the original right or the derived share.

7 Note: Paragraph (a)—section 139DQ of the *Income Tax Assessment Act*  
8 *1936* applies for the purposes of this Subdivision to treat a matching  
9 share or right issued as part of a 100% takeover or restructure as a  
10 continuation of the share or right it matches.

- 11 (3) To avoid doubt, paragraph (1)(e) or (2)(f) applies:  
12 (a) even if you are not a \*temporary resident when the \*CGT  
13 event happens; and  
14 (b) whether you are an Australian resident or a foreign resident  
15 when the CGT event happens.

16 *Capital gain or loss*

- 17 (4) If you are a \*temporary resident or a foreign resident when the  
18 \*CGT event happens, you make a \*capital gain or \*capital loss from  
19 the CGT event.

20 Note: If you are an Australian resident (but not a temporary resident) when  
21 the CGT event occurs, neither Division 136 nor section 768-915  
22 prevents you having a capital gain or capital loss.

- 23 (5) Subsection (4) has effect despite Division 136 and section 768-915.

24 *Amount of capital gain or capital loss for temporary residents and*  
25 *foreign residents*

- 26 (6) If you are a \*temporary resident or a foreign resident when the  
27 \*CGT event happens, the amount of the \*capital gain or \*capital  
28 loss is the amount of your adjusted notional gain or loss worked  
29 out under subsection (9).

30 *Amount of capital gain or capital loss for Australian residents*

- 31 (7) If you are an Australian resident (but not a \*temporary resident)  
32 when the \*CGT event happens, the amount of the \*capital gain or  
33 \*capital loss is the sum of:  
34 (a) the amount that would be the amount of your capital gain or  
35 capital loss if this section did not apply to you; and

1 (b) the amount of your adjusted notional gain or loss worked out  
2 under subsection (9).

3 Example: George, a New Zealander, is granted shares (with a total market value  
4 at the time of \$100,000) under an employee share scheme on  
5 20 January 2006. He comes to Australia as a temporary resident on  
6 1 January 2007 and completes the rest of the employment to which the  
7 shares relate in Australia. George elects to have the discount assessed  
8 in that income year. He then ceases to be a temporary resident but  
9 remains an Australian resident on 8 May 2008. At that time the shares  
10 have a market value of \$80,000. George disposes of the shares on  
11 30 June 2009 for \$115,000. George's capital gain for the purpose of  
12 paragraph (a) would be \$35,000. Assume that the amount of the loss  
13 that accrued up to 8 May 2008 that is to be counted for the purpose of  
14 paragraph (b) is \$9,000. For the year ending 30 June 2009, George  
15 would, as a result of subsection (7), make a capital gain of \$26,000  
16 (being \$35,000 less \$9,000).

17 (8) If subsection (7) applies to the \*CGT event, subsections 136-40(3)  
18 and 768-955(3) do not apply for the purposes of applying  
19 Division 115 in relation to the CGT event.

20 *Adjusted notional gain or loss*

21 (9) To work out your adjusted notional gain or loss:  
22 (a) work out your notional gain or loss using section 768-925;  
23 and  
24 (b) adjust your notional gain or loss using sections 768-930,  
25 768-935 and 768-940.

## 26 **768-925 Notional gain or loss**

27 (1) Your notional gain or loss is the \*capital gain or \*capital loss you  
28 would have had in relation to the \*CGT event if, for the whole of  
29 the period set by subsections (2) and (3), you:  
30 (a) had been an Australian resident; and  
31 (b) had not been a \*temporary resident.

32 (2) The period starts:  
33 (a) in the case of section 768-920 applying to the \*share or right  
34 in relation to which the \*CGT event happens because of  
35 subsection 768-920(1):  
36 (i) if the share or right was acquired from an \*employee  
37 share trust—when you first acquired a beneficial  
38 interest in the share or right; or

- 1 (ii) if subparagraph (i) does not apply—when you \*acquired  
2 that share or right; and
- 3 (b) in the case of section 768-920 applying to the \*share in  
4 relation to which the \*CGT event happens because of  
5 subsection 768-920(2):
- 6 (i) if the share was acquired from an \*employee share  
7 trust—when you first acquired a beneficial interest in  
8 the original right; or
- 9 (ii) if subparagraph (i) does not apply—when you \*acquired  
10 the original right.
- 11 (3) The period ends when the \*CGT event happens.
- 12 (4) If you are an Australian resident (but not a \*temporary resident)  
13 when the \*CGT event happens, your notional gain or loss is  
14 reduced by the amount of the \*capital gain or \*capital loss that you  
15 would have made in relation to the \*CGT event if section 768-920  
16 did not apply to you.

17 **768-930 Adjustment to notional gain or loss**

- 18 (1) If section 768-920 applies to the \*share or right in relation to which  
19 the \*CGT event happens because of subsection 768-920(1), adjust  
20 your notional gain or loss by:
- 21 (a) firstly, applying the factor worked out under subsection  
22 768-935(1), (2) or (3) to the amount of your notional gain or  
23 loss; and
- 24 (b) secondly, applying the factor worked out under subsection  
25 768-935(4) to the amount worked out under paragraph (a).
- 26 (2) If section 768-920 applies to the \*share in relation to which the  
27 \*CGT event happens because of subsection 768-920(2), adjust your  
28 notional gain or loss by:
- 29 (a) firstly, applying the factor worked out under subsection  
30 768-940(1), (2) or (3) to the amount of your notional gain or  
31 loss; and
- 32 (b) secondly, applying the factor worked out under subsection  
33 768-940(4) to the amount worked out under paragraph (a).

1 **768-935 Adjustment for share or right acquired under employee**  
2 **share scheme**

3 (1) If:

4 (a) the \*CGT event happens on or after the \*cessation time for  
5 the share or right; and

6 (b) when, or immediately before, the CGT event happens you are  
7 either:

8 (i) a foreign resident; or

9 (ii) an Australian resident who is a temporary resident;

10 the factor to be applied for the purposes of paragraph

11 768-930(1)(a) is:

12 
$$\frac{\text{Days before cessation time}}{\text{Days before CGT event}}$$

13 where:

14 ***days before cessation time*** is the number of days in the period that:

15 (a) starts on the day on which you \*acquired the \*share or right  
16 or, if you acquired the share or right from an \*employee share  
17 trust, on the day on which you first acquired a beneficial  
18 interest in the share or right; and

19 (b) ends on the \*cessation time for the share or right.

20 ***days before CGT event*** is the number of days in the period that:

21 (a) starts on the day on which you \*acquired the \*share or right  
22 or, if you acquired the share or right from an \*employee share  
23 trust, on the day on which you first acquired a beneficial  
24 interest in the share or right; and

25 (b) ends on the day on which the \*CGT event happens.

26 (2) If:

27 (a) the \*CGT event happens on or after the \*cessation time for  
28 the share or right; and

29 (b) when, or immediately before, the CGT event happens you are  
30 an Australian resident (but not a \*temporary resident);

31 the factor to be applied for the purposes of paragraph

32 768-930(1)(a) is:

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1 
$$\frac{\text{Days before cessation time}}{\text{Days before ceasing to be a temporary resident}}$$

2 where:

3 ***days before cessation time*** is the number of days in the period that:

- 4 (a) starts on the day on which you \*acquired the \*share or right  
5 or, if you acquired the share or right from an \*employee share  
6 trust, on the day on which you first acquired a beneficial  
7 interest in the share or right; and  
8 (b) ends on the \*cessation time for the share or right.

9 ***days before ceasing to be a temporary resident*** is the number of  
10 days in the period that:

- 11 (a) starts on the day on which you \*acquired the \*share or right  
12 or, if you acquired the share or right from an \*employee share  
13 trust, on the day on which you first acquired a beneficial  
14 interest in the share or right; and  
15 (b) ends on the day on which you cease to be a \*temporary  
16 resident.

17 (3) The factor to be applied for the purposes of paragraph  
18 768-930(1)(a) is 1 if:

- 19 (a) the CGT event happens before the \*cessation time for the  
20 \*share or right; or  
21 (b) you became an Australian resident who was not a \*temporary  
22 resident before the cessation time for the share or right.

23 (4) The factor to be applied for the purposes of paragraph  
24 768-930(1)(b) is:

25 
$$\frac{\text{Assessable part of discount}}{\text{Discount}}$$

26 where:

27 ***assessable part of discount*** is the amount of the discount that:

- 28 (a) was included in your assessable income under Division 13A  
29 of Part III of the *Income Tax Assessment Act 1936* in relation  
30 to the \*share or right; or

1 (b) would have been included in your assessable income under  
2 that Division in relation to the share or right if subsection  
3 139BA(2) of that Act were disregarded.

4 *discount* is the amount of the discount.

#### 5 **768-940 Adjustment for derived share**

6 (1) If:

7 (a) the \*CGT event happens on or after the \*cessation time for  
8 the original right; and

9 (b) when, or immediately before, the CGT event happens you are  
10 either:

11 (i) a foreign resident; or

12 (ii) an Australian resident who is a \*temporary resident;

13 the factor to be applied for the purposes of paragraph  
14 768-930(2)(a) is:

$$15 \frac{\text{Days before cessation time}}{\text{Days before CGT event}}$$

16 where:

17 *days before cessation time* is the number of days in the period that:

18 (a) starts on the day on which you \*acquired the original right or,  
19 if you acquired the \*share from an \*employee share trust, on  
20 the day on which you first acquired a beneficial interest in  
21 the original right; and

22 (b) ends on the \*cessation time for the original right.

23 *days before CGT event* is the number of days in the period that:

24 (a) starts on the day on which you \*acquired the original right or,  
25 if you acquired the \*share from an \*employee share trust, on  
26 the day on which you first acquired a beneficial interest in  
27 the original right; and

28 (b) ends on the day on which the \*CGT event happens.

29 (2) If:

30 (a) the \*CGT event happens on or after the \*cessation time for  
31 the original right; and

32 (b) when, or immediately before, the CGT event happens you are  
33 an Australian resident (but not a \*temporary resident);

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1 the factor to be applied for the purposes of paragraph  
2 768-930(2)(a) is:

3 
$$\frac{\text{Days before cessation time}}{\text{Days before ceasing to be a temporary resident}}$$

4 where:

5 ***days before cessation time*** is the number of days in the period that:

- 6 (a) starts on the day on which you \*acquired the original right or,  
7 if you acquired the \*share from an \*employee share trust, on  
8 the day on which you first acquired a beneficial interest in  
9 the original right; and  
10 (b) ends on the \*cessation time for the original right.

11 ***days before ceasing to be a temporary resident*** is the number of  
12 days in the period that:

- 13 (a) starts on the day on which you \*acquired the original right or,  
14 if you acquired the \*share from an \*employee share trust, on  
15 the day on which you first acquired a beneficial interest in  
16 the original right; and  
17 (b) ends on the day on which you cease to be a \*temporary  
18 resident.

19 (3) The factor to be applied for the purposes of paragraph  
20 768-930(2)(a) is 1 if:

- 21 (a) the \*CGT event happens before the \*cessation time for the  
22 original right; or  
23 (b) you became an Australian resident who was not a \*temporary  
24 resident before the cessation time for the original right.

25 (4) The factor to be applied for the purposes of paragraph  
26 768-930(2)(b) is:

27 
$$\frac{\text{Assessable part of discount}}{\text{Discount}}$$

28 where:

29 ***assessable part of discount*** is the amount of the discount that:

- 30 (a) was included in your assessable income under Division 13A  
31 of Part III of the *Income Tax Assessment Act 1936* in relation  
32 to the original right; or
-



1 (b) would have been included in your assessable income under  
2 that Division in relation to the original right if subsection  
3 139BA(2) of that Act were disregarded.

4 *discount* is the amount of the discount.

5 **768-945 Amending assessment to take account of effect on capital**  
6 **gain or loss of recalculating discount**

7 (1) This section applies if:

8 (a) an amount is included in your assessable income, or you have  
9 a net capital loss, for a particular income year; and

10 (b) that amount is reduced, or increased, because of a change in  
11 the extent (if any) to which any of the following provisions  
12 of the *Income Tax Assessment Act 1936* apply in relation to  
13 the amount during a subsequent income year:

14 (i) section 23AF;

15 (ii) section 23AG;

16 (iii) subsection 139B(1A).

17 (2) In paragraph (1)(b):

18 (a) the reference to an amount being reduced includes a  
19 reference to the amount being reduced to a nil amount; and

20 (b) the reference to an amount being increased includes a  
21 reference to the amount being increased from a nil amount.

22 (3) Section 170 of the *Income Tax Assessment Act 1936* does not  
23 prevent the amendment of an assessment to take account of the  
24 effect that the reduction or increase has on the determination of the  
25 amount of a \*capital gain or \*capital loss under subsection  
26 768-920(6) or (7).

27 (4) If section 768-920 applies to the \*share or right in relation to which  
28 the \*CGT event occurs because of subsection 768-920(1), the  
29 amendment must be made before the end of the period of 4 years  
30 starting immediately after the income year during which the period  
31 of employment or service relating to the \*acquisition of the share or  
32 right ends.

33 (5) If section 768-920 applies to the \*share or right in relation to which  
34 the \*CGT event occurs because of subsection 768-920(2), the  
35 amendment must be made before the end of the period of 4 years

1 starting immediately after the income year during which the period  
2 of employment or service relating to the \*acquisition of the original  
3 right ends.

4 **768-950 Individual becoming an Australian resident**

5 Section 136-40 does not apply to your becoming an Australian  
6 resident if you are a \*temporary resident immediately after you  
7 become an Australian resident.

8 **768-955 Temporary resident who ceases to be temporary resident  
9 but remains an Australian resident**

- 10 (1) If you are a \*temporary resident and you then cease to be a  
11 temporary resident (but remain, at that time, an Australian  
12 resident), there are rules relevant to each \*CGT asset that:  
13 (a) you owned just before you ceased to be a temporary resident;  
14 and  
15 (b) does not have the \*necessary connection with Australia; and  
16 (c) you \*acquired on or after 20 September 1985.
- 17 (2) The first element of the \*cost base and \*reduced cost base of the  
18 asset (at the time you cease to be a \*temporary resident) is its  
19 \*market value at that time. This subsection has effect despite  
20 Subdivision 130-D.
- 21 (3) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it  
22 at the time you ceased to be a \*temporary resident.
- 23 (4) This section does not apply to a \*share or right if:  
24 (a) it is a \*qualifying share or a \*qualifying right; and  
25 (b) you have not made an election under section 139E of the  
26 *Income Tax Assessment Act 1936* covering the share or right;  
27 and  
28 (c) the \*cessation time for the share or right has not occurred.

29 **768-960 Temporary resident not attributable taxpayer for purposes  
30 of controlled foreign companies rules**

31 For the purposes of Part X of the *Income Tax Assessment Act 1936*  
32 (which deals with the attribution of income in respect of controlled  
33 foreign companies), you are taken not to be an \*attributable

1 taxpayer in relation to a \*CFC or \*CFT at any time you are a  
2 \*temporary resident.

3 **768-965 Exemption of temporary resident from taxation in respect**  
4 **of foreign investment fund income**

5 If you are a \*temporary resident at the end of an income year,  
6 section 529 and Division 22 of Part XI of the *Income Tax*  
7 *Assessment Act 1936* do not apply to you in relation to a \*FIF or  
8 \*FLP in respect of the notional accounting period of the FIF or FLP  
9 that ends in that income year.

10 **768-970 Modification of rules for accruals system of taxation of**  
11 **certain non-resident trust estates**

12 At any time when you are a \*temporary resident, you are taken not  
13 to be a resident for the purposes of section 102AAZD of the  
14 *Income Tax Assessment Act 1936*.

15 **768-975 Calculation of beneficiary's share of net income of**  
16 **non-resident trust estate**

17 At any time when you are a \*temporary resident, you are taken not  
18 to be a resident for the purposes of subsection 96C(6) of the  
19 *Income Tax Assessment Act 1936*.

20 **768-980 Interest paid by temporary resident**

21 Interest that is paid by a \*temporary resident:

- 22 (a) is an amount to which section 128B (liability to withholding  
23 tax) of the *Income Tax Assessment Act 1936* does not apply;  
24 and  
25 (b) is \*non-assessable non-exempt income if the interest is:  
26 (i) \*derived by a foreign resident; and  
27 (ii) is not derived from carrying on \*business in Australia at  
28 or through a \*permanent establishment in Australia.

29 **2 Subsection 995-1(1)**

30 Insert:

31 ***temporary resident***: you are a ***temporary resident*** if:

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**Schedule 1** Foreign source income exemptions for temporary residents  
**Part 1** Main amendments

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- (a) you hold a temporary visa granted under the *Migration Act 1958*; and
- (b) you are not an Australian resident within the meaning of the *Social Security Act 1991*; and
- (c) your \*spouse is not an Australian resident within the meaning of the *Social Security Act 1991*.

However, you are not a **temporary resident** if you have been an Australian resident (within the meaning of this Act), and any of paragraphs (a), (b) and (c) are not satisfied, at any time after the commencement of this definition.

Note: The tests in paragraphs (b) and (c) are applied to ensure that holders of temporary visas who nonetheless have a significant connection with Australia are not treated as temporary residents for the purposes of this Act.

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2 **Part 2—Other amendments**

3 ***Fringe Benefits Tax Assessment Act 1986***

4 **3 Subsection 136(1) (sub-subparagraph (j)(ii)(B) of the**  
5 **definition of *fringe benefit*)**

6 Omit “an exempt visitor to Australia for the purposes of section 517 of  
7 that Act in relation to the year of income in which”, substitute “a  
8 temporary resident (within the meaning of the *Income Tax Assessment*  
9 *Act 1997*) when”.

10 ***Income Tax Assessment Act 1936***

11 **4 At the end of subsection 96C(6)**

12 Add:

13 Note: A temporary resident is taken not to be a resident for the purposes of  
14 this subsection: see section 768-975 of the *Income Tax Assessment Act*  
15 *1997*.

16 **5 At the end of subsection 128B(2)**

17 Add:

18 Note: An amount of interest paid to a person by a temporary resident is an  
19 amount to which this section does not apply: see section 768-980 of  
20 the *Income Tax Assessment Act 1997*.

21 **6 At the end of subsection 128B(2A)**

22 Add:

23 Note: An amount of interest paid to a person by a temporary resident is an  
24 amount to which this section does not apply: see section 768-980 of  
25 the *Income Tax Assessment Act 1997*.

26 **7 At the end of section 128D**

27 Add:

28 Note: An amount of interest paid to a person by a temporary resident is  
29 non-assessable non-exempt income: see section 768-980 of the  
30 *Income Tax Assessment Act 1997*.

31 **8 Subsection 139DQ(1)**

1           After “this Division”, insert “and Subdivision 768-R of the *Income Tax*  
2           *Assessment Act 1997*”.

3           **9 Subsection 139DQ(2)**

4           After “this Division”, insert “and Subdivision 768-R of the *Income Tax*  
5           *Assessment Act 1997*”.

6           **10 Subsection 139DQ(3)**

7           After “this Division”, insert “and Subdivision 768-R of the *Income Tax*  
8           *Assessment Act 1997*”.

9           **11 Paragraphs 139GB(3)(a) and (b)**

10           Repeal the paragraphs, substitute:

11                   (a) is a temporary resident within the meaning of the *Income Tax*  
12                   *Assessment Act 1997*; or

13                   (b) is not a resident; or

14           **12 Paragraph 274(1)(aa)**

15           Omit “an exempt visitor to Australia for the purposes of section 517 in  
16           relation to”, substitute “a temporary resident within the meaning of the  
17           *Income Tax Assessment Act 1997* at the end of”.

18           **13 At the end of section 361**

19           Add:

20                   (3) Subsections (1) and (2) have effect subject to section 768-960 of  
21                   the *Income Tax Assessment Act 1997*.

22           **14 Subsection 469(5)**

23           Repeal the subsection, substitute:

24                   (5) The operative provision does not apply, or its application is  
25                   affected, in certain circumstances which are set out in:

26                           (a) Divisions 2 to 15 of this Part; and

27                           (b) section 768-965 of the *Income Tax Assessment Act 1997*.

28           **15 Division 10 of Part XI**

29           Repeal the Division.

1 ***Income Tax Assessment Act 1997***

2 **16 Section 11-55 (table item headed “foreign aspects of**  
3 **income taxation”)**

4 Before:

withholding tax, dividend royalty or interest subject to..... **128D**

5 insert:

income derived by temporary residents..... 768-910

interest paid by temporary residents..... 768-980

6 **17 Section 11-55 (after table item headed “tax loss transfers”)**

7 Insert:

**temporary residents**

*see foreign aspects of income taxation*

8 **18 Subsection 104-160(6) (note 1)**

9 Omit “section 104-165”, substitute “section 104-166”.

10 **19 Subsection 104-160(6) (after note 1)**

11 Insert:

12 Note 1A: An individual may disregard the gain or loss if he or she was a  
13 temporary resident immediately before he or she stopped being an  
14 Australian resident: see section 768-915.

15 **20 Subsection 104-165(1)**

16 Repeal the subsection.

17 Note: The heading to section 104-165 is replaced by the heading “**Exception for**  
18 **individuals**”.

19 **21 After section 104-165**

20 Insert:

21 **104-166 Subsection 104-165(1) still applies if you continue to be a**  
22 **short term Australian resident**

23 Subsection 104-165(1) continues to apply, despite its repeal by  
24 item 20 of Schedule 1 to the *Tax Laws Amendment (2006*  
25 *Measures No. 1) Act 2006*, to an individual:

- 1 (a) who is in Australia on the day on which that item receives the  
2 Royal Assent; and  
3 (b) who remains an Australian resident from that day until the  
4 time subsection 104-165(1) is applied in respect of him or  
5 her.

6 **22 Section 109-55 (table item 15)**

7 After “become an Australian resident”, insert “(but not a temporary  
8 resident)”.

9 **23 Section 109-55 (after table item 15)**

10 Insert:

15A You are a temporary resident, when you cease to be section 768-955  
you then cease to be a a temporary resident  
temporary resident (but  
remain, at that time, an  
Australian resident) and you  
owned a CGT asset that you  
acquired on or after  
20 September 1985 and that  
did not have the necessary  
connection with Australia

11 **24 Section 112-87 (table item 1)**

12 After “becomes an Australian resident”, insert “(but not a temporary  
13 resident)”.

14 **25 Section 112-87 (after table item 1)**

15 Insert:

1A A temporary resident ceases First element of cost 768-955  
to be a temporary resident base and reduced cost  
(but remains, at that time, an base  
Australian resident)

16 **26 After paragraph 130-80(4)(a)**

17 Insert:

18 (aa) you are not a \*temporary resident immediately after you  
19 become an Australian resident; and

20 **27 Subsection 130-80(4) (note)**

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1 Omit “Note”, substitute “Note 1”.

2 **28 Subsection 130-80(4) (note)**

3 Omit “Section 136-40 deals”, substitute “Sections 136-40 and 768-955  
4 deal”.

5 **29 At the end of subsection 130-80(4)**

6 Add:

7 Note 2: Paragraph (aa)—see also section 768-920.

8 **30 After paragraph 130-83(4)(a)**

9 Insert:

10 (aa) you are not a \*temporary resident immediately after you  
11 become an Australian resident; and

12 **31 Subsection 130-83(4) (note)**

13 Omit “Note”, substitute “Note 1”.

14 **32 Subsection 130-83(4) (note)**

15 Omit “Section 136-40 deals”, substitute “Sections 136-40 and 768-955  
16 deal”.

17 **33 After paragraph 130-85(4)(a)**

18 Insert:

19 (aa) you are not a \*temporary resident immediately after you  
20 become an Australian resident; and

21 **34 Subsection 130-85(4) (note)**

22 Omit “Note”, substitute “Note 1”.

23 **35 Subsection 130-85(4) (note)**

24 Omit “Section 136-40 deals”, substitute “Sections 136-40 and 768-955  
25 deal”.

26 **36 At the end of subsection 130-85(4)**

27 Add:

28 Note 2: Paragraph (aa)—see also section 768-920.

29 **37 At the end of subsection 136-40(1)**

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**Schedule 1** Foreign source income exemptions for temporary residents

**Part 2** Other amendments

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1 Add:

2 Note: This section has effect subject to section 768-950 (individuals who  
3 become Australian residents and are temporary residents immediately  
4 after they become Australian residents).

5 **38 Subsection 995-1(1)**

6 Insert:

7 *FLP* has the same meaning as in Part XI of the *Income Tax*  
8 *Assessment Act 1936*.

9 **39 Subsection 995-1(1) (definition of *notional accounting***  
10 ***period*)**

11 Omit “section 486”, substitute “section 470”.

12 **40 Application**

13 (1) Sections 768-910, 768-945, 768-960, 768-965, 768-970 and 768-975 of  
14 the *Income Tax Assessment Act 1997* apply for an income year that  
15 begins on or after the start-up day.

16 (2) Sections 768-915, 768-920, 768-925, 768-930, 768-935 and 768-940 of  
17 the *Income Tax Assessment Act 1997* and items 20 and 21 of this  
18 Schedule apply if the relevant CGT event happens on or after the  
19 start-up day.

20 (3) For the purposes of sections 768-920, 768-925, 768-930, 768-935,  
21 768-940 and 768-945 of the *Income Tax Assessment Act 1997*, items 8,  
22 9 and 10 of this Schedule apply if:

23 (a) the relevant CGT event happens on or after the start-up day;  
24 and

25 (b) the relevant matching shares or rights were acquired on or  
26 after 1 July 2004.

27 (4) Section 768-950 of the *Income Tax Assessment Act 1997* and items 26,  
28 30 and 33 of this Schedule apply to an individual becoming an  
29 Australian resident on or after the start-up day.

30 (5) Section 768-955 of the *Income Tax Assessment Act 1997* applies to an  
31 individual ceasing to be a temporary resident (but remaining an  
32 Australian resident) on or after the start-up day.

- 1 (6) For the purposes of section 768-955 of the *Income Tax Assessment Act*  
2 *1997*, items 8, 9 and 10 of this Schedule apply if:
- 3 (a) the individual ceases to be a temporary resident (but remains  
4 an Australian resident) on or after the start-up day; and
- 5 (b) the relevant CGT asset is a matching share or right that was  
6 acquired on or after 1 July 2004.
- 7 (7) Section 768-980 of the *Income Tax Assessment Act 1997* applies to a  
8 payment of interest made on or after the day on which this Act receives  
9 the Royal Assent.
- 10 (8) The amendments made by items 13, 14 and 15 of this Schedule apply  
11 for an income year that begins on or after the start-up day.
- 12 (9) In this item:
- 13 *start-up day* means the 1 July next following the day on which this Act  
14 receives the Royal Assent.

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## Schedule 2—Business related costs

### Part 1—Capital allowances amendments

#### *Income Tax Assessment Act 1997*

#### **1 Subsection 12-5(2) (before table item headed “leases”)**

Insert:  
lease, authority, licence, permit or quota  
expenditure to terminate..... 25-110

#### **2 At the end of Division 25**

Add:

#### **25-110 Capital expenditure to terminate lease etc.**

- (1) You can deduct an amount for capital expenditure you incur to terminate a lease or licence (including an authority, permit or quota) that results in the termination of the lease or licence if the expenditure is incurred:
  - (a) in the course of \*carrying on a \*business; or
  - (b) in connection with ceasing to carry on a business.
- (2) The amount you can deduct is 20% of the expenditure:
  - (a) for the income year in which the lease or licence is terminated; and
  - (b) for each of the next 4 income years.

#### *Exceptions*

- (3) You cannot deduct any amount for expenditure you incur to terminate a lease that, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, is classified as a finance lease.
- (4) If you incurred the expenditure under an \*arrangement and:
  - (a) there is at least one other party to the arrangement with whom you did not deal at \*arm’s length; and

- 1 (b) apart from this subsection, the amount of the expenditure  
2 would be more than the \*market value of what it was for  
3 (assuming the termination did not occur and was never  
4 proposed to occur);  
5 the amount of expenditure you take into account is that market  
6 value.
- 7 (5) You cannot deduct any amount for expenditure you incur to  
8 terminate a lease or licence if:  
9 (a) after the termination, you or an \*associate of yours enters into  
10 another lease or licence with the same party or an associate of  
11 that party; and  
12 (b) the other lease or licence is of the same kind as the original  
13 one.
- 14 (6) You cannot deduct any amount for expenditure you incur to  
15 terminate a lease or licence to the extent that the expenditure is for  
16 the granting or receipt of another lease or licence in relation to the  
17 asset that was the subject of the original lease or licence.

### 18 **3 Section 35-5**

19 Repeal the section, substitute:

#### 20 **35-5 Object**

- 21 (1) The object of this Division is to improve the integrity of the  
22 taxation system by:  
23 (a) preventing losses from non-commercial activities that are  
24 \*carried on as \*businesses by individuals (alone or in  
25 partnership) being offset against other assessable income;  
26 and  
27 (b) preventing pre-business capital expenditure and  
28 post-business capital expenditure by individuals (alone or in  
29 partnership) in relation to non-commercial activities being  
30 deductible under section 40-880 (business related costs);  
31 unless certain exceptions apply.
- 32 (2) This Division is not intended to apply to activities that do not  
33 constitute \*carrying on a \*business (for example, the receipt of  
34 income from passive investments).

#### 35 **4 Subsection 35-10(2) (heading)**

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1 Repeal the heading, substitute:

2 *Rules*

3 **5 After subsection 35-10(2)**

4 Insert:

5 (2A) You cannot deduct an amount under section 40-880 (business  
6 related costs) for expenditure in relation to a \*business activity you  
7 used to \*carry on if you are an individual, either alone or in  
8 partnership (whether or not some other entity is a member of the  
9 partnership) unless:

10 (a) one of the tests set out in section 35-30 (assessable income  
11 test), 35-35 (profits test), 35-40 (real property test) or 35-45  
12 (other assets test) was satisfied for the business activity; or

13 (b) the Commissioner has exercised the discretion set out in  
14 section 35-55 for the business activity; or

15 (c) the exception in subsection (4) applied;

16 for the income year in which the business activity ceased to be  
17 carried on or an earlier income year.

18 (2B) If you are an individual, either alone or in partnership (whether or  
19 not some other entity is a member of the partnership), you cannot  
20 deduct an amount under section 40-880 (business related costs) for  
21 expenditure in relation to a \*business activity:

22 (a) you propose to \*carry on; or

23 (b) another entity proposes to carry on if the other entity is not an  
24 individual, either alone or in partnership;

25 for an income year before the one in which the business activity  
26 starts to be carried on.

27 (2C) This section applies to an amount that you could have deducted,  
28 apart from paragraph (2B)(a), as if it were an amount attributable  
29 to the \*business activity that you can deduct from assessable  
30 income from the activity for the income year in which the business  
31 activity starts to be \*carried on.

32 (2D) You can deduct expenditure covered by paragraph (2B)(b) for the  
33 income year in which the \*business activity starts to be \*carried on.

34 **6 Subsection 35-10(4)**

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1 After “subsection (2)”, insert “, (2A) or (2B)”.

2 **7 Subsection 35-15(1)**

3 Omit “section 35-10”, substitute “subsection 35-10(2)”.

4 **8 Subsection 35-20(1)**

5 Omit “section 35-10”, substitute “subsection 35-10(2) or (2A)”.

6 **9 Section 35-30**

7 Omit “rule in section 35-10 does not apply”, substitute “rules in  
8 section 35-10 do not apply”.

9 **10 Subsection 35-35(1)**

10 Omit “rule in section 35-10 does not apply”, substitute “rules in  
11 section 35-10 do not apply”.

12 **11 Subsection 35-35(1)**

13 Omit “subsection 35-10(2)”, substitute “subsections 35-10(2) and  
14 (2C)”.

15 **12 Subsection 35-35(2)**

16 Omit “rule in section 35-10 does not apply”, substitute “rules in  
17 section 35-10 do not apply”.

18 **13 Subsection 35-35(2)**

19 Omit “subsection 35-10(2)”, substitute “subsections 35-10(2) and  
20 (2C)”.

21 **14 Subsection 35-40(1)**

22 Omit “rule in section 35-10 does not apply”, substitute “rules in  
23 section 35-10 do not apply”.

24 **15 Subsection 35-45(1)**

25 Omit “rule in section 35-10 does not apply”, substitute “rules in  
26 section 35-10 do not apply”.

27 **16 Subsection 35-55(1)**

28 Omit “section 35-10”, substitute “subsection 35-10(2)”.

1 **17 Subparagraph 35-55(1)(b)(ii)**

2 Omit “subsection 35-10(2)”, substitute “subsections 35-10(2) and  
3 (2C)”.

4 **18 At the end of section 35-55 (after the note)**

5 Add:

6 (2) The Commissioner may decide that the rule in subsection  
7 35-10(2B) does not apply to a \*business activity for an income year  
8 if the Commissioner is satisfied that it would be unreasonable to  
9 apply that rule because special circumstances of the kind referred  
10 to in paragraph (1)(a) of this section prevented the activity from  
11 starting.

12 Note: This subsection is intended to provide for a case where a business  
13 activity would have begun to be carried on and satisfied one of the  
14 tests if it were not for the special circumstances.

15 **19 Section 40-10 (table item 2.3)**

16 After “5 years”, insert “where the amounts are not otherwise taken into  
17 account and are not denied a deduction”.

18 **20 At the end of section 40-180**

19 Add:

20 (3) The first element of \*cost includes an amount you paid or are taken  
21 to have paid in relation to starting to \*hold the \*depreciating asset if  
22 that amount is directly connected with holding the asset.

23 (4) The first element of \*cost of a \*depreciating asset does not include  
24 an amount that forms part of the second element of cost of another  
25 depreciating asset.

26 **21 Paragraph 40-185(1)(b)**

27 Omit “for holding the asset or receiving the benefit”, substitute “in  
28 relation to holding the asset or receiving the benefit”.

29 **22 Subsection 40-185(1) (example)**

30 Omit “Example”, substitute “Example 1”.

31 **23 Subsection 40-185(1) (after example 1)**

32 Insert:

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1 Example 2: Laura travels overseas to purchase a purpose-built vehicle for use in  
2 her trade. The purchase of the vehicle is the sole reason for the trip.  
3 Laura incurs expenses for airfares and accommodation. These  
4 expenses are included in the cost of the vehicle because they are “in  
5 relation to starting to hold” the vehicle.

6 **24 Subsection 40-190(2)**

7 Repeal the subsection (not including the example or the note),  
8 substitute:

9 (2) The second element is:

- 10 (a) the amount you are taken to have paid under section 40-185  
11 for each economic benefit that has contributed to bringing the  
12 asset to its present condition and location from time to time  
13 since you started to \*hold the asset; and  
14 (b) expenditure you incur that is reasonably attributable to a  
15 \*balancing adjustment event occurring for the asset.

16 **25 Subsection 40-190(2) (example)**

17 Omit “Example”, substitute “Example 1”.

18 **26 Subsection 40-190(2) (before the note)**

19 Insert:

20 Example 2: Leonie needed to replace one of her old depreciating assets that was  
21 fixed to her land with a new, more efficient one. Leonie paid a  
22 contractor a fee to demolish and remove the old asset. This resulted in  
23 a balancing adjustment event occurring for the old asset, and the fee  
24 forms part of the second element of the cost of the old asset that was  
25 demolished.

26 **27 Before subsection 40-190(3)**

27 Insert:

28 (2A) Paragraph (2)(b) does not apply to a \*balancing adjustment event  
29 referred to in item 6 or 11 of the table in subsection 40-300(2).

30 **28 Section 40-315**

31 Repeal the section.

32 **29 Section 40-825**

33 After “5 years”, insert “if the amounts are not otherwise taken into  
34 account and are not denied a deduction”.

1 **30 Section 40-880**

2 Repeal the section, substitute:

3 **40-880 Business related costs**

4 *Object*

- 5 (1) The object of this section is to make certain \*business capital  
6 expenditure deductible over 5 years if:  
7 (a) the expenditure is not otherwise taken into account; and  
8 (b) a deduction is not denied by some other provision; and  
9 (c) the business is, was or is proposed to be \*carried on for a  
10 \*taxable purpose.

11 *Deduction*

- 12 (2) You can deduct, in equal proportions over a period of 5 income  
13 years starting in the year in which you incur it, capital expenditure  
14 you incur:  
15 (a) in relation to your \*business; or  
16 (b) in relation to a business that used to be \*carried on; or  
17 (c) in relation to a business proposed to be carried on; or  
18 (d) to liquidate or deregister a company of which you were a  
19 \*member, to wind up a partnership of which you were a  
20 partner or to wind up a trust of which you were a beneficiary,  
21 that carried on a business.

22 *Limitations and exceptions*

- 23 (3) You can only deduct the expenditure, for a \*business that you  
24 \*carry on, used to carry on or propose to carry on, to the extent that  
25 the business is carried on, was carried on or is proposed to be  
26 carried on for a \*taxable purpose.
- 27 (4) You can only deduct the expenditure, for a \*business that another  
28 entity used to \*carry on or proposes to carry on, to the extent that:  
29 (a) the business was carried on or is proposed to be carried on  
30 for a \*taxable purpose; and  
31 (b) the expenditure is in connection with:  
32 (i) your deriving assessable income from the business; and

- 1 (ii) the business that was carried on or is proposed to be  
2 carried on.
- 3 (5) You cannot deduct anything under this section for an amount of  
4 expenditure you incur to the extent that:
- 5 (a) it forms part of the \*cost of a \*depreciating asset that you  
6 \*hold, used to hold or will hold; or
- 7 (b) you can deduct an amount for it under a provision of this Act  
8 other than this section; or
- 9 (c) it forms part of the cost of land; or
- 10 (d) it is in relation to a lease or other legal or equitable right; or
- 11 (e) it would, apart from this section, be taken into account in  
12 working out:
- 13 (i) a profit that is included in your assessable income (for  
14 example, under section 6-5 or 15-15); or
- 15 (ii) a loss that you can deduct (for example, under  
16 section 8-1 or 25-40); or
- 17 (f) it could, apart from this section, be taken into account in  
18 working out the amount of a \*capital gain or \*capital loss  
19 from a \*CGT event; or
- 20 (g) a provision of this Act other than this section would  
21 expressly make the expenditure non-deductible if it were not  
22 of a capital nature; or
- 23 (h) a provision of this Act other than this section expressly  
24 prevents the expenditure being taken into account as  
25 described in paragraphs (a) to (f) for a reason other than the  
26 expenditure being of a capital nature; or
- 27 (i) it is expenditure of a private or domestic nature; or
- 28 (j) it is incurred in relation to gaining or producing \*exempt  
29 income or \*non-assessable non-exempt income.
- 30 (6) The exceptions in paragraphs (5)(d) and (f) do not apply to  
31 expenditure you incur to preserve (but not enhance) the value of  
32 goodwill if the expenditure you incur is in relation to a legal or  
33 equitable right and the value to you of the right is solely  
34 attributable to the effect that the right has on goodwill.
- 35 (7) You cannot deduct an amount under paragraph (2)(c) in relation to  
36 a \*business proposed to be \*carried on unless, having regard to any  
37 relevant circumstances, it is reasonable to conclude that the  
38 business is proposed to be carried on within a reasonable time.
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**Schedule 2** Business related costs  
**Part 1** Capital allowances amendments

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1 (8) You cannot deduct anything under this section for an amount of  
2 expenditure that, because of a market value substitution rule, was  
3 excluded from the \*cost of a \*depreciating asset or the \*cost base or  
4 \*reduced cost base of a \*CGT asset.

5 Note: Some examples of market value substitution rules are subsection  
6 40-180(2) (table item 8), subsection 40-190(3) (table item 1) and  
7 sections 40-765 and 112-20.

8 (9) You cannot deduct anything under this section for an amount of  
9 expenditure you incur:  
10 (a) by way of returning an amount you have received (except to  
11 the extent that the amount was included in your assessable  
12 income or taken into account in working out an amount so  
13 included); or  
14 (b) to the extent that, for another entity, the amount is a \*return  
15 on or of:  
16 (i) an \*equity interest; or  
17 (ii) a \*debt interest that is an obligation of yours.

1

2 **Part 2—CGT amendments**

3 *Income Tax Assessment Act 1997*

4 **31 Section 108-17**

5 Omit “non-capital costs of ownership”, substitute “costs of ownership”.

6 **32 Section 108-30**

7 Omit “non-capital costs of ownership”, substitute “costs of ownership”.

8 **33 Subsection 110-25(1)**

9 Omit “, subject to subsections (7), (8) and (9)”.

10 **34 Subsection 110-25(3)**

11 Repeal the subsection (not including the note), substitute:

12 (3) The second element is the \*incidental costs you incurred. These  
13 costs can include giving property: see section 103-5.

14 **35 Subsection 110-25(4)**

15 Omit “non-capital costs of ownership of”, substitute “costs of owning”.

16 **36 Subsection 110-25(5)**

17 Repeal the subsection (including the note), substitute:

18 (5) The fourth element is capital expenditure you incurred:

19 (a) the purpose or the expected effect of which is to increase or  
20 preserve the asset’s value; or

21 (b) that relates to installing or moving the asset.

22 The expenditure can include giving property: see section 103-5.

23 Note: There are 3 situations involving leases in which this element is  
24 modified: see section 112-80.

25 (5A) Subsection (5) does not apply to capital expenditure incurred in  
26 relation to goodwill.

27 **37 Subsections 110-25(7), (8), (9), (10) and (11)**

28 Repeal the subsections.

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1 **38 Subsection 110-25(12) (note 1)**

2 Omit “subsection (5) of this section or”.

3 **39 Subsection 110-35(1)**

4 Repeal the subsection, substitute:

- 5 (1) There are a number of *incidental costs* you may have incurred.  
6 Except for the *ninth*, they are costs you may have incurred:  
7 (a) to \*acquire a \*CGT asset; or  
8 (b) that relate to a \*CGT event.

9 **40 Paragraphs 110-35(5)(a) and (b)**

10 After “advertising”, insert “or marketing”.

11 **41 At the end of section 110-35**

12 Add:

- 13 (7) The *sixth* is search fees relating to a \*CGT asset.  
14 (8) The *seventh* is the cost of a conveyancing kit (or a similar cost).  
15 (9) The *eighth* is borrowing expenses (such as loan application fees  
16 and mortgage discharge fees).  
17 (10) The *ninth* is expenditure that:  
18 (a) is incurred by the \*head company of a \*consolidated group to  
19 an entity that is not a \*member of the group; and  
20 (b) reasonably relates to a \*CGT asset \*held by the head  
21 company; and  
22 (c) is incurred because of a transaction that is between members  
23 of the group.

24 Example: Land is transferred by one company to another company. The  
25 companies are members of a consolidated group. Stamp duty is  
26 payable as a result of the transaction.

27 The transaction has no taxation consequences because of its  
28 intra-group nature.

29 The stamp duty is included in the cost base and reduced cost base of  
30 the land.

31 Note: Intra-group assets are not held by the head company because of the  
32 operation of subsection 701-1(1) (the single entity rule). An example  
33 of an intra-group asset is a debt owed by a member of the consolidated  
34 group to another member of the group.

1 **42 After section 110-35**

2 Insert:

3 **110-36 Indexation**

4 (1) The *cost base* of a \*CGT asset \*acquired at or before 11.45 am (by  
5 legal time in the Australian Capital Territory) on 21 September  
6 1999 also includes indexation of the elements of the cost base  
7 (except the third element) if the requirements of Division 114 are  
8 met.

9 (2) However, for the purposes of working out the \*capital gain of an  
10 entity mentioned in an item of the table from a \*CGT event  
11 happening after 11.45 am (by legal time in the Australian Capital  
12 Territory) on 21 September 1999, the *cost base* includes indexation  
13 only if the entity mentioned in the item chooses that the cost base  
14 includes indexation.

15 **Choice of indexation**

Item	For the purposes of working out the capital gain of this entity:	The cost base includes indexation only if this entity chooses so:
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust
4	A listed investment company	The company

16 Note 1: Section 103-25 specifies when you must make the choice and provides  
17 that the way you prepare your income tax return is evidence of your  
18 choice.

19 Note 2: For each CGT asset whose cost base you need to work out, you may  
20 either choose to index the expenditure included in the asset's cost base  
21 or not make that choice. If you do not choose to index the expenditure,  
22 your net capital gain includes only part of your capital gain on the  
23 CGT asset as worked out on the basis of the cost base not including  
24 indexation and reduced by your capital losses.

25 (3) Also, for the purpose of working out the \*capital gain of a \*life  
26 insurance company from a \*CGT event happening after 30 June  
27 2000 in respect of a \*CGT asset that is a \*virtual PST asset, the *cost*  
28 *base* includes indexation only if the life insurance company  
29 chooses that the cost base includes indexation.

1 Note: Section 110-25 of the *Income Tax (Transitional Provisions) Act 1997*  
2 provides that, in working out the capital gain from a CGT event after  
3 11.45 am on 21 September 1999 and before 1 July 2000 in respect of  
4 an asset of a life insurance company or registered organisation, the  
5 cost base includes indexation only if the company or organisation  
6 chooses it.

7 **43 Section 110-38**

8 Before “Expenditure”, insert “(1)”.

9 **44 At the end of section 110-38**

10 Add:

- 11 (2) Expenditure does *not* form part of any element of the *cost base* to  
12 the extent that it is a \*bribe to a foreign public official or a \*bribe to  
13 a public official.
- 14 (3) Expenditure does *not* form part of any element of the *cost base* to  
15 the extent that it is in respect of providing \*entertainment.
- 16 (4) Expenditure does *not* form part of any element of the *cost base* to  
17 the extent that section 26-5 prevents it being deducted (even if  
18 some other provision also prevents it being deducted).

19 Note: Section 26-5 denies deductions for penalties.

20 **45 After subsection 110-55(9A)**

21 Insert:

- 22 (9B) Expenditure does *not* form part of the *reduced cost base* to the  
23 extent that it is a \*bribe to a foreign public official or a \*bribe to a  
24 public official.
- 25 (9C) Expenditure does *not* form part of the *reduced cost base* to the  
26 extent that it is in respect of providing \*entertainment.
- 27 (9D) Expenditure does *not* form part of the *reduced cost base* to the  
28 extent that section 26-5 prevents it being deducted (even if some  
29 other provision also prevents it being deducted).

30 Note: Section 26-5 denies deductions for penalties.

31 **46 Section 114-1 (note 3)**

32 Omit “non-capital costs of ownership”, substitute “costs of ownership”.

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1 **47 Subsections 114-5(2) and (3)**

2 Omit “for the purposes of section 110-25”.

3 **48 Subsection 960-275(4)**

4 Omit “non-capital costs of ownership”, substitute “costs of ownership”.

5 **49 Subsection 995-1(1) (definition of *incidental costs*)**

6 Repeal the definition, substitute:

7 *incidental costs* has the meaning given by section 110-35.

8 ***Income Tax (Transitional Provisions) Act 1997***

9 **50 Section 114-5**

10 Omit “section 110-25 of”.

1

2 **Part 3—Application**

3 **51 Application**

4 (1) The amendments made by Part 1 of this Schedule apply to expenditure  
5 incurred on or after 1 July 2005.

6 (2) The amendments made by Part 2 of this Schedule apply to CGT events  
7 happening on or after 1 July 2005.

1  
2 **Schedule 3—Promotion and implementation**  
3 **of schemes**

4 **Part 1—Main amendments**

5 *Taxation Administration Act 1953*

6 **1 After Division 288 in Schedule 1**

7 Insert:

8 **Division 290—Promotion and implementation of schemes**

9 **Table of Subdivisions**

10           290-A   Objects of this Division  
11           290-B   Civil penalties  
12           290-C   Injunctions  
13           290-D   Voluntary undertakings

14 **Subdivision 290-A—Objects of this Division**

15 **Table of sections**

16           290-5   Objects of this Division

17 **290-5 Objects of this Division**

18           The objects of this Division are:

- 19           (a) to deter the promotion of tax avoidance \*schemes and tax  
20           evasion schemes; and  
21           (b) to deter the implementation of schemes that have been  
22           promoted on the basis of conformity with a \*product ruling in  
23           a way that is materially different from that described in the  
24           product ruling.

1 **Subdivision 290-B—Civil penalties**

2 **Table of sections**

3	290-50	Civil penalties
4	290-55	Exceptions
5	290-60	Meaning of <i>promoter</i>
6	290-65	Meaning of <i>tax exploitation scheme</i>

7 **290-50 Civil penalties**

8 *Promoter of tax exploitation scheme*

- 9 (1) An entity must not engage in conduct that results in that or another  
10 entity being a \*promoter of a \*tax exploitation scheme.

11 *Implementing scheme otherwise than in accordance with ruling*

- 12 (2) An entity must not engage in conduct that results in a \*scheme that  
13 has been promoted on the basis of conformity with a \*product  
14 ruling being implemented in a way that is materially different from  
15 that described in the product ruling.

16 Note: A scheme will not have been implemented in a way that is materially  
17 different from that described in a product ruling if the tax outcome for  
18 participants in the scheme is the same as that described in the ruling.

19 *Civil penalty*

- 20 (3) If the Federal Court of Australia is satisfied, on application by the  
21 Commissioner, that an entity has contravened subsection (1) or (2),  
22 the Court may order the entity to pay a civil penalty to the  
23 Commonwealth.

24 *Amount of penalty*

- 25 (4) The maximum amount of the penalty is the greater of:  
26 (a) 5,000 penalty units (for an individual) or 25,000 penalty units  
27 (for a body corporate); and  
28 (b) twice the consideration received or receivable (directly or  
29 indirectly) by the entity and \*associates of the entity in  
30 respect of the \*scheme.

31 Note: See section 4AA of the *Crimes Act 1914* for the current value of a  
32 penalty unit.

1 *Principles relating to penalties*

- 2 (5) In deciding what penalty is appropriate for a contravention of  
3 subsection (1) or (2) by an entity, the Federal Court of Australia  
4 may have regard to all matters it considers relevant, including:  
5 (a) the amount of the consideration received or receivable  
6 (directly or indirectly) by the entity and \*associates of the  
7 entity in respect of the \*scheme; and  
8 (b) the deterrent effect that any penalty may have; and  
9 (c) the amount of loss or damage incurred by scheme  
10 participants; and  
11 (d) the nature and extent of the contravention; and  
12 (e) the circumstances in which the contravention took place,  
13 including the deliberateness of the entity's conduct and  
14 whether there was an honest and reasonable mistake of law;  
15 and  
16 (f) the period over which the conduct extended; and  
17 (g) whether the entity took any steps to avoid the contravention;  
18 and  
19 (h) whether the entity has previously been found by the Court to  
20 have engaged in the same or similar conduct; and  
21 (i) the degree of the entity's cooperation with the  
22 Commissioner.

23 *Recovery of penalty*

- 24 (6) The penalty is a civil debt payable to the Commonwealth, and the  
25 Commissioner may, on behalf of the Commonwealth, enforce an  
26 order for an entity to pay the penalty as if it were an order made in  
27 civil proceedings against the entity to recover a debt due by the  
28 entity. The debt arising from the order is taken to be a judgment  
29 debt.

30 **290-55 Exceptions**

31 *Reasonable mistake or reasonable precautions*

- 32 (1) The Federal Court of Australia must not order the entity to pay a  
33 civil penalty if the entity satisfies the Court:  
34 (a) that the conduct in respect of which the proceedings were  
35 instituted was due to a reasonable mistake of fact; or

- 1 (b) that:
- 2 (i) the conduct in respect of which the proceedings were
- 3 instituted was due to the act or default of another entity,
- 4 to an accident or to some other cause beyond the
- 5 entity's control; and
- 6 (ii) the entity took reasonable precautions and exercised due
- 7 diligence to avoid the conduct.
- 8 (2) The other entity referred to in paragraph (1)(b) does not include
- 9 someone who was an employee or agent of the entity when the
- 10 alleged conduct occurred.

11 *Reliance on advice from the Commissioner*

- 12 (3) The Commissioner must not make an application under
- 13 section 290-50 for conduct referred to in subsection 290-50(1) in
- 14 relation to an entity's involvement in a \*scheme if:
- 15 (a) the scheme is based on treating a \*taxation law as applying in
- 16 a particular way; and
- 17 (b) that way agrees with:
- 18 (i) advice given to the entity or the entity's agent by or on
- 19 behalf of the Commissioner; or
- 20 (ii) a statement in a publication approved in writing by the
- 21 Commissioner.

22 *Time limitation*

- 23 (4) The Commissioner must not make an application under
- 24 section 290-50 in relation to an entity's involvement in a \*tax
- 25 exploitation scheme more than 4 years after the entity last engaged
- 26 in conduct that resulted in the entity or another entity being a
- 27 \*promoter of the tax exploitation scheme.
- 28 (5) The Commissioner must not make an application under
- 29 section 290-50 in relation to an entity's involvement in a \*scheme
- 30 that has been promoted on the basis of conformity with a \*product
- 31 ruling more than 4 years after the entity last engaged in conduct in
- 32 relation to implementation of the scheme.
- 33 (6) However, the limitation in subsection (4) or (5) does not apply to a
- 34 \*scheme involving tax evasion.

1 *Exception where entity does not know result of conduct*

- 2 (7) The Federal Court of Australia must not order an entity to pay a  
3 civil penalty in relation to the entity's engaging in conduct:  
4 (a) that results in another entity being a \*promoter of a \*tax  
5 exploitation scheme; or  
6 (b) that results in a \*scheme that has been promoted on the basis  
7 of conformity with a \*product ruling being implemented in a  
8 way that is materially different from that described in the  
9 product ruling;  
10 if the entity satisfies the Court that the entity did not know, and  
11 could not reasonably be expected to have known, that the entity's  
12 conduct would produce that result.

13 *Employees*

- 14 (8) The Commissioner must not make an application under  
15 section 290-50 in relation to an individual's involvement in a  
16 \*scheme as an employee if the Federal Court of Australia has  
17 ordered the individual's employer to pay a civil penalty under this  
18 Division in relation to the same scheme.

19 **290-60 Meaning of promoter**

- 20 (1) An entity is a **promoter** of a \*tax exploitation scheme if:  
21 (a) the entity markets the scheme or otherwise encourages the  
22 growth of the scheme or interest in it; and  
23 (b) the entity or an \*associate of the entity receives (directly or  
24 indirectly) consideration in respect of that marketing or  
25 encouragement; and  
26 (c) having regard to all relevant matters, it is reasonable to  
27 conclude that the entity has had a substantial role in respect  
28 of that marketing or encouragement.  
29 (2) However, an entity is not a **promoter** of a \*tax exploitation scheme  
30 merely because the entity provides advice about the \*scheme.  
31 (3) An employee is not to be taken to have had a substantial role in  
32 respect of that marketing or encouragement merely because the  
33 employee distributes information or material prepared by another  
34 entity.

1 **290-65 Meaning of *tax exploitation scheme***

2 (1) A \*scheme is a *tax exploitation scheme* if, at the time of the  
3 conduct mentioned in subsection 290-50(1):

4 (a) one of these conditions is satisfied:

5 (i) if the scheme has been implemented—it is reasonable to  
6 conclude that an entity that (alone or with others)  
7 entered into or carried out the scheme did so with the  
8 sole or dominant purpose of that entity or another entity  
9 getting a \*scheme benefit from the scheme;

10 (ii) if the scheme has not been implemented—it is  
11 reasonable to conclude that, if an entity (alone or with  
12 others) had entered into or carried out the scheme, it  
13 would have done so with the sole or dominant purpose  
14 of that entity or another entity getting a scheme benefit  
15 from the scheme; and

16 (b) one of these conditions is satisfied:

17 (i) if the scheme has been implemented—it is not  
18 \*reasonably arguable that the scheme benefit is available  
19 at law;

20 (ii) if the scheme has not been implemented—it is not  
21 reasonably arguable that the scheme benefit would be  
22 available at law if the scheme were implemented.

23 Note: The condition in paragraph (b) would not be satisfied if the  
24 implementation of the scheme for all participants were in accordance  
25 with binding advice given by or on behalf of the Commissioner of  
26 Taxation (for example, if that implementation were in accordance with  
27 a public ruling under this Act, or all participants had private rulings  
28 under this Act and that implementation were in accordance with those  
29 rulings).

30 (2) In deciding whether it is \*reasonably arguable that a \*scheme  
31 benefit would be available at law, take into account any thing that  
32 the Commissioner can do under a \*taxation law.

33 Example: The Commissioner may cancel a tax benefit obtained by a taxpayer in  
34 connection with a scheme under section 177F of the *Income Tax*  
35 *Assessment Act 1936*.



1 **Subdivision 290-C—Injunctions**

2 **Table of sections**

3	290-120	Conduct to which this Subdivision applies
4	290-125	Injunctions
5	290-130	Interim injunctions
6	290-135	Delay in making ruling
7	290-140	Discharge etc. of injunctions
8	290-145	Certain limits on granting injunctions not to apply
9	290-150	Other powers of the Federal Court unaffected

10 **290-120 Conduct to which this Subdivision applies**

11 This Subdivision applies to conduct of the kind referred to in  
12 subsection 290-50(1) or (2).

13 **290-125 Injunctions**

14 If an entity has engaged, is engaging or is proposing to engage in  
15 conduct to which this Subdivision applies or would apply, the  
16 Federal Court of Australia may, on the application of the  
17 Commissioner, grant an injunction:

- 18 (a) restraining the entity from engaging in the conduct; and  
19 (b) if, in the Court's opinion, it is desirable to do so—requiring  
20 the entity to do something.

21 **290-130 Interim injunctions**

22 The Federal Court of Australia may, before considering an  
23 application for an injunction under section 290-125, grant an  
24 interim injunction restraining an entity from engaging in conduct to  
25 which this Subdivision applies.

26 **290-135 Delay in making ruling**

27 If:

- 28 (a) an entity applied in writing to the Commissioner for a  
29 \*product ruling in relation to a \*scheme; and  
30 (b) the Commissioner has neither made the ruling nor told the  
31 entity in writing that the Commissioner has declined to make  
32 the ruling;

1 the Commissioner must not make an application under  
2 section 290-125 in relation to conduct or proposed conduct by an  
3 entity in relation to the scheme until the Commissioner makes the  
4 ruling or tells the entity in writing that the Commissioner has  
5 declined to make the ruling.

6 **290-140 Discharge etc. of injunctions**

7 The Federal Court of Australia may discharge or vary an injunction  
8 granted under this Subdivision.

9 **290-145 Certain limits on granting injunctions not to apply**

10 *Restraining injunctions*

11 (1) The power of the Federal Court of Australia under this Subdivision  
12 to grant an injunction restraining an entity from engaging in  
13 conduct of a particular kind may be exercised:

14 (a) if the Court is satisfied that the entity has engaged in conduct  
15 of that kind—whether or not it appears to the Court that the  
16 entity intends to engage again, or to continue to engage, in  
17 conduct of that kind; or

18 (b) if it appears to the Court that, if an injunction is not granted,  
19 it is likely that the entity will engage in conduct of that  
20 kind—whether or not the entity has previously engaged in  
21 conduct of that kind and whether or not there is an imminent  
22 danger of substantial damage to anyone if the entity engages  
23 in conduct of that kind.

24 *Performance injunctions*

25 (2) The power of the Federal Court of Australia under this Subdivision  
26 to grant an injunction requiring an entity to do something may be  
27 exercised:

28 (a) if the Court is satisfied that the entity has refused or failed to  
29 do that thing—whether or not it appears to the Court that the  
30 entity intends to refuse or fail again, or to continue to refuse  
31 or fail, to do that thing; or

32 (b) if it appears to the Court that, if an injunction is not granted,  
33 it is likely that the entity will refuse or fail to do that thing—  
34 whether or not the entity has previously refused or failed to  
35 do that act or thing and whether or not there is an imminent

1 danger of substantial damage to anyone if the entity refuses  
2 or fails to do that act or thing.

3 **290-150 Other powers of the Federal Court unaffected**

4 The powers conferred on the Federal Court of Australia under this  
5 Subdivision are in addition to, and not instead of, any other powers  
6 of the Court, however conferred.

7 **Subdivision 290-D—Voluntary undertakings**

8 **Table of sections**

9 290-200 Voluntary undertakings

10 **290-200 Voluntary undertakings**

- 11 (1) The Commissioner may accept a written undertaking given by an  
12 entity for the purposes of this section in connection with furthering  
13 the objects of this Division.
- 14 (2) The entity may withdraw or vary the undertaking at any time, but  
15 only with the consent of the Commissioner.
- 16 (3) If the Commissioner considers that the entity that gave the  
17 undertaking has breached any of its terms, the Commissioner may  
18 apply to the Federal Court of Australia for an order under  
19 subsection (4).
- 20 (4) If the Court is satisfied that the entity has breached a term of the  
21 undertaking, the Court may make one or both of the following  
22 orders:
- 23 (a) an order directing the entity to comply with that term of the  
24 undertaking;
- 25 (b) any other order that the Court considers appropriate.

26 **2 At the end of Division 298 in Schedule 1**

27 Add:

1 **Subdivision 298-B—Civil penalties**

2 **Table of sections**

3	298-80	Application of Subdivision
4	298-85	Civil evidence and procedure rules for civil penalty orders
5	298-90	Civil proceedings after criminal proceedings
6	298-95	Criminal proceedings during civil proceedings
7	298-100	Criminal proceedings after civil proceedings
8	298-105	Evidence given in proceedings for penalty not admissible in criminal proceedings
9		
10	298-110	Civil double jeopardy

11 **298-80 Application of Subdivision**

12 This Subdivision applies for the purposes of the provisions (the  
13 *civil penalty provisions*) set out in this table.  
14

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**Application of Subdivision**

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<b>Item</b>	<b>Provision</b>	<b>Brief description</b>
1	Division 290	Civil penalties for the promotion and implementation of schemes

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15 **298-85 Civil evidence and procedure rules for civil penalty orders**

16 The Federal Court of Australia must apply the rules of evidence  
17 and procedure for civil matters when hearing proceedings for a  
18 civil penalty order under the civil penalty provisions.

19 **298-90 Civil proceedings after criminal proceedings**

20 The Court must not make a civil penalty order under the civil  
21 penalty provisions against an entity if the entity has been convicted  
22 of an offence constituted by conduct that is substantially the same  
23 as the conduct in relation to which the civil penalty order would be  
24 made.

25 **298-95 Criminal proceedings during civil proceedings**

26 (1) Proceedings for a civil penalty order under the civil penalty  
27 provisions against an entity are stayed if:

- 1 (a) criminal proceedings are started or have already been started  
2 against the entity for an offence; and  
3 (b) the offence is constituted by conduct that is substantially the  
4 same as the conduct in relation to which the civil penalty  
5 order would be made.
- 6 (2) The proceedings for the order may be resumed if the entity is not  
7 convicted of the offence. Otherwise, the proceedings for the order  
8 are dismissed.

9 **298-100 Criminal proceedings after civil proceedings**

10 Criminal proceedings may be started against an entity for conduct  
11 that is substantially the same as conduct in relation to which a civil  
12 penalty order under the civil penalty provisions could be made  
13 regardless of whether a civil penalty order has been made against  
14 the entity.

15 **298-105 Evidence given in proceedings for penalty not admissible in**  
16 **criminal proceedings**

17 Evidence of information given or evidence of production of  
18 documents by an entity is not admissible in criminal proceedings  
19 against the entity if:

- 20 (a) the entity previously gave the evidence or produced the  
21 documents in proceedings for a civil penalty order under the  
22 civil penalty provisions against the entity (whether or not the  
23 order was made); and  
24 (b) the conduct alleged to constitute the offence is substantially  
25 the same as the conduct in relation to which the civil penalty  
26 order was sought.

27 However, this does not apply to a criminal proceeding in respect of  
28 the falsity of the evidence given by the entity in the proceedings for  
29 the civil penalty order.

30 **298-110 Civil double jeopardy**

31 If an entity is ordered to pay a civil penalty under the civil penalty  
32 provisions in respect of particular conduct, the entity is not liable to  
33 a civil penalty under some other provision of a \*Commonwealth  
34 law in respect of that conduct.

1

2 **Part 2—Consequential amendments**

3 ***Income Tax Assessment Act 1997***

4 **3 Subsection 995-1(1)**

5 Insert:

6 *product ruling* means a public ruling under the *Taxation*  
7 *Administration Act 1953* that states that it is a product ruling.

8 **4 Subsection 995-1(1)**

9 Insert:

10 *promoter* has the meaning given by section 290-60 in Schedule 1  
11 to the *Taxation Administration Act 1953*.

12 **5 Subsection 995-1(1)**

13 Insert:

14 *tax exploitation scheme* has the meaning given by section 290-65  
15 in Schedule 1 to the *Taxation Administration Act 1953*.

16 ***Taxation Administration Act 1953***

17 **6 Subsection 16-35(1) in Schedule 1 (note 2)**

18 After “administrative”, insert “and civil”.

19 **7 Subsection 16-43(2) in Schedule 1 (note)**

20 After “administrative”, insert “and civil”.

21 **8 Subsection 16-140(3) in Schedule 1 (note 2)**

22 After “administrative”, insert “and civil”.

23 **9 Section 255-1 in Schedule 1**

24 Before “A *tax-related liability*”, insert “(1)”.

25 **10 At the end of section 255-1 in Schedule 1**

26 Add:

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1 (2) A civil penalty under Division 290 is not a *tax-related liability*.

2 **11 Part 4-25 in Schedule 1 (heading)**

3 Repeal the heading, substitute:

4 **Part 4-25—Charges and penalties**

5 **12 Section 288-10 in Schedule 1 (note 2)**

6 After “administrative”, insert “and civil”.

7 **13 Section 288-20 in Schedule 1 (note 2)**

8 After “administrative”, insert “and civil”.

9 **14 Division 298 in Schedule 1 (heading)**

10 Repeal the heading, substitute:

11 **Division 298—Machinery provisions for penalties**

12 **Subdivision 298-A—Administrative penalties**

13 **15 Section 298-5 in Schedule 1**

14 Repeal the section, substitute:

15 **298-5 Scope of Subdivision**

16 This Subdivision applies if:

17 (a) an administrative penalty is imposed on an entity by another  
18 Division in this Part; or

19 (b) a penalty is imposed on an entity by Subdivision 162-D of  
20 the \*GST Act.

21 **16 Section 420-5 in Schedule 1 (note 2)**

22 After “administrative”, insert “and civil”.

1

2 **Part 3—Application**

3 **17 Application**

4           The amendments made by this Schedule apply in relation to conduct  
5           engaged in on or after the day on which this Act receives the Royal  
6           Assent.



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## Schedule 4—Vouchers

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

#### **1 At the end of subsection 29-25(2)**

Add:  
; or (h) a supply or acquisition for which the GST treatment will be unknown until a later supply is made.

#### **2 Section 100-1 (note)**

Omit “state a”, substitute “have a stated”.

#### **3 Section 100-5 (heading)**

Repeal the heading, substitute:

#### **100-5 Supplies of vouchers with a stated monetary value**

#### **4 Paragraph 100-5(1)(a)**

Omit “a monetary value stated on the voucher”, substitute “the \*stated monetary value of the voucher”.

#### **5 Paragraph 100-5(1)(b)**

Omit “that monetary value”, substitute “the stated monetary value of the voucher”.

#### **6 Subsection 100-5(2)**

Omit “that monetary value”, substitute “the \*stated monetary value of the voucher”.

#### **7 After subsection 100-5(2)**

Insert:  
(2A) The *stated monetary value*, in relation to a \*voucher other than a \*prepaid phone card or facility, means the monetary value stated on the voucher or in documents accompanying the voucher.

- 1 (2B) The *stated monetary value*, in relation to a \*voucher that is a  
2 \*prepaid phone card or facility, means the sum of:  
3 (a) in any case—the monetary value stated on the voucher or in  
4 documents accompanying the voucher; and  
5 (b) if the voucher is topped up after it is supplied—the monetary  
6 value of the top-up stated on the voucher or in documents  
7 accompanying the top-up.  
8 However, disregard the monetary value stated on the voucher (or in  
9 documents accompanying the voucher) or top-up (as the case  
10 requires), of any bonus supplies covered by the voucher or top-up  
11 (as the case requires).

12 **8 Subsection 100-10(3)**

13 Omit “a monetary value stated on the voucher”, substitute “the \*stated  
14 monetary value of the voucher”.

15 **9 After section 100-10**

16 Insert:

17 **100-12 Consideration on redemption of vouchers**

- 18 (1) To avoid doubt, the consideration for a \*taxable supply of a thing  
19 acquired by fully redeeming a \*voucher is taken to be the sum of:  
20 (a) the \*stated monetary value of the voucher, reduced by any  
21 amount of that value refunded to the holder of the voucher in  
22 respect of the supply; and  
23 (b) any additional consideration provided for the supply.  
24 (2) To avoid doubt, the consideration for a \*taxable supply of a thing  
25 acquired by partly redeeming a \*voucher is taken to be the sum of:  
26 (a) the amount of the \*stated monetary value of the voucher that  
27 the redemption represents; and  
28 (b) any additional consideration provided for the supply.  
29 (3) Subsections (1) and (2) have effect despite section 9-15 (which is  
30 about consideration).

31 **10 Paragraph 100-15(1)(b)**

32 Omit “a monetary value stated on the voucher”, substitute “the \*stated  
33 monetary value of the voucher”.

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**11 Paragraph 100-15(1)(c)**

Before “redeemed”, insert “fully”.

**12 Subsection 100-15(2)**

Repeal the subsection, substitute:

- (2) The amount of the increasing adjustment is 1/11 of the \*stated monetary value of the voucher to the extent that it was not redeemed.

**13 After section 100-15**

Insert:

**100-18 Arrangement for supply of voucher**

- (1) An entity (the *supplier*) may, in writing, enter into an arrangement with another entity under which the other entity supplies (whether or not as an agent on the supplier’s behalf) a \*voucher to a third party.
- (2) If, under the arrangement, the supplier pays, or is liable to pay, an amount, as a commission or similar payment, to the other entity for the other entity’s supply, the supply by the other entity to the supplier, to which the supplier’s payment or liability relates, is treated as if it were not a \*taxable supply.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

**14 Section 100-25**

Repeal the section, substitute:

**100-25 Meaning of *voucher* etc.**

- (1) A *voucher* is any:
- (a) voucher, token, stamp, coupon or similar article; or
- (b) \*prepaid phone card or facility;
- the redemption of which in accordance with its terms entitles the holder to receive supplies in accordance with its terms. However, a postage stamp is not a voucher.

- 1 (2) A *prepaid phone card or facility* is any article or facility supplied  
2 for the primary purpose of enabling the holder:  
3 (a) to use, on a prepaid basis, telephone or like services supplied  
4 by a supplier of \*telecommunications supplies; or  
5 (b) to make, on a prepaid basis, acquisitions that are facilitated  
6 by using telephone or like services supplied by such a  
7 supplier.

8 **15 Section 195-1 (note to the definition of *consideration*)**

9 After “100-5”, insert “, 100-12”.

10 **16 Section 195-1**

11 Insert:

12 *prepaid phone card or facility* has the meaning given by  
13 subsection 100-25(2).

14 **17 Section 195-1**

15 Insert:

16 *stated monetary value* has the meanings given by subsections  
17 100-5(2A) and (2B).

18 **18 Section 195-1 (note to the definition of *taxable supply*)**

19 Before “110-5”, insert “100-18”.

20 **19 Section 195-1 (definition of *voucher*)**

21 Omit “section 100-25”, substitute “subsection 100-25(1)”.

22 **20 Application of amendments**

- 23 (1) The amendments made by items 1, 13 and 18 apply in relation to  
24 supplies made on or after the day on which this Act receives the Royal  
25 Assent.
- 26 (2) The amendments made by items 2, 3, 4, 5, 6, 7, 8, 10, 14, 16, 17 and 19  
27 apply, and are taken to have applied, in relation to supplies made on or  
28 after 1 July 2000.
- 29 (3) The amendments made by items 9, 11, 12 and 15 apply in relation to  
30 supplies made on or after 11 May 2005.

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**21 Transitional provision**

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2 (1) This item applies if:

3 (a) a supplier of telecommunications supplies entered into an  
4 arrangement under section 153-50 of the *A New Tax System*  
5 (*Goods and Services Tax*) Act 1999 before the day on which  
6 this Act receives the Royal Assent; and

7 (b) the arrangement applies wholly or partly to prepaid phone  
8 cards or facilities; and

9 (c) to the extent that the arrangement applies to those cards or  
10 facilities, section 153-55 of that Act did not apply to the  
11 supply of those cards or facilities merely because:

12 (i) the supply was not a taxable supply; or

13 (ii) the supply was not a taxable supply and another party to  
14 the arrangement was not an agent of the supplier of  
15 telecommunications supplies.

16 (2) To the extent that the arrangement applies to supplies of prepaid phone  
17 cards or facilities made on or after the day on which this Act receives  
18 the Royal Assent, the arrangement is taken to have effect under  
19 Subdivision 153-B of the *A New Tax System (Goods and Services Tax)*  
20 *Act 1999* as if:

21 (a) those supplies were taxable supplies; and

22 (b) if subparagraph (1)(c)(ii) applies—that other party supplies  
23 those cards or facilities as the agent of the supplier of  
24 telecommunications supplies.