

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (2008 MEASURES No. 6) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon Wayne Swan MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
FBT	fringe benefits tax
GIC	general interest charge
GST	goods and services tax
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MEC group	multiple entry consolidated group
offset	late payment offset
Register	foreign claims register
SG	superannuation guarantee
SGAA 1992	<i>Superannuation Guarantee (Administration) Act 1992</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

General outline and financial impact

CGT roll-overs for corporate restructures

Schedule 1 to this Bill modifies the capital gains tax (CGT) provisions in the *Income Tax Assessment Act 1997* to prevent a market value cost base from arising when shares and certain other interests in an entity are acquired by another entity following a scrip for scrip CGT roll-over under an arrangement that is taken to be a restructure.

Date of effect: These amendments apply to arrangements entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.

Proposal announced: This measure was announced in the 2008-09 Budget by the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs in Media Release No. 033 of 13 May 2008.

Financial impact: The financial impact of these amendments is unquantifiable.

Compliance cost impact: These amendments are expected to have a low compliance cost impact.

Amendments to assistance in collection provisions

Schedule 2 to this Bill amends the assistance in collection provisions found in Division 263 of Schedule 1 to the *Taxation Administration Act 1953*. The amendments will overcome legal and administrative problems associated with deeming foreign tax debts 'never to have been payable' in the event that such debts are removed from the foreign claims register (Register) or otherwise reduced.

The amendments also expand the types of payments that the Commissioner of Taxation (Commissioner) can make to the foreign country to include certain funds that the Commissioner recovers in the course of legal proceedings (such as interest attributable to the debt and costs paid for by the foreign authority).

Finally, these amendments clarify that the role of the Register is to transform foreign tax debt into Australian tax debts rather than to act as a day-to-day record of the debtor's liability.

Date of effect: These amendments apply from the day after this Bill receives Royal Assent.

Proposal announced: These amendments have not previously been announced.

Financial impact: Nil.

Compliance cost impact: Low. These amendments are minor in nature and will have no impact on businesses.

Late payment offset for superannuation guarantee contributions

Schedule 3 to this Bill amends the *Superannuation Guarantee (Administration) Act 1992* to vary the period within which an employer can make a superannuation contribution after the due date for a quarter and still elect to use the late payment offset to reduce their superannuation guarantee charge liability for the quarter. This amendment will encourage employers to make a contribution on behalf of their employee, albeit late, in a more timely manner closer to the original due date.

Schedule 3 also amends the calculation of the general interest charge on an unpaid superannuation guarantee charge where an employer elects to use the late payment offset.

Date of effect: These amendments commence from the date this Bill receives Royal Assent.

Proposal announced: These amendments relate to the measure announced by the Minister for Superannuation and Corporate Law in Media Release No. 014 of 20 March 2008.

Financial impact: Minimal.

Compliance cost impact: Low. These amendments affect employers who elect to use the late payment offset after the commencement of this Bill. There will be a low increase in compliance cost arising from the need for some employers to be aware of these amendments and to make a contribution before an assessment for the relevant quarter is raised.

Minor amendments

Schedule 4 to this Bill makes technical corrections and other minor amendments to the taxation laws. These amendments are part of the Government's ongoing commitment to the care and maintenance of the tax system.

Date of effect: These corrections, amendments and improvements generally commence from Royal Assent to this Bill but some apply prospectively or retrospectively.

Proposal announced: These amendments have not previously been announced.

Financial impact: The revenue impact of extending capital allowance roll-over relief for depreciating assets to the case where a fixed trust is converted to a company, is unquantifiable, but is expected to involve a minimal to small cost to revenue. Each of the other amendments will have a nil to minimal revenue impact.

Compliance cost impact: Nil to low.

Chapter 1

CGT roll-overs for corporate restructures

Outline of chapter

1.1 Schedule 1 to this Bill modifies the capital gains tax (CGT) provisions in the *Income Tax Assessment Act 1997* (ITAA 1997) to prevent a market value cost base from arising when shares and certain other interests in an entity (the original entity) are acquired by another entity (the acquiring entity) following a scrip for scrip roll-over under an arrangement that is taken to be a restructure.

Context of amendments

1.2 Currently, depending on circumstances, Subdivision 124-G of the ITAA 1997 (exchange of shares in one company for shares in another company) or Subdivision 124-M (scrip for scrip roll-over) may apply to allow a CGT roll-over for shareholders who dispose of shares in a company (the original entity) in exchange for shares in another company (the acquiring entity). In essence:

- the exchange of shares roll-over is designed for corporate restructures; and
- the scrip for scrip roll-over is designed for corporate takeovers.

1.3 The exchange of shares roll-over provides a tax neutral outcome for corporate restructures where there is no substantive change in the underlying assets or the ownership of the original entity. If this roll-over applies, the cost base of the shares that an acquiring entity receives in the original entity reflects the cost bases of the underlying net assets of the original entity.

1.4 The scrip for scrip roll-over can apply to an arrangement only if the exchange of shares roll-over does not apply. If the scrip for scrip roll-over applies, the market value substitution rule generally applies so that the cost base of the shares that the acquiring entity receives in the original entity reflects the market value of the underlying net assets of the original entity. This recognises that, in a commercial takeover, shares are

given in consideration for the acquisition of the value represented by those assets.

1.5 However, the scrip for scrip roll-over contains integrity rules that apply if the owners of the replacement entity and the original entity are substantially the same. If the integrity rules apply, the cost base of the shares that the acquiring entity receives in the original entity generally reflects the cost bases of the original shares held in the original entity (rather than the market value of the original entity).

1.6 Companies are able to gain significant tax benefits by restructuring in a way that attracts the scrip for scrip roll-over rather than the exchange of shares roll-over. These tax benefits are compounded if the entity taken over becomes a member of the acquiring entity's consolidated group.

1.7 For example, some entities have entered into schemes that involve the insertion of a new holding company above the original entity (known as 'top hat' schemes). The schemes are designed to attract a scrip for scrip roll-over. As a result, the holding company obtains a market value cost base for the shares it acquires in the original entity under the scheme even though there is no significant change in the underlying ownership of the assets.

1.8 Where the original entity subsequently joins the holding company's consolidated group, the consolidation tax cost setting rules apply to push this market value cost base into the underlying assets of the original entity. This effectively allows the tax costs of the original entity's assets to be reset which, in turn, can lead to an increase in capital allowance deductions and a reduction in capital gains that arise on the disposal of those assets.

Summary of new law

1.9 The scrip for scrip CGT roll-over provisions will be modified to prevent a market value cost base from arising for any qualifying interests acquired by the acquiring entity under an arrangement that is taken to be a restructure.

1.10 An arrangement will be taken to be a restructure if, broadly, just after the arrangement was completed (the completion time) the market value of the replacement interests issued by the acquiring entity under the arrangement in exchange for qualifying interests in the original entity is more than 80 per cent of the market value of all the shares (including

options, rights and similar interests to acquire shares) issued by the replacement entity.

1.11 If an arrangement that qualifies for scrip for scrip roll-over is taken to be a restructure, then the cost base for the qualifying interests that the acquiring entity acquires in the original entity will reflect the cost bases of the underlying net assets of the original entity (rather than the market value of the original entity).

1.12 In addition, if the original entity becomes a member of a consolidated group or multiple entry consolidated group (MEC group) under the arrangement, then the head company of the group can elect to retain the tax costs of the original entity's assets.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>If an arrangement that qualifies for scrip for scrip roll-over is taken to be a restructure, then the cost base for the qualifying interests that the acquiring entity acquires in the original entity will reflect the cost bases of the underlying net assets of the original entity (rather than the market value of the original entity).</p> <p>An arrangement will be taken to be a restructure if, broadly, at the completion time the market value of the replacement interests issued by the replacement entity under the arrangement in exchange for qualifying interests in the original entity is more than 80 per cent of the market value of all the shares (including options, rights and similar interests to acquire shares) issued by the replacement entity.</p>	<p>A CGT roll-over (the scrip for scrip roll-over) is available if interests in an entity (the original entity) are exchanged for interests in another entity (the replacement entity) where, for example, there is a company takeover.</p> <p>Under these arrangements, the acquiring entity acquires interests in the original entity. Subject to certain integrity rules, these interests are given a market value cost base.</p>
<p>If the original entity becomes a member of a consolidated group or MEC group under the arrangement, then the head company of the group can elect to retain the tax costs of the original entity's assets.</p>	<p>If the original entity becomes a member of a consolidated group or MEC group under the arrangement, then the head company of the group must apply the consolidation tax cost setting rules to reset the tax costs of the original entity's assets.</p>

Detailed explanation of new law

1.13 The scrip for scrip CGT roll-over provisions (Subdivision 124-M of the ITAA 1997) will be modified to prevent a market value cost base from arising for qualifying interests acquired by an acquiring entity under an arrangement that is taken to be a restructure.

1.14 Qualifying interests are:

- original interests in the original entity — an interest is an original interest under paragraph 124-780(1)(a) if the interest is:
 - a share in the original entity acquired by an acquiring entity; or
 - an option, right or similar interest in the original entity acquired by an acquiring entity; and
- any interests issued by the original entity to an acquiring entity under the arrangement in respect of other original interests in the original entity that are cancelled under the arrangement.

1.15 If an arrangement that qualifies for scrip for scrip roll-over is taken to be a restructure, then the cost base for the qualifying interests that the acquiring entity acquires in the original entity will reflect the cost bases of the original entity's assets (rather than the market value of the original entity).

1.16 In addition, if the original entity becomes a member of a consolidated group or MEC group under the arrangement, the head company of the group can elect to retain the tax costs of the original entity's assets.

When is an arrangement taken to be a restructure?

1.17 A single arrangement will be taken to be a restructure if:

- the replacement entity for the arrangement knows, or could reasonably be expected to know:
 - that a scrip for scrip roll-over has been, or will be, obtained in relation to the arrangement; and
 - that there is a common stakeholder for the arrangement; and

- just after the arrangement was completed (the completion time), the market value of the replacement interests issued by the replacement entity under the arrangement, or under an earlier arrangement that was taken to be a restructure, in exchange for qualifying interests in the original entity is more than 80 per cent of the market value of all the shares (including options, rights and similar interests to acquire shares) issued by the replacement entity.

[Schedule 1, item 2, subsection 124-784A(1)]

1.18 The replacement entity may be either the entity that acquires the original entity (the acquiring entity) or the ultimate holding company of the acquiring entity (paragraph 124-780(3)(c)).

1.19 An interest is a replacement interest under paragraph 124-780(1)(a) if, broadly:

- the interest is a share in the acquiring entity that is issued in exchange for an interest in the original entity; or
- the interest is an option, right or similar interest that gives an entitlement to acquire a share in the acquiring entity that is issued in exchange for a similar interest in the original entity.

Reasonable expectation that an arrangement will result in a scrip for scrip CGT roll-over

1.20 An arrangement will be taken to be a restructure only if the replacement entity for the arrangement knows, or could reasonably be expected to know, that a scrip for scrip CGT roll-over has been, or will be, obtained in relation to the arrangement. *[Schedule 1, item 2, subparagraph 124-784A(1)(a)(i)]*

1.21 It will be a question of fact as to whether the replacement entity for an arrangement knows, or could reasonably be expected to know, that a scrip for scrip CGT roll-over has been, or will be, obtained in relation to the arrangement. However, if the conditions for a scrip for scrip CGT roll-over in section 124-780 are satisfied, then it is likely that the replacement entity will know, or could reasonably be expected to know, that the arrangement will result in a scrip for scrip CGT roll-over unless it can establish that a CGT roll-over is denied to all the shareholders of the original entity because of the exceptions in section 124-795.

Common stakeholder

1.22 An arrangement will be taken to be a restructure only if the replacement entity for an arrangement knows, or could reasonably be expected to know, that there is no common stakeholder for the arrangement. *[Schedule 1, item 2, subparagraph 124-784A(1)(a)(ii)]*

1.23 It will be a question of fact as to whether the replacement entity for an arrangement knows, or could reasonably be expected to know, that that there is no common stakeholder for the arrangement.

1.24 If there is no common stakeholder under an arrangement, there will be a significant change in the underlying ownership of the original entity. As a consequence, the arrangement will be more akin to a takeover, rather than a restructure.

1.25 Under subsection 124-783(3), an original interest holder is a common stakeholder for an arrangement if it had:

- a common stake (as defined in section 124-783) in the original entity just before the arrangement started; and
- a common stake in the replacement entity just after the arrangement was completed.

1.26 For the purpose of determining whether there is a common stakeholder for an arrangement under section 124-784A, subsections 124-783(4) and (5), which alter the operation of subsection 124-783(3), are disregarded. Consequently:

- an original interest holder that has a replacement interest will not be taken to be a common stakeholder just because an acquiring entity for the arrangement is an original interest holder; and
- an original interest holder for an arrangement can be a common stakeholder even if the replacement entity or the original entity has 300 members or more just before the arrangement started.

[Schedule 1, item 2, subparagraph 124-784A(1)(a)(ii)]

Market value of the replacement entity increases by more than 80 per cent

1.27 If the replacement entity for an arrangement knows, or could reasonably be expected to know, that a scrip for scrip CGT roll-over has

been, or will be, obtained in relation to the arrangement and there is a common stakeholder, then the arrangement will be taken to be a restructure if, just after the arrangement was completed (the completion time), the market value of the replacement interests issued by the replacement entity under the arrangement in exchange for qualifying interests in the original entity is more than 80 per cent of:

- the market value of the shares issued by the replacement entity; and
- the market value of options, rights and similar interests issued by the replacement entity that give the holder an entitlement to acquire a share in the replacement entity at or after the completion time.

[Schedule 1, item 2, paragraph 124-784A(1)(b) and steps 1 and 3 in the method statement in subsection 124-784A(2)]

1.28 If the replacement entity issued replacement interests in exchange for interests in the original entity under any earlier arrangements that were taken to be restructures, then those replacement interests will be taken into account for the purposes of applying the test. *[Schedule 1, item 2, step 2 in the method statement in subsection 124-784A(2)]*

Example 1.1

Nestar Online Pty Ltd (the replacement entity) enters into an arrangement to acquire Miky Jay Toys Pty Ltd (the original entity). Just prior to the arrangement:

- Nestar Online has a net market value of \$50,000; and
- Miky Jay Toys has a net market value of \$1 million.

Under the arrangement, the shareholders of Miky Jay Toys receive \$50,000 cash and shares with a value of \$950,000 in Nestar Online in exchange for their Miky Jay Toys shares. The arrangement qualifies for a scrip for scrip CGT roll-over.

The market value, just after the completion time, of the replacement interests issued under the arrangement by Nestar Online to the original shareholders of Miky Jay Toys is \$950,000 (step 1 in the method statement in subsection 124-784A(2)).

As there are no prior arrangements that have been taken to be restructures, the result of step 2 in the method statement in subsection 124-784A(2) is also \$950,000.

The market value, just after the completion time, of all the shares (including options, rights and similar interests to acquire shares) issued by Nestar Online is \$1 million (step 3 in the method statement in subsection 124-784A(2)).

As the result of step 2 in the method statement (\$950,000) is greater than 80 per cent of the result of step 3 ($80\% \times \$1\text{m} = \$800,000$), the arrangement is taken to be a restructure.

Example 1.2

Zac Megastores Pty Ltd (the replacement entity) enters into an arrangement to acquire Nestar Online Pty Ltd (the original entity). Just prior to the arrangement:

- Zac Megastores has a net market value of \$50,000; and
- Nestar Online has a net market value of \$1 million.

The arrangement is undertaken in three stages.

Under stage 1, Zac Megastores acquires 5 per cent of Nestar Online shares for \$50,000 cash.

Under stage 2, Zac Megastores acquires an additional 80 per cent of Nestar Online shares by exchanging shares. That is, the participating shareholders of Nestar Online receive Zac Megastores shares with a value of \$800,000 in exchange for their Nestar Online shares, and qualify for a scrip for scrip CGT roll-over.

- The market value, just after the completion time, of the replacement interests issued by Zac Megastores to the original shareholders of Nestar Online under stage 2 of the arrangement is \$800,000 (step 1 in the method statement in subsection 124-784A(2)).
- As there are no prior arrangements that have been taken to be restructures, the result of step 2 in the method statement in subsection 124-784A(2) is also \$800,000.
- The market value of all the shares (including options, rights and similar interests to acquire shares) issued by Zac Megastores just after the completion of stage 2 is \$850,000 (step 3 in the method statement in subsection 124-784A(2)).
- As the result of step 2 in the method statement (\$800,000) is greater than 80 per cent of the result of step 3 ($80\% \times \$850,000 = \$680,000$), stage 2 of the arrangement is taken to be a restructure.

Under stage 3, Zac Megastores acquires the final 15 per cent of Nestar Online shares by exchanging shares. That is, the remaining shareholders of Nestar Online receive Zac Megastores shares with a value of \$150,000 in exchange for their Nestar Online shares, and qualify for a scrip for scrip CGT roll-over.

- The market value, just after the completion time, of the replacement interests issued by Zac Megastores to original shareholders of Nestar Online under stage 3 of the arrangement is \$150,000 (step 1 in the method statement in subsection 124-784A(2)).
- The net market value of the replacement interests issued by Zac Megastores to original shareholders of Nestar Online under stage 2 of the arrangement is \$800,000. Therefore, the result of step 2 in the method statement in subsection 124-784A(2) is \$950,000 (ie, \$150,000 + \$800,000).
- The market value of all the shares (including options, rights and similar interests to acquire shares) issued by Zac Megastores just after the completion of stage 3 is \$1 million (step 3 in the method statement in subsection 124-784A(2)).
- As the result of step 2 in the method statement (\$950,000) is greater than 80 per cent of the result of step 3 ($80\% \times \$1\text{m} = \$800,000$), stage 3 of the arrangement is also taken to be a restructure.

Value of interests in a listed entity

1.29 If a replacement entity is listed on an approved stock exchange at the completion time, then, for the purpose of applying the method statement in subsection 124-784A(2), the replacement entity may choose that the market value of the replacement interests is taken to be the officially quoted price of the interests at that time. [*Schedule 1, item 2, subsection 124-784A(3)*]

1.30 An interest in an entity has an officially quoted price at the completion time if, during the one week period starting on the day that the completion time occurred, there was at least one transaction on the relevant stock exchange of interests in that class. The ***officially quoted price*** is the weighted average of the prices at which those interests were traded on that stock exchange (ie, the volume weighted average price) during that period. [*Schedule 1, items 2 and 5, subsection 124-784A(6) and the definition of 'officially quoted price' in subsection 995-1(1)*]

1.31 If there are no transactions on a relevant stock exchange of interests in that class during that period, an interest in an entity will not have an officially quoted price at the completion time. In these

circumstances, the replacement entity cannot make a choice under subsection 124-784A(3).

1.32 Where an interest is quoted on two or more approved stock exchanges on the day that the completion time occurred, the replacement entity can choose the stock exchange on which interests are traded to determine the officially quoted price. *[Schedule 1, items 2 and 5, subsection 124-784A(7) and the definition of 'officially quoted price' in subsection 995-1(1)]*

More than one original entity acquired under an arrangement

1.33 If qualifying interests in more than one original entity are acquired under the same arrangement, then:

- the qualifying interests of each of the original entities are taken to be acquired under separate arrangements; and
- those separate arrangements are taken to have happened in the order that the original entities were acquired.

[Schedule 1, item 2, subsection 124-784A(4)]

1.34 However, if interests are acquired in two or more original entities at the same time under a single arrangement, the replacement entity must choose the order in which the original entities were acquired for the purposes of applying section 124-784A. *[Schedule 1, item 2, subsection 124-784A(5)]*

More than one original entity acquired under separate arrangements that commence at the same time

1.35 Similarly, if interests are acquired in two or more original entities under separate arrangements that commence at the same time, the replacement entity must choose the order in which the original entities were acquired for the purposes of applying section 124-784A. *[Schedule 1, item 2, subsection 124-784A(5)]*

Choice to deny a scrip for scrip CGT roll-over

1.36 To reduce compliance costs, a replacement entity can make a choice to prevent taxpayers from being able to choose to obtain a scrip for scrip CGT roll-over in relation to an arrangement. The replacement entity or the original entity must notify affected taxpayers of the choice before the exchange of shares. *[Schedule 1, item 3, subsection 124-795(4)]*

1.37 The notification can be in the disclosure documentation sent to holders of interests in the original entity in relation to the arrangement or in any other form chosen by the replacement entity or the original entity.

1.38 If the replacement entity for an arrangement makes a choice under subsection 124-795(4), it will know, or could reasonably be expected to know, that a scrip for scrip CGT roll-over has not been, or will not be, obtained in relation to the arrangement. As a result, the arrangement will fall outside the scope of section 124-784A.

1.39 The choice to deny a scrip for scrip CGT roll-over is not limited to arrangements that are taken to be restructures. Therefore, the replacement entity does not need to establish that an arrangement will be taken to be a restructure under section 124-784A before making a choice under subsection 124-795(4).

Modification to the CGT cost base rules when an arrangement is taken to be a restructure

1.40 Where an arrangement is taken to be a restructure, the cost base and reduced cost base of the qualifying interests acquired in the original entity are worked out by applying the method statement in subsection 124-784B(2). *[Schedule 1, items 1 and 2, item 2A in the table in section 112-53 and section 124-784B]*

1.41 However, the modifications do not apply if the cost base and reduced cost base of the qualifying interests is worked out under section 124-782, because the common stakeholder rules in section 124-783 apply to the arrangement. *[Schedule 1, item 2, paragraph 124-784B(1)(a)]*

1.42 If an arrangement is taken to be a restructure, the first element of the cost base and reduced cost base of the qualifying interests will be worked out at the completion time under the method statement in subsection 124-784B(2). *[Schedule 1, item 2, subsections 124-784B(2) and (6)]*

1.43 The method statement, which consists of three components, broadly works out the first element of the cost base and reduced cost base of the qualifying interests using the formula:

$$\frac{\text{Original entity's assets (step 1 + step 2 + step 3) - Original entity's liabilities (step 4)}}{\text{Number of interests (step 5)}}$$

1.44 The first component of the method statement is to add up certain amounts relating to the original entity's assets — that is, steps 1, 2 and 3 in the method statement.

1.45 Step 1 in the method statement, which primarily relates to CGT assets held by the original entity, is the sum of:

- the market value of the original entity's pre-CGT assets (except trading stock) at the completion time;
- the cost bases of the original entity's CGT assets (except trading stock) at the completion time;
- if any of the original entity's CGT assets (except trading stock) have no cost base, the maximum amount of consideration the entity would need to receive if it were to dispose of the assets at the completion time without an amount being included in its assessable income or allowed as a deduction; and
- the amounts worked out under steps 2 and 3 in the method statement.

[Schedule 1, item 2, step 1 in the method statement in subsection 124-784B(2)]

1.46 Step 2 in the method statement, which relates to the original entity's trading stock, is the sum of:

- the value of the original entity's trading stock at the start of the income year in which the completion time occurred;
- the cost of livestock acquired by natural increase during the income year but before the completion time;
- the amount of any outgoing incurred in connection with the acquisition of trading stock during the income year but before the completion time (except livestock acquired by natural increase); and
- the amount of any outgoings forming part of the cost of the trading stock incurred by the original entity during its current holding of the trading stock but before the completion time.

[Schedule 1, item 2, step 2 in the method statement in subsection 124-784B(2)]

1.47 Step 3 in the method statement, which relates to assets of the original entity that are not CGT assets or trading stock, is the amount that would be an asset's cost base at the completion time if the asset were a CGT asset. *[Schedule 1, item 2, step 3 in the method statement in subsection 124-784B(2)]*

1.48 The second component of the method statement is to *subtract* the original entity's liabilities at the completion time in respect of those assets from the result of the first component of the method statement — that is, step 4 in the method statement. For the purpose of applying the method statement, the relevant liabilities are those that are recognised for income tax purposes (as distinct from accounting liabilities). *[Schedule 1, item 2, step 4 in the method statement in subsection 124-784B(2)]*

1.49 When a liability of the original entity is not a liability in respect of a specific asset or assets of the entity, the liability is taken to be a liability in respect of all the assets of the entity. *[Schedule 1, item 2, subsection 124-784B(4)]*

1.50 However, if a liability is in respect of two or more assets, the proportion of the liability in respect of each asset reflects the relative market value of each of those assets. *[Schedule 1, item 2, subsection 124-784B(5)]*

1.51 The third component of the method statement is to *divide* the result of the second component by the total number of membership interests in the original entity — that is, step 5 in the method statement.

- If the original entity has one class of membership interests, the result of step 4 is divided by the total number of those membership interests at the completion time.
- If the original entity has more than one class of membership interests:
 - a portion of the result of step 4 is allocated to each class in proportion to the market value of all the membership interests in that class; and
 - the amount allocated to each class is *divided* by the total number of membership interests in that class at the completion time.

[Schedule 1, item 2, step 5 in the method statement in subsection 124-784B(2)]

1.52 For the purposes of step 5 in the method statement in subsection 124-784B(2), a membership interest is taken to include an option, right or similar interest (including a contingent option, right or

interest) held at the completion time, which is created or issued by the original entity, to acquire a membership interest (such as a share) in the original entity. [*Schedule 1, item 2, subsection 124-784B(7)*]

1.53 If an acquiring entity is listed on an approved stock exchange at the completion time, then, for the purpose of applying step 5 in the method statement, the replacement entity may choose that the market value of the membership interests is taken to be the officially quoted price of those interests at that time. [*Schedule 1, item 2, subsection 124-784A(3)*]

Example 1.3

Nestar Online Pty Ltd acquired Miky Jay Toys Pty Ltd under an arrangement that was taken to be a restructure. The arrangement was completed on 31 March 2009.

Just prior to the arrangement, Miky Jay Toys had:

- pre-CGT assets (other than trading stock) with a market value of \$265,000;
- post-CGT assets (other than trading stock) with cost bases of \$400,000 and a market value of \$650,000;
- trading stock with a value at the start of the 2008-09 of \$60,000; and
- trading stock acquired before 31 March 2009 with a cost of \$25,000.

Liabilities in respect of those assets amount to \$150,000.

After the completion of the arrangement, Nestar Online holds 100,000 shares in Miky Jay Toys. All of the shares are of the same class. Each share has a market value of \$10.

As part of the arrangement, Nestar Online acquired 5,000 shares for cash, at a cost of \$50,000 (ie, \$10 per share). Therefore, the first element of the cost base and reduced cost base for each of those 5,000 shares is \$10.

The remaining 95,000 shares were acquired under the arrangement by a scrip for scrip exchange. The first element of the cost base and reduced cost base of those shares is worked out by applying the method statement in subsection 124-784B(2).

- The result of step 1 is \$750,000 — that is, the sum of:
 - the market value of pre-CGT assets — \$265,000 (step 1(a));

- the cost bases of post-CGT assets — \$400,000 (step 1(b));
- the amount worked out for trading stock under step 2 — \$85,000 (step 1(d))
- The result of step 4 is \$150,000 — that is, the value of the liabilities in respect of those assets.
- The result of step 5 is \$6 — that is, step 1 (\$750,000) *less* step 4 (\$150,000) *divided* by the total number of membership interests in the original entity (100,000).

Therefore, the first element of the cost base and reduced cost base of each of the remaining 95,000 shares is \$6.

Cost bases of qualifying interests acquired partly with cash and partly with an exchange of scrip

1.54 Where a qualifying interest is acquired under an arrangement partly with a payment of cash and partly with an exchange of scrip, the method statement in subsection 124-784B(2) will apply to work out that part of the first element of the cost base and reduced cost base of the interest that is attributable to the exchange of scrip. [*Schedule 1, item 2, subsection 124-784B(3)*]

1.55 The first element of the cost base and reduced cost base that is attributable to cash is worked out using the general rules about cost base.

Example 1.4

In Example 1.3 Nestar Online Pty Ltd acquired Miky Jay Toys Pty Ltd. Under the arrangement, Nestar Online paid cash for 5,000 shares and purchased the remaining 95,000 shares by an exchange of shares.

Assume that, instead, Nestar Online acquired 100,000 shares partly by paying cash and partly by an exchange of shares — that is, 5 per cent of each share was acquired by paying cash and 95 per cent by exchanging shares.

In these circumstances, the cost base and reduced cost base of each share will be \$6.20 — that is the sum of:

- to the extent that the share is acquired by an exchange of scrip, the amount worked out under subsection 124-784B(2) — \$5.70 (ie, $\$6 \times \$95,000 / \$100,000$); and
- to the extent that the share is acquired by cash — \$0.50 (ie, $\$10 \times \$5,000 / \$100,000$).

Adjustments to the method statement in subsection 124-784B(2) for arrangements involving consolidated groups

1.56 The operation of the method statement in subsection 124-784B(2) is modified where, under an arrangement that is taken to be a restructure:

- the original entity (other than a head company) joins a consolidated group or MEC group;
- the original entity is the head company of a consolidated group or MEC group and does not join another group;
- the original entity is the head company of a consolidated group or MEC group and joins another group; or
- the original entity leaves a consolidated group or MEC group and does not join another group.

1.57 The adjustments primarily ensure that the assets and liabilities that are taken into account under the method statement in subsection 124-784B(2) are appropriately identified.

Original entity (other than a head company) joins a consolidated group

1.58 Where an original entity (that is not a head company) becomes a subsidiary member of a consolidated group or MEC group under an arrangement that is taken to be a restructure, for the purposes of applying section 124-784B:

- the completion time for the arrangement is taken to be the time the original entity becomes a member of the group; and
- the core rules in the consolidation regime (Division 701) in relation to the original entity becoming a member of the group are disregarded.

[Schedule 1, item 4, subsections 715-910(1) and (2)]

1.59 As a result, the method statement in subsection 124-784B(2) is applied at the joining time disregarding the single entity rule, the entry history rule and the tax cost setting rules. This will ensure that the original entity's assets and liabilities are appropriately recognised for the purposes of applying the method statement.

Original entity is the head company of a consolidated group and does not join another group

1.60 The operation of the method statement in subsection 124-784B(2) is modified where, under an arrangement that is taken to be a restructure:

- the original entity is the head company of a consolidated group or MEC group just before the arrangement was completed; and
- the original entity does not become a subsidiary member of another consolidated group or MEC group.

1.61 In these circumstances, the single entity rule (section 701-1) and entry history rule (section 701-5) have effect for the purposes of applying the method statement in subsection 124-784B(2). [*Schedule 1, item 4, section 715-915*]

1.62 As a result, the assets and liabilities that are taken into account under the method statement in subsection 124-784B(2) are the underlying assets and liabilities of the group.

Original entity is the head company of a consolidated group and joins another group

1.63 The operation of the method statement in subsection 124-784B(2) is modified where, under an arrangement that is taken to be a restructure:

- the original entity is the head company of a consolidated group or MEC group (the acquired group) just before the arrangement was completed; and
- as a result of the arrangement, the head company and all of the subsidiary members of the acquired group become subsidiary members of another consolidated group or MEC group.

[*Schedule 1, item 4, subsection 715-920(1)*]

1.64 In these circumstances, for the purposes of applying the method statement in subsection 124-784B(2):

- the original entity is taken to be the head company of the acquired group at the completion time for the arrangement;

- the operation of the consolidation provisions for head company core purposes in relation to the members of the group continue to have effect at the completion time for the arrangement — that is, the acquired group is taken to remain in existence as a consolidated group or MEC group;
- the completion time for the arrangement is taken to be the time the original entity becomes a member of the other group; and
- the core rules in the consolidation regime (Division 701) in relation to the original entity becoming a member of the group are disregarded.

[Schedule 1, item 4, subsection 715-920(2)]

1.65 As a result, the method statement in subsection 124-784B(2) is applied to the head company of the acquired group at the joining time disregarding the single entity rule, the entry history rule and the tax cost setting rules. This will ensure that all the assets and liabilities of the acquired group are appropriately recognised for the purposes of applying the method statement.

Original entity leaves a consolidated group and does not join another group

1.66 Where, under an arrangement that is taken to be a restructure, an original entity ceases to be a subsidiary member of a consolidated group or MEC group after the completion time for the arrangement and does not become a member of another consolidated group, the completion time is taken to be the leaving time for the purposes of applying section 124-784B. *[Schedule 1, item 4, section 715-925]*

1.67 As a result, the method statement in subsection 124-784B(2) is applied to the leaving entity at the leaving time. This will ensure that all the assets and liabilities of the leaving entity are appropriately recognised for the purposes of applying the method statement.

Cost base of equity or debt given by an acquiring entity to an ultimate holding company

1.68 For a down stream acquisition where the acquiring subsidiary issues debt or equity to the ultimate holding company, the acquisition cost for the ultimate holding company for that debt or equity will be based on the cost base for the qualifying interests that the subsidiary acquires. *[Schedule 1, item 2, section 124-784C]*

1.69 In these circumstances, the first element of the cost base of the equity or debt for the ultimate holding company is that part of the cost base of the qualifying interests worked out under section 124-784B as:

- may be reasonably allocated to the equity or debt; and
- is not more than the market value of the equity or debt just after the arrangement was completed.

[Schedule 1, item 2, subsection 124-784C(2)]

1.70 In addition, any capital gain of the ultimate holding company from the repayment of new debt owed by an acquiring entity under the arrangement is disregarded to the extent that it relates to the difference between the part of the cost base worked out under section 124-784B and the market value of the debt just after the arrangement was completed.

[Schedule 1, item 2, subsection 124-784C(3)]

1.71 Section 124-784C is based on section 124-784, which applies similar outcomes for a down stream acquisition where the cost base of an original interest is transferred or allocated under section 124-782.

Modification to the tax cost setting rules if an original entity becomes a member of a consolidated group

1.72 Under the consolidation regime, if an entity joins a consolidated group or MEC group, the tax cost setting rules (section 701-10 and subsection 701-35(4)) apply to reset the tax costs of the joining entity's assets.

1.73 However, the head company of a consolidated group or MEC group can choose to disregard the tax cost setting rules where, under an arrangement that is taken to be a restructure:

- the original entity becomes a member of a consolidated group or MEC group; or
- the original entity is the head company of a consolidated group or MEC group (the acquired group) just before the arrangement was completed and, as a result of the arrangement, the head company and all of the subsidiary members of the acquired group become subsidiary members of another group.

[Schedule 1, item 4, subsections 715-910(3) and 715-920(3)]

1.74 If the head company makes a choice under subsection 715-910(3) or 715-920(3), the tax costs of the original entity's assets will not be reset. Instead, the entry history rule will apply so that the head company's tax costs of the original entity's assets will be retained.

1.75 A choice to retain the tax costs of the original assets for an arrangement that is taken to be a restructure is appropriate because such an arrangement essentially involves a relatively small entity taking over a relatively large entity with little increase in value. The choice significantly reduces compliance costs as:

- there will be no need to apply section 124-784B to work out the first element of the cost base and reduced cost base of the qualifying interests acquired in the original entity; and
- there will be no need to apply the tax cost setting rules to work out the reset tax costs of the original entity's assets.

Schemes entered into for a tax avoidance purpose

1.76 The general anti-avoidance rule in Part IVA of the *Income Tax Assessment Act 1936* applies to certain schemes entered into for the dominant purpose of obtaining a tax benefit. Ordinarily a transaction not treated as a restructure under section 124-784A of the ITAA 1997 will not give rise to any issues that call for a consideration of the potential application of Part IVA.

1.77 However, arrangements that are structured in an artificial or contrived way so as to avoid being treated as a restructure could, depending on the circumstances, attract the application of Part IVA. For example, some transactions involving the changing of the market value of the replacement interests or the interests on issue (or shifting value between them), or the issuing of interests before the completion time of the transaction, may contain features which could lead to the application of Part IVA. Each case will turn on its own particular facts.

Application and transitional provisions

1.78 If an arrangement involves a takeover bid (within the meaning of the *Corporations Act 2001*), the amendments will apply in relation to the arrangement if:

- for an off market bid — the bidder lodged with the Australian Securities and Investments Commission a notice

stating that the bidder's statement and offer document has been sent to the target (ie, step 4 in the table in subsection 633(1) of the *Corporations Act 2001* is completed) after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008; or

- for a market bid — the bidder announced the bid to the relevant financial market (ie, step 2 in the table in subsection 635(1) of the *Corporations Act 2001* is completed) after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.

[Schedule 1, subitem 6(1)]

1.79 If an arrangement involves a scheme of arrangement (within the meaning of the *Corporations Act 2001*), the amendments will apply in relation to the arrangement if a court orders, under subsection 411(1) of the *Corporations Act 2001*, a meeting of a company's members, or one or more classes of a company's members, about the arrangement and the application for the order was made after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008. *[Schedule 1, subitem 6(2)]*

1.80 If an arrangement does not involve a takeover bid or a scheme of arrangement, the amendments will apply in relation to the arrangement if a decision to enter into the arrangement was not made before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.

[Schedule 1, subitem 6(3)]

1.81 It will be a question of fact as to whether a decision to enter into the arrangement was made before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008. However, it is expected that there would be some evidence of the decision in the records of the acquiring entity or the original entity.

Chapter 2

Amendments to assistance in collection provisions

Outline of chapter

2.1 Schedule 2 to the Bill amends the assistance in collection provisions found in Division 263 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). The amendments will overcome legal and administrative problems associated with deeming debts ‘never to have been payable’ in the event that claims are removed from the foreign claims register (Register) or otherwise reduced.

2.2 The amendments also expand the types of payments that the Commissioner of Taxation (Commissioner) can make to the foreign country to include certain funds that the Commissioner recovers in the course of legal proceedings (such as interest attributable to the debt and funds paid for in advance by the foreign country).

2.3 Finally, these amendments clarify that the role of the Register is to transform foreign tax debts into Australian tax debts, rather than acting as a day-to-day record of the debtor’s liability.

Context of amendments

2.4 The current assistance in collection provisions were enacted by the *International Tax Agreements Amendment Act (No. 1) 2006* to enable the Commissioner to meet Australia’s existing and future treaty obligations for the mutual assistance in collection of tax debts. Specifically, these provisions enable the Commissioner to take action to collect or to conserve tax debts owed in another country where the debtor is resident in Australia or has assets in Australia.

2.5 Since these provisions have been enacted, however, two issues have been identified which may impact on the Commissioner’s ability to effectively meet Australia’s obligations under relevant international agreements.

2.6 The first issue arises because of the consequence of deeming a foreign tax debt as ‘never to have been payable’ when the debt is reduced

under subsection 263-35(6). Debts can be reduced in circumstances such as where a debtor has made a part payment in the foreign country or where the debt is reduced in the foreign country as a result of an amendment to the debtor's liability. Deeming such debts as 'never to have been payable' in this way could significantly frustrate any proceedings that the Commissioner has commenced or finalised to collect the debt.

2.7 The second problem arises in relation to the types of payments that the Commissioner is able to make to the foreign country. Under the current law, section 263-40 permits only the principal amount and any general interest charge (GIC) referable to that amount that has been collected by the Commissioner to be paid to the foreign country. However, there may be circumstances where other amounts will need to be paid.

2.8 These amendments also provide an opportunity to clarify the role of the Register.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Any foreign tax debts that are removed from the Register or otherwise reduced with agreement of the foreign country are treated as a credit for the purposes of Part IIB of the TAA 1953	Any foreign tax debts that are removed from the Register or otherwise reduced with agreement of the foreign country are deemed never to have been payable.
Where foreign tax debts are removed from the Register, the debtor's liability for any GIC referable to the foreign tax debt is also removed.	No change.
Where foreign tax debts are reduced and applied as a credit in accordance with Part IIB, the debtor remains liable for any GIC referable to the amount by which the debt has been reduced.	Where foreign tax debts are reduced and deemed never to have been payable, any GIC referable to the reduced debt is also deemed never to have been payable.

<i>New law</i>	<i>Current law</i>
The Commissioner can remit to the foreign country any principal amount of the foreign tax debt he collects (and any GIC associated with that debt) in addition to any judgment interest and any costs funded by the foreign country that the Commissioner recovers in the course of legal proceedings.	The Commissioner can remit to the foreign country only the principal amount and any GIC associated with that amount that he collects.

Detailed explanation of new law

2.9 These amendments address two issues with the existing assistance in collection provisions found in Division 263 of Schedule 1 to the TAA 1953. They also clarify the role of the Register.

Deeming amounts never to have been payable

Reducing claims

2.10 The first issue arises because of the consequence of deeming a foreign tax debt as ‘never to have been payable’ when the debt is reduced under subsection 263-35(6). Debts will be reduced in circumstances such as where a debtor has made a part payment in the foreign country or where the debt is reduced in the foreign country as a result of an amendment of the debtor’s liability.

2.11 The problem of deeming foreign tax debts ‘never to have been payable’ in such circumstances arises where the Commissioner has already commenced legal proceedings to recover the debt. Treating a foreign tax debt in this way could result in any ongoing or completed proceedings to be frustrated. For instance, where a default judgment has been handed down in the Commissioner’s favour, any subsequent reduction of the debt (which will result in the reduced amount being deemed ‘never to have been payable’) may provide the debtor with a strong argument that the judgment was entered in the wrong amount and should be set aside.

2.12 To overcome this issue, the amendments remove any reference to the amount of the foreign tax debt reduction as being deemed ‘never to have been payable’. Instead, any amounts reduced will be treated as a credit for the purposes of Part IIB of the TAA 1953 (which deals with running balance accounts, credits and payments). [*Schedule 2, items 6 and 7*]

2.13 This approach ensures any that ‘reductions’ that occur as a consequence of a foreign country’s notification to the Commissioner (for instance of a part payment of the debt in the foreign country), are treated in the same manner as if the debtor made a part payment in Australia. That is, the amount will be applied against the liability of the debtor as reflected on its running balance account (if one has been created) or otherwise be applied against the debtor’s liability if the amount has not been allocated to a running balance account (see sections 8AAZLA and 8AAZLB of the TAA 1953).

2.14 In contrast to the current provisions, one of the effects of this amendment is that the debtor will remain liable for any GIC that has accrued in relation to an amount that is reduced. However, as GIC acts as a replacement for any interest that would be accruing on the tax debt in the foreign country, it will be appropriate in some circumstances for the Commissioner to exercise his discretion to remit any GIC. This would include circumstances such as where the foreign tax debt is reduced as a result of an amendment to the debtor’s liability in the foreign country.

Removing claims from the Register

2.15 To ensure consistency in the assistance in collection provisions, similar amendments will also be made in relation to the removal of foreign tax debts from the Register. The *removal* of debts occurs in circumstances where the debt was registered in error or where the claim is otherwise withdrawn by the foreign country (and the Commissioner has the agreement of the foreign country to remove the debt from the Register) or where the debtor has applied to have the debt removed from the Register under subsection 263-35(3).

2.16 Under these amendments, when foreign tax debts are removed from the Register they will also no longer be considered ‘never to have been payable’ but will be treated as a credit and applied against the debtor’s running balance account in accordance with Part IIB of the TAA 1953. In effect, the credits apply to extinguish any remaining foreign tax debt for which the debtor is liable. [*Schedule 2, item 5, paragraph 255-35(5)(a)*]

2.17 As this will occur in circumstances where the foreign tax debt should not have been registered or where it is otherwise withdrawn in its entirety, it is appropriate that the debtor also not be held liable for any GIC that may have accrued in relation to the debt. [*Schedule 2, item 5, paragraph 255-35(5)(b)*]

Clarifying the role of the Register

2.18 The Register provides a mechanism by which foreign tax debts are effectively ‘transformed’ into Australian tax liabilities, in relation to which the Commissioner may exercise his debt collection powers. This is reflected in the existing subsection 263-30(1) which notes that once the foreign tax debt is entered on the Register, the amount owed by the debtor becomes a pecuniary liability to the Commonwealth. The explanatory memorandum to the International Tax Agreements Amendment Bill (No. 1) 2006 (see paragraph 1.27) further notes that the role of the Register is only to record liabilities, with any payment or credits received by the Commissioner being applied against the debtor’s running balance account.

2.19 To clarify that the role of the register is not to act as a ‘day-to-day’ record of the foreign tax debt owed by the debtor, these amendments introduce a specific provision to reflect this. [*Schedule 2, item 1*]

2.20 Consistent with the treatment of ‘reductions’ as credits as proposed by these amendments, any such reductions will not require the Commissioner to amend the Register and the Register will continue to reflect the amount of the foreign tax debt as originally notified by the foreign country. [*Schedule 2, items 3 and 4*]

2.21 However, notwithstanding that amounts ‘removed’ also give rise to credits under Part IIB of the TAA 1953, since a ‘removal’ occurs in circumstances where it is clear that the claim was placed on the Register in error or where the foreign country withdraws the claim, it is appropriate for a removal to also result in the Register being amended (to reflect that there is no longer any foreign tax debt which the Commissioner must pursue in Australia on behalf of the foreign country).

2.22 It should be noted that, though a ‘removal’ results in both the foreign tax debt being removed from the Register *and* the debtor being entitled to a credit, this does not effectively ‘double count’ the removal of the debtor’s liability. The crediting removes the debtor’s liability while the removal of the debt from the Register merely recognises that the role of the Register, in ‘transforming’ a foreign tax debt into an Australian tax liability, is no longer required.

2.23 To provide further clarification, the table below highlights the various events that can impact on the debtor’s liability and/or the content of the Register.

<i>Event</i>	<i>Impact on Register</i>	<i>Impact on debtor's running balance account</i>
Amount of foreign tax debt placed on Register in error, foreign country withdraws its claim or debtor applies to Commissioner to have the foreign tax debt removed from the Register.	Particulars of claim are removed from the Register.	Debtor is entitled to a credit up to the value of the entire amount of the claim <i>plus</i> any GIC that has accrued on such an amount (ie, the debtor's liability is effectively brought to nil in relation to the claim).
The foreign country notifies the Commissioner that the amount owing by the debtor needs to be reduced (for instance, because the debtor's liability has been amended or because the debtor has made a part payment in the foreign country).	None.	Debtor is entitled to a credit equal to the amount of the reduction. There is no impact on any GIC that is on the debtor's running balance account that is referable to the amount of the reduction. However, the Commissioner has the discretion to remit such amounts if appropriate.
Debtor makes a payment in Australia.	None.	As with other taxation liabilities in Australia, the debtor's liability is reduced and the debtor is entitled to a credit equal to the amount of the payment.
There is a minor administrative error (for instance, the name of the debtor is misspelt and so forth).	The Register can be amended to correct the error (in accordance with subsection 263-35(1)).	Nil. This has no impact on the quantum of the claim.

Expanding the types of monies that can be paid to the foreign country

2.24 The final issue which these amendments address arises in relation to the types of payments that the Commissioner can make to the foreign country. Under the current law, section 263-40 permits only the principal amount and any GIC referable to that amount that has been collected by the Commissioner to be paid to the foreign country. However, there may be circumstances where other payments will need to be made.

2.25 This would include judgment interest, being interest awarded by the Court as part of obtaining judgment as well as interest that accrues on the judgment debt from the day after judgment is entered. Other amounts that should be paid to the foreign country also includes costs that the Commissioner recovers in the course of legal proceedings, where those costs had been paid for in advance by the foreign country. Whether the

foreign country is required to make payments to the Commissioner for the recovery of the foreign tax debt is a matter determined by an agreement between the Commissioner and his foreign counterpart.

2.26 Accordingly, these amendments expand the types of payments that the Commissioner can make to the foreign country to include judgment interest and other costs recovered by the Commissioner in proceedings relating to the foreign tax debt where those costs had been paid for by the foreign country. *[Schedule 2, item 8]*

Chapter 3

Late payment offset for superannuation guarantee contributions

Outline of chapter

3.1 Schedule 3 to this Bill amends the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992) to vary the period within which an employer can make a contribution to an employee's superannuation fund after the due date for a quarter, and still be able to use the late payment offset (offset). The calculation of the general interest charge (GIC) on an unpaid amount of the superannuation guarantee (SG) charge where the offset is used is also amended.

Context of amendments

3.2 The SGAA 1992 prescribes a minimum level of superannuation contribution that an employer is required to make on behalf of an eligible employee for a quarter, or else pay an SG charge. The prescribed minimum level of contribution is currently 9 per cent of the employee's ordinary time earnings. To avoid the SG charge, the employer is required to pay the prescribed contribution for the quarter to the employee's superannuation fund by the due date. The due date for a quarter is 28 days after the end of the quarter.

3.3 An employer who does not pay the required amount of superannuation contribution by the due date is liable to pay the SG charge to the Australian Taxation Office (ATO) by the date the SG charge is due to be paid (SG charge payable date). The SG charge includes the contribution shortfall amount, a nominal interest component and an administration fee.

3.4 The offset under section 23A of the SGAA 1992 allows an employer who makes a contribution into an employee's fund after the due date for a quarter, to elect to use the contribution to offset against part of their SG charge liability with respect to the employee for the quarter. Prior to these amendments, the employer could make the contribution at any time after the due date and still be eligible to use the offset. That is, there was no specified time limit as to when the employer was required to

make the contribution by, although they were required to elect to use the offset within four years of the SG charge payable date.

3.5 Amending the SGAA 1992 to tighten the period within which an employer can make a contribution and still use the offset will encourage employers to make the contribution closer to the original due date.

3.6 An employer is liable to pay the GIC on an unpaid amount of the SG charge. The GIC effectively accrues on the individual employee's shortfall component of the unpaid SG charge amount, from the SG charge payable date to the date the SG charge and the GIC are both fully paid. Prior to these amendments, where an employer makes a late contribution into an employee's fund and elects to use the offset, the GIC would be calculated on the full shortfall component of the unpaid SG charge amount from the SG charge payable date to the date the Commissioner of Taxation (Commissioner) receives the election. This is despite a contribution being made earlier into the employee's fund for the relevant quarter.

3.7 Amending the calculation of the GIC to take account of the offset reflects the fact that the employer has earlier made a contribution for the benefit of the employee for the relevant quarter.

Summary of new law

3.8 Schedule 3 to this Bill amends the SGAA 1992 with respect to when an employer can make a contribution to an employee's fund after the due date for a quarter, and still be able to use the offset. An employer is eligible to use the offset to reduce their SG charge liability, where:

- the employer has made a contribution for a quarter into an employee's fund after the due date for the quarter;
- the contribution in respect of the employee is made before the employer's original assessment for the SG charge for the quarter (original SG assessment date);
- the employer has given an election, in the approved form, to the Commissioner to use the offset in respect of the employee to reduce their SG charge liability for the quarter; and
- the election is made within four years after the original SG assessment date for the quarter.

3.9 Schedule 3 also amends the SGAA 1992 in relation to the calculation of the GIC on an unpaid amount of the SG charge where an employer elects to use the offset. The offset takes effect from the original SG assessment date. From the original SG assessment date, the GIC accrues on the remaining shortfall component of the unpaid SG charge amount after the offset has been applied.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A contribution made after the due date for a quarter for an employee can be used to offset against the SG charge for the quarter for the employee, provided the contribution is made before the original SG assessment date for the quarter.	A contribution made any time after the due date for a quarter for an employee can be used to offset against the SG charge for the quarter for the employee.
Where an employer elects to use the offset, the GIC accrues on the remaining shortfall component of the unpaid SG charge amount (after the offset is applied) from the original SG assessment date for the quarter.	Where an employer elects to use the offset, the GIC accrues on the full shortfall component of the unpaid SG charge amount (before the offset is applied) from the SG charge payable date to the date of the election. The GIC then accrues on the remaining shortfall component of the unpaid SG charge amount (after the offset is applied) from the date of the election.

Detailed explanation of new law

Eligibility to use the offset

3.10 The offset can be used by an employer to reduce their SG charge liability for a quarter for an employee, where all the following conditions exist:

- the employer makes a contribution into the employee's superannuation fund after the due date for the quarter [*Schedule 3, item 1, subparagraph 23A(1)(a)(i)*];
- the contribution in respect of the employee is made before the employer's original SG assessment date for the quarter [*Schedule 3, item 1, subparagraph 23A(1)(a)(ii)*];

- the employer elects, in the approved form, to use the contribution as an offset against their SG charge for the quarter for the employee; and
- the election is made within four years after the employer's original SG assessment date for the quarter [*Schedule 3, item 2*].

3.11 An employer's original SG assessment date for a quarter is the date when either of the following first occurs:

- the Commissioner receives an SG statement from the employer for the quarter and the employer has not previously lodged an SG statement for that quarter and the Commissioner has not assessed an SG charge for the employer for that quarter; or
- a default assessment is raised on the employer for the quarter.

Example 3.5

Catherine is required to make a \$1,000 contribution for the September 2009 quarter on behalf of Jay. Catherine fails to make the contribution by the due date of 28 October 2009, but makes a late contribution into Jay's superannuation fund on 1 December 2009. Catherine is assessed on 31 January 2010 with an SG charge liability for the September 2009 quarter for Jay. Catherine is eligible to use the late contribution made to Jay's fund to offset against her unpaid SG charge liability for Jay for the September 2009 quarter. If Catherine wishes to use the offset she must give her election in the approved form to the Commissioner by 31 January 2014.

Example 3.6

Jeremy does not make super contributions for Phil, Peter and Michael for the quarter ended 30 September 2009. He pays a late contribution for all three on 15 December 2009. On 11 January 2010 Jeremy lodges an SG statement with the Commissioner including his liability for only Phil and Peter. In that statement, he also elects a late payment offset for Phil and Peter.

On 27 June 2010 Jeremy realises that he did not include details for Michael in the SG statement or elect the offset for him and lodges both an amended SG statement and an offset election for Michael. Jeremy will be entitled to claim the offset for Michael as it has been received within four years of the original SG assessment date (ie, within four years of 11 January 2010).

3.12 Where an employer makes a contribution to an employee's fund after the due date for a quarter but is ineligible to use the offset because the contribution is not made before the original SG assessment date for the quarter, then the employer may be able to apply that contribution to a future quarter for the employee for the purposes of the SGAA 1992. This is in accordance with subsection 23(7) of the SGAA 1992. However, the contribution can only be applied to a future quarter if the contribution is made not more than 12 months before the beginning of that quarter and the individual is still an employee of the employer in that future quarter.

Example 3.7

Kim is required to make a \$500 contribution for the September 2009 quarter on behalf of Jean. Kim fails to make the contribution by the due date of 28 October 2009. Kim is assessed with an SG charge liability on 1 November 2009 for the September 2009 quarter for Jean. Kim makes a late contribution on 1 December 2009 into Jean's fund. Kim is not able to use the contribution to offset against her unpaid SG charge liability for the September 2009 quarter. This is because the contribution was not made before the original SG assessment date for the September 2009 quarter (ie, the contribution was not made before 1 November 2009). However, Kim may apply the contribution to a future quarter for Jean if the future quarter does not end later than 1 December 2010 and Jean is still employed by Kim in that future quarter.

Date of effect of the offset

3.13 Where an employer is eligible to use the offset for a quarter for an employee, and does elect to use the offset, then the offset takes effect on the employer's original SG assessment date for the quarter. [*Schedule 3, item 3*]

3.14 The offset takes effect to reduce the employer's SG charge liability for the quarter in respect of the relevant employee. The SG charge liability is reduced by first using the contribution to offset against the nominal interest component of the SG charge, before any remainder of the contribution is used to offset against the shortfall amount of the SG charge. This is in accordance with subsection 23A(4) of the SGAA 1992.

3.15 Having the date of effect of the offset as the employer's original SG assessment date should encourage employers who have a shortfall for a quarter to lodge their SG statement in a timely manner and to also elect to use the offset in a timely manner, so that the offset can take effect to reduce their SG charge liability.

3.16 The date of effect of the offset is also relevant for calculating the GIC on an SG charge amount (refer to paragraph 3.19).

Example 3.8

Following on from Example 3.1, Catherine's SG charge amount for the September 2009 quarter for Jay at the original SG assessment date (31 January 2010) is \$1,070. This is made up of the shortfall amount of \$1,000, the nominal interest component of \$50 and the administration fee of \$20. Catherine gives her election to use the offset in respect of Jay to the Commissioner on 1 February 2010. On 31 January 2010, the late contribution made by Catherine into Jay's fund is first offset against the nominal interest component before the remainder of the contribution is offset against the shortfall amount.

General interest charge on an unpaid superannuation guarantee charge

3.17 Section 49 of the SGAA 1992 sets out how the GIC on an unpaid SG charge is calculated. The GIC does not accrue on the nominal interest or the administration components of the SG charge, in accordance with subsection 49(2) of the SGAA 1992. The GIC is intended to encourage employers to pay an unpaid amount of the SG charge by the time it is due to be paid (ie, by the SG charge payable date). The SG charge payable date is set out under sections 36 and 46 of the SGAA 1992.

3.18 The GIC accrues from the SG charge payable date to when both the SG charge and the GIC have been fully paid. This is in accordance with subsection 49(3) of the SGAA 1992. With the GIC accruing on any shortfall component of the unpaid SG charge amount employers have the incentive to pay the unpaid amount in a timely manner.

3.19 Prior to these amendments, where an employer elects to use the offset under section 23A of the SGAA 1992, the GIC would accrue on the full shortfall component of the unpaid SG charge amount from the SG charge payable date to the date the Commissioner receives the election. Then from the date the Commissioner receives the election, the GIC would accrue on the remaining shortfall component of the unpaid SG charge amount (after the offset has been applied) to the time when both the SG charge and the GIC are fully paid.

3.20 Under these amendments, where an employer elects to use the offset under section 23A, the GIC is calculated on the remaining shortfall component of the unpaid SG charge amount (after the offset has been applied) [*Schedule 3, item 4*]. The offset in respect of an employee takes effect from the employer's original SG assessment date for the quarter [*Schedule 3, item 3*].

Example 3.9

Following on from Example 3.4, Catherine is liable to pay GIC on the remaining shortfall component of the unpaid SG charge amount after the offset has been applied, from the SG charge payable date for the September 2009 quarter to when the SG charge and the GIC are both fully paid.

The offset takes effect on Catherine's original SG assessment date of 31 January 2010. The remaining shortfall component of the unpaid SG charge amount is \$50 after the offset has been applied. This amount is arrived by applying the contribution (\$1,000) against the nominal interest component (\$50) before the remainder of the contribution (\$950) is applied against the shortfall amount (\$1,000). The GIC accrues on the shortfall amount of the remaining unpaid SG charge (\$50). The administration fee (\$20) is still payable but does not attract GIC.

The GIC will accrue on \$50 from the SG charge payable date of 31 January 2010 to when both the SG charge and the GIC have been fully paid by Catherine.

Application and transitional provisions

3.21 These amendments commence from the date this Bill receives Royal Assent.

3.22 These amendments apply to a valid election made by an employer to use the offset on or after the commencement of this Bill [*Schedule 3, item 5*]. An election by an employer is considered to be valid where it is made in accordance with section 23A of the SGAA 1992.

3.23 Schedule 3 to this Bill does not contain any transitional provision.

Chapter 4

Minor amendments

Outline of chapter

4.1 Schedule 4 to this Bill makes various minor amendments to the taxation laws.

Context of amendments

4.2 Taxation legislation is complex and wide-ranging. Therefore, errors can occur. Even minor errors can detract from the readability of the taxation laws and can confuse or mislead readers, so the errors need correcting.

4.3 The minor amendments are part of the Government's commitment to the care and maintenance of the taxation laws.

Summary of new law

4.4 These amendments deal with issues such as:

- incorrect terminology;
- grammatical or punctuation errors;
- missing asterisks from defined terms;
- inoperative material;
- ambiguities in the law; and
- realign policy with the original policy intent.

4.5 More significant amendments include:

- extending capital allowance roll-over relief for depreciating assets to the case where a fixed trust is converted to a company (see items 16 to 18);

- allowing funds that can make payments to dependents of deceased estates to still be approved worker entitlement funds and so retain the fringe benefits tax exemption for payments to them (see item 5); and
- giving trustees and beneficiaries of employee share trusts a choice to backdate recently inserted capital gains tax (CGT) provisions that prevent taxing both trustees and beneficiaries when the employee becomes absolutely entitled to shares held in the trust after exercising rights under an employee share scheme (see item 51).

4.6 These amendments apply from the date of Royal Assent unless otherwise stated.

Detailed explanation of new law

Table 4.1: Amendments to the *Goods and Services Tax Act 1999*

<i>Provision being amended</i>	<i>What the amendment does</i>
195-1 ('hospital treatment')	Replaces a reference to a definition that has been repealed with the definition that replaced it. 'Hospital treatment' is a goods and services tax (GST) free health service. The current definition of 'hospital treatment' has the meaning given by subsection 67(4) of the <i>National Health Act 1953</i> . That provision was repealed on the enactment of the <i>Private Health Insurance Act 2007</i> . As a result, hospital treatment is defined by reference to a repealed provision. The amendment instead refers to the definition of 'hospital treatment' in the <i>Private Health Insurance Act 2007</i> which achieves the same effect. [<i>Schedule 4, item 1, section 195-1</i>]

Table 4.2: Amendments to the *Fringe Benefits Tax Assessment Act 1986*

<i>Provision being amended</i>	<i>What the amendment does</i>
5C(3) and (4)	<p>Amends the fringe benefits tax (FBT) calculation of an employer's aggregate fringe benefits amount to restore the pre-GST concessional treatment of remote area property benefits. [<i>Schedule 4, items 2 and 3, subsections 5C(3) and (4)</i>]</p> <p>These amendments also clarify how remote area housing fringe benefits are allocated between Type 1 and Type 2 aggregate fringe benefits amounts, according to whether the amortised fringe benefit to which it relates is a GST-creditable benefit.</p> <p>The calculation of an employer's aggregate fringe benefits amount was amended in 2000 to take the effect of GST into account. However, the amendments inadvertently did not replicate the previous FBT discount for remote area housing, nor the spreading of certain remote area property benefits over an amortisation period.</p> <p>The amendments, which favour taxpayers, apply from the FBT year commencing 1 April 2000 (when the original GST amendments began). [<i>Schedule 4, item 4</i>]</p>
58PB(4)(c)(i)	<p>Allows approved worker entitlement funds to make payments to the dependants of deceased workers. [<i>Schedule 4, item 5, subparagraph 58PB(4)(c)(i)</i>]</p> <p>Sections 58PA and 58PB provide an exemption from FBT for certain payments to approved worker entitlement funds. A fund can only be an approved worker entitlement fund if it is limited to making payments to the employees for whom contributions were received.</p> <p>This amendment provides that, upon the death of an employee, the fund is able to make payments to the employee's dependants or the trustee of the employee's deceased estate, without losing its status as an approved worker entitlement fund.</p> <p>This is consistent with the outcome where a worker with unused leave entitlements dies and amounts in respect of those entitlements are paid to the dependants directly by an employer rather than by a worker's entitlement fund.</p>

Table 4.3: Amendments to the *Income Tax Assessment Act 1936*

<i>Provision being amended</i>	<i>What the amendment does</i>
23AB(5)(a)	<p>Updates a reference to the now repealed '<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>'. The Act was retitled to the '<i>Safety, Rehabilitation and Compensation Act 1988</i>' in 1992 and 1993. [<i>Schedule 4, item 6, paragraph 23AB(5)(a)</i>]</p>

<i>Provision being amended</i>	<i>What the amendment does</i>
23AG(1)	Corrects a grammatical error by replacing the word 'is' with the word 'are'. [<i>Schedule 4, item 7, subsection 23AG(1)</i>]
73A(6) (definition of 'Research Secretary')	Changes a reference to 'Education Research Act 1970' to 'Australian Research Council Act 2001'. This restores the capacity of the Secretary to the Department of Innovation to declare an institution an approved research institute. The <i>Education Research Act 1970</i> was repealed on 3 July 2008 by the <i>Statute Law Revision Act 2008</i> . [<i>Schedule 4, item 8, subsection 73A(6) (definition of 'Research Secretary')</i>]
82KZMGA(1)	Removes a discrepancy in the law that may inhibit the trading of pre-2 October 2001 interests in forestry managed investment schemes. This amendment reflects the original policy intent of the <i>Tax Laws Amendment (2007 Measures No. 3) Act 2007</i> . [<i>Schedule 4, item 9, subsection 82KZMGA(1)</i>]
102T(27) ('unit trust distribution')	Replaces a mistaken reference to 'subsection 102M(1)' (which does not exist) with the correct reference 'section 102M'. [<i>Schedule 4, item 10, subsection 102T(27) (unit trust distribution)</i>]

Table 4.4: Amendments to the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
20-55(1) (item 1 in the table) 20-55(1) (item 6 in the table) 25-5(8) 36-17(5) (example) 43-50(1) and (2) 43-210 (step 6) 43-215 (step 4) 240-55 (heading) 290-90(2) (note 2)	Replaces references to 'allowable deduction' with 'deduction', which is the term used in the <i>Income Tax Assessment Act 1997</i> (ITAA 1997). There is no change in outcomes. [<i>Schedule 4, items 11, 12, 13, 15, 21, 22, 23, 27, 28, subsections 20-55(1) (item 1 in the table), 20-55(1) (item 6 in the table), 25-5(8), 36-17(5) (example), 43-50(1) and (2) and 290-90(2) (note 2), sections 43-210 (step 6), 43-215 (step 4) and 240-55 (heading)</i>]
25-7(b) and (c)	Repeals a paragraph that only relates to the 2001-02 income year and is therefore inoperative. [<i>Schedule 4, item 14, paragraph 25-7(b)</i>]

<i>Provision being amended</i>	<i>What the amendment does</i>
26-50(3)(b)(iv) 30-15(2) (column headed ‘How much you can deduct’) 51-50(2)(b)(i) 52-70(b) 52-105(3)(b) 149-15(1)(b) 152-40(1A)(a) 215-10(1)(b)(ii) 215-10(1)(b) 215-10(1)(c) 215-10(2)(a)(ii) 295-485(1)(a) 320-107(1)(a)	Corrects asterisking of defined terms. In the ITAA 1997, the protocol is to mark defined terms with an asterisk but to do so only for the first occurrence of the term in each subsection. <i>[Schedule 4, item 52, subparagraphs 26-50(3)(b)(iv), 215-10(1)(b)(ii) and 215-10(2)(a)(ii), paragraphs 52-105(3)(b), 149-15(1)(b), 152-40(1A)(a), 215-10(1)(b), 215-10(1)(c), 295-485(1)(a), 320-107(1)(a) and subsections 30-15(2) and 52-70(b)]</i>
40-340(1)	<p>Extends capital allowance roll-over relief to the same situations that Subdivision 124-N covers for CGT provisions. Because the situations are the same in both cases, the reasons for providing roll-over relief for CGT make it appropriate to also provide it for capital allowances. <i>[Schedule 4, items 16 and 18, subsections 40-340(1) and (2)]</i></p> <p>Generally roll-over relief is a deferral of tax where there is no underlying change in ownership of an asset (eg, where an asset is transferred from a company to a trust owned by the same person).</p> <p>The law provides situations where roll-over relief is available in CGT situations, and capital allowance situations. Usually these situations are aligned.</p> <p>The CGT rules in Subdivision 124-N provide roll-over relief where a unit trust transfers its assets to a company and the unit holders are provided with shares in the company. This amendment extends roll-over relief to capital allowances in the same case.</p> <p>The amendment applies to balancing adjustment events in the 2008-09 income year and later years. This ensures there is a uniform treatment across the income year. <i>[Schedule 4, item 17]</i></p>
40-340(5)	Replaces references to ‘person’ with ‘you’, the direct form of address generally used in the ITAA 1997. <i>[Schedule 4, items 19 and 20, subsection 40-340(5)]</i>

<i>Provision being amended</i>	<i>What the amendment does</i>
116-30(2B)	<p>Amends subsection 116-30(2B) to ensure that it applies as intended.</p> <p>Subsection 116-30(2B) ensures that the CGT market value substitution rule in subsection 116-30(2) does not apply when CGT event C2 (about the cancellation, surrender and similar endings of an intangible CGT asset) happens to interests in certain widely held companies and trusts.</p> <p>Subsection 116-30(2B) was intended to apply only in those cases where the capital proceeds differ from the market value of the asset (ie, in paragraph 116-30(2)(b) cases). However, subsection 116-30(2B) at present also inappropriately extends to cases where some or all of the capital proceeds cannot be valued (ie, paragraph 116-30(2)(a) cases). The amendment ensures that the market value substitution rule can still apply in 116-30(2)(a) cases. <i>[Schedule 4, item 24, subsection 116-30(2B)]</i></p> <p>This amendment (which favours taxpayers) applies to CGT events happening after the start of the 2006-07 income year so that it is consistent with the original application of subsection 116-30(2B). <i>[Schedule 4, item 25]</i></p>
122-50(1) example	<p>Amends an example so that it correctly reflects the law.</p> <p>The example was correct when it was first introduced, but the need to amend it was overlooked when amendments were made to the operative provision in 2001.</p> <p><i>[Schedule 4, item 26, subsection 122-50(1) example]</i></p>
707-310	<p>Changes references to 'income' to the less ambiguous equivalent 'ordinary or statutory income'. <i>[Schedule 4, items 29 to 31, section 707-310]</i></p>
711-30(3)	<p>Replaces an unnecessary internal tag 'the receivable' with 'the asset' to remove unnecessary verbiage in the law.</p> <p><i>[Schedule 4, items 32 to 35, subsection 711-30(3)]</i></p>

Table 4.5: Amendments to the *Income Tax Rates Act 1986*

<i>Provision being amended</i>	<i>What the amendment does</i>
23(2)(c)	<p>Updates references to provisions that were renumbered in 2007. <i>[Schedule 4, item 35, paragraph 23(2)(c)]</i></p> <p>The amendment applies to assessments for the 2007-08 and later income years (when the error first applied) to avoid any confusion in the law. <i>[Schedule 4, item 36]</i></p>

Table 4.6: Amendments to the *Taxation Administration Act 1953*

<i>Provision being amended</i>	<i>What the amendment does</i>
16-5 in Schedule 1, note 2	<p>The note refers to a number of sections and then refers to the time required by ‘that section’. An amendment made by the <i>Tax Laws Amendment (Election Commitments No. 1) Act 2008</i> inserted ‘or subsection 12-390(4)’, in the note. Consequently, the use of ‘that section’ no longer covers all the provisions mentioned. The amendment corrects that by replacing ‘that section’ with ‘that provision’. [<i>Schedule 4, item 37, section 16-5 in Schedule 1</i>]</p>
20-35(2)(b) in Schedule 1	<p>The paragraph refers to a number of sections and then refers to the receipt mentioned in ‘that section’. A consequential amendment made by the <i>Tax Laws Amendment (Election Commitments No. 1) Act 2008</i> inserted ‘or subsection 12-390(4),’ in the paragraph. Consequently, the use of ‘that section’ no longer covers all the provisions mentioned. The amendment corrects that by replacing ‘that section’ with ‘that provision’. [<i>Schedule 4, item 38, paragraph 20-35(2)(b) in Schedule 1</i>]</p> <p>The application applies to income years starting on or after 1 July 2008 to avoid confusion. [<i>Schedule 4, item 39</i>]</p>
45-10 in Schedule 1 (note 1) 45-10 in Schedule 1 (note 2) 45-450 in Schedule 1	<p>Updates cross-references that were missed when section 9-1 of the ITAA 1997 was re-ordered in 2007. [<i>Schedule 4, items 40 to 43, section 45-450 in Schedule 1</i>]</p> <p>The amendments are backdated to assessment for the 2007-2008 and later income years (when the references were missed) to avoid confusion in the law. [<i>Schedule 4, item 44</i>]</p>

Table 4.7: Amendments to the *Taxation (Interest on Overpayments and Early Payments) Act 1983*

<i>Provision being amended</i>	<i>What the amendment does</i>
3(1)	<p>Restores the provision that allows interest to be paid to taxpayers when they have overpaid certain amounts. <i>[Schedule 4, item 45, subsection 3(1)]</i></p> <p>Paragraph (a) of the definition of ‘income tax crediting amount’ in section 3 was repealed as a consequential amendment to the introduction of the new foreign tax offset provisions (item 213 of Schedule 1 to the <i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i>).</p> <p>Part of that paragraph allowed interest to be paid to taxpayers when a credit entitlement arose that was not related to foreign tax credits.</p> <p>The amendment restores that part of the repealed paragraph. It applies from the time that the repeal of the old paragraph applied (ie, accounting periods starting on or after 1 July 2008). <i>[Schedule 4, item 46]</i></p>
10(1)(a) 10(1) 9(2) and (3)	<p>Repeals an inoperative provision and makes consequential amendments to references. <i>[Schedule 4, items 47 to 49, paragraph 10(a), subsections 9(2) and (3) and 10(1)]</i></p> <p>The subparagraph deals with the calculation of interest payable to a person for a period that commenced in the mid-eighties.</p> <p>A savings provision ensures that, in the unlikely event a taxpayer is still owed interest from that period, the operation of the subparagraph is preserved. <i>[Schedule 4, item 50]</i></p>

Table 4.8: Amendments to the *Tax Laws Amendment (Budget Measures) Act 2008*

<i>Provision being amended</i>	<i>What the amendment does</i>
Item 14 of Schedule 1	<p>Provides taxpayers with a choice to amend their assessments for the 1998-99 to 2007-08 income years.</p> <p>Subsection 130-90(3) of the ITAA 1997 was amended in 2008 to prevent taxing both a trustee and a beneficiary of an employee share trust when the employee becomes absolutely entitled to shares held in the trust after exercising rights under an employee share scheme. That amendment applied to CGT events happening after 7.30 pm on 13 May 2008 (the time of announcement of the amendment).</p> <p>The application date was based on the understanding that taxpayers were not using these arrangements because of the potential double taxation that may apply. This understanding has proved to be incorrect. A number of public company schemes involving employee share trusts have been used since 1998 (when section 130-90 was introduced into the ITAA 1997).</p> <p>The current amendment provides taxpayers with the choice to apply for retrospective amendment of their assessments back to 1998-99. [<i>Schedule 4, item 51, item 14 of Schedule 1</i>]</p> <p>This allows taxpayers to use the amendment in those cases where they would otherwise suffer double taxation, but still allows taxpayers to avoid any disadvantage retrospective application that the original amendment might impose. In other words, it ensures that the backdating is only to the benefit of taxpayers.</p> <p>Standard amendment periods (typically, two or four years depending on the taxpayer's circumstances) still apply.</p>

Table 4.9: Amendments to the *Pay-roll Tax Act 1941*

<i>Provision being amended</i>	<i>What the amendment does</i>
All provisions	<p>Repeals an inoperative Act.</p> <p>The <i>Pay-roll Tax Assessment Act 1941</i> was repealed in 2006 by the <i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i> but repealing the inoperative imposition Act was overlooked. [<i>Schedule 4, item 53, Pay-roll Tax Act 1941</i>]</p> <p>Commonwealth payroll tax ceased to apply to wages paid after 1 September 1971, which is the date the Commonwealth transferred responsibility for payroll tax to the States.</p>

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