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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (2011 MEASURES No. 9) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

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

Abbreviation	***Definition***
ACT	Australian Capital Territory
ADI's	authorised deposit-taking institutions
ATO	Australian Taxation Office
APRA	Australian Prudential Regulation Authority
CGT	capital gains tax
Commissioner	Commissioner of Taxation
Corporations Act	*Corporations Act 2001*
DGRs	deductible gift recipients
GST	goods and services tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
ITAA 1997	*Income Tax Assessment Act 1997*
ITAA 1936	*Income Tax Assessment Act 1936*
RSA Act	*Retirement Savings Accounts Act 1997*
share sale facility	share or interest sale facility
SIS Act	*Superannuation Industry (Supervision) Act 1993*
TAA 1953	*Taxation Administration Act 1953*
TFN	tax file number
TIES	Tax Issues Entry System

General outline and financial impact

Electronic portability form

Schedule 1 to this Bill amends the *Retirement Savings Accounts Act 1997* and the *Superannuation Industry (Supervision) Act 1993* to enable certain superannuation fund members to electronically request the consolidation of their superannuation benefits through the Australian Taxation Office.

Date of effect: These amendments commence from the day after Royal Assent.

Proposal announced: This measure was announced in the Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 134 of 23 September 2011.

Financial impact: Nil.

Compliance cost impact: Low to nil.

CGT and business restructures — Part 1: Share or interest sale facilities for foreign interest holders in a restructure

Part 1 of Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* to ensure entities in a restructure can use a share or interest sale facility to deal with foreign held interests without Australian tax residents automatically failing a key requirement of certain capital gains tax (CGT) roll-overs.

Date of effect: This measure applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

The amendments are either beneficial to taxpayers or do not disadvantage them. For more details see paragraphs 2.31 to 2.33 in this explanatory memorandum.

Proposal announced: This measure was announced in the then Assistant Treasurer's Media Release No. 090 of 11 May 2010 and in the 2010-11 Budget.

Financial impact: This measure is expected to have an unquantifiable, but expected to be negligible, revenue impact.

Compliance cost impact: Low. This is comprised of a low implementation impact and no change in ongoing compliance costs relative to the affected group.

CGT and business restructures — Part 2: CGT demerger relief

Part 2 of Schedule 2 to this Bill excludes an entity from being a member of a demerger group if the entity is a corporation sole or a complying superannuation entity.

Date of effect: The amendments in Part 2 apply to capital gains tax events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

This date of effect ensures that any transactions occurring from the time of announcement are covered by the amendments so that taxpayers can benefit from the measure. These amendments are beneficial to taxpayers.

Proposal announced: This measure was announced in the then Assistant Treasurer's Media Release No. 090 of 11 May 2010 and in the 2010-11 Budget.

Financial impact: This measure is expected to have an unquantifiable but negligible revenue cost.

Compliance cost impact: Low. This is comprised of a low implementation impact and no change in ongoing compliance costs relative to the affected group.

CGT and business restructures — Part 3: Roll-overs for change of incorporation

Part 3 of Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to expand the existing capital gains tax (CGT) roll-over for the change of a body to an incorporated company. The expanded roll-over applies to entities that change incorporation to become a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. The expanded roll-over also covers a taxpayer's rights associated with a body, as well as their ownership interests, and situations

where a body is wound up and replaced by a new company incorporated under a different law.

Part 3 also amends the ITAA 1997 to allow for tax neutral consequences for CGT, depreciating, revenue and trading stock assets of a body that is wound up and replaced by a new company incorporated under a different law, and these assets are transferred to the new company.

Date of effect: The expansions to the CGT roll-over for interests in a body that changes incorporation applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

The roll-over for the CGT, depreciating, revenue and trading stock assets of a body that changes its incorporation by winding up and transferring its assets to a new company applies in relation to the cessation of existence of bodies corporate occurring after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

The dates of effect of these roll-overs are retrospective so that any transactions occurring since the time of announcement are covered by the amendments so that taxpayers can benefit from the measure.

Proposal announced: This measure was announced in the then Assistant Treasurer's Media Release No. 090 of 11 May 2010 and in the 2010-11 Budget.

Financial impact: This measure is expected to have an unquantifiable but negligible revenue cost.

Compliance cost impact: Low. This is comprised of a low implementation impact and no change in ongoing compliance costs relative to the affected group.

GST financial supply provisions

Schedule 3 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to implement three of the seven recommendations agreed to by the Government arising out of Treasury's *Review of the GST financial supply provisions*. The measures requiring legislative change and included in this Bill:

- increase the first limb of the financial acquisitions threshold from $50,000 to $150,000;

- exclude financial supplies consisting of a borrowing made through the provision of a deposit account by an Australian authorised deposit-taking institution from the current concession for borrowings; and
- allow taxpayers who account on a cash basis to treat an acquisition made under a hire purchase agreement as though they do not account on a cash basis.

Implementation of the remaining measures require changes to the *A New Tax System (Goods and Services Tax) Regulations 1999*.

Date of effect: 1 July 2012.

Proposal announced: The Government announced on 11 May 2010 that it would enact a package of seven measures in response to Treasury's *Review of the GST financial supply provisions*.

Financial impact: The package of financial supply measures is expected to be revenue neutral when taken as a whole.

Compliance cost impact: Low.

GST treatment of new residential premises

Schedule 4 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that sales or long-term leases of new residential premises by a registered entity are taxable supplies and that sales or long-term leases of residential premises (other than new residential premises) are input taxed supplies.

Date of effect: Except for item 2 (clarifying the definition of 'new residential premises') which applies on or after the day this Schedule commences, the provisions take effect from 27 January 2011 (the date of the Government's announcement). This start date will reduce the risk to revenue that might otherwise arise from behavioural change. These amendments contain a transitional provision to ensure that developers who were 'commercially committed' to arrangements to develop premises before 27 January 2011 are not disadvantaged by the measure.

Proposal announced: This measure was announced in the Assistant Treasurer and Minister for Financial Services and Superannuation's Media Release No. 020 of 27 January 2011.

Financial impact: This measure results in an ongoing gain to goods and services tax (GST) revenue which is estimated to be $60 million over the forward estimates period, with cash receipts from this measure paid to the States and Territories. This results in additional payments of $55 million to the States and Territories over the forward estimates period, with the difference between payments due to a timing delay between the accrual of GST revenue and cash collections.

Compliance cost impact: Low.

Deductible gift recipients

Schedule 5 to this Bill amends the *Income Tax Assessment Act 1997* to update the list of deductible gift recipients (DGRs) by adding one entity as a DGR, and changing the name of another entity previously specifically listed.

Date of effect: The listing of Rhodes Trust in Australia applies to gifts made after 20 October 2011. The name change from ‘Playgroup Australia Incorporated’ to ‘Playgroup Australia Limited’ applies from 25 October 2010.

Proposal announced: The addition of Rhodes Trust in Australia has not previously been announced.

Financial impact:

Organisation	***2011-12***	***2012-13***	***2013-14***	***2014-15***
Rhodes Trust in Australia	−$0.06m	−$0.75m	−$0.75m	−$0.75m

Compliance cost impact: Nil.

Miscellaneous amendments to the tax laws

Schedule 6 to this Bill makes technical corrections and other minor and miscellaneous amendments to the taxation laws. These amendments are part of the Government’s commitment to the care and maintenance of the tax system.

Date of effect: These amendments commence from Royal Assent unless otherwise stated.

Proposal announced: These amendments were all foreshadowed by release in draft form on the Treasury website on 11 October 2011.

Financial impact: The amendment to gives the Commissioner of Taxation discretion to extend the two-year period that applies to the capital gains tax exemptions on the disposal of a dwelling (or an interest in it) by a trustee of a deceased estate (Part 8, comprising items 94 to 96) is expected to result in a small but unquantifiable cost to revenue.

The other amendments are expected to have a minimal to nil revenue impact.

Compliance cost impact: Low to nil.

Chapter 1
Electronic portability form

Outline of chapter

1.1 Schedule 1 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Retirement Savings Accounts Act 1997* (RSA Act) to enable certain superannuation fund members to electronically request the consolidation of their superannuation benefits through the Australian Taxation Office (ATO). The scheme is referred to as the *electronic portability form*.

1.2 For the purposes of this chapter, references to a 'superannuation fund' or 'fund trustee', 'member' and 'benefits' also include a retirement savings account (RSA) provider, an RSA account holder and benefits held in RSA accounts.

1.3 This Schedule also:

- grants the Commissioner of Taxation (Commissioner) general administration of the scheme and related tax file number (TFN) provisions;
- amends the TFN provisions for the purposes of the scheme; and
- removes a redundant reference in relation to the division of general administration of the SIS Act.

Context of amendments

1.4 The current arrangements for the portability of superannuation allow members of certain superannuation funds to move their benefits between funds. Broadly, the member applies to their fund in writing and completes the required documentation. The transferring fund verifies the identity of the member, using certified member identity documents. The transferring fund must send the member's benefits to the receiving fund nominated by the member when all the requirements have been satisfied.

1.5 Some fund members may be unaware they have become 'lost'. A superannuation fund may report a member as 'lost' to the ATO, for example, when the fund cannot contact the member. The ATO records

the account details of such 'lost' members on the lost members register. The primary aim of this register is to assist in reuniting lost members with their superannuation benefits. The Commissioner is required to keep the lost members register by the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

1.6 Lost members may search for their superannuation accounts using SuperSeeker, an online tool on the ATO's website. SuperSeeker also allows individuals to search for unclaimed superannuation money and other superannuation amounts held by the ATO. If SuperSeeker matches the member's details with those stored on the lost members register, the member may either contact the fund trustee directly to update their details, or consolidate their accounts by transferring or rolling over their benefits under the current portability arrangements.

Electronic portability form

1.7 The proposed electronic portability form will provide certain members with a simplified and streamlined electronic method to facilitate consolidating their benefits.

1.8 Lost members, after first locating their benefits through SuperSeeker, may pre-fill a transfer request and submit it electronically to the ATO. The ATO will verify the identity of the member and match it to the recorded account, and will also verify the status of the nominated receiving fund. If the verification processes are successfully completed, the ATO will electronically transmit the transfer request to the fund that reported the member as lost (the transferring fund). The transferring fund will then be able to send the member's benefits to the nominated receiving fund under the current portability arrangements.

1.9 In some cases electronic submission of the transfer request is not available. Circumstances in which this may occur include:

- the member's account details are not recorded on the lost members register;
- insufficient member details are provided on the transfer request;
- details about the nominated receiving fund are not provided;
- the member has previously submitted a form electronically for the same account;
- the ATO cannot verify the member's identity;

- the ATO cannot verify the status of the receiving fund; or
- the transferring fund cannot receive electronic correspondence from the ATO.

1.10 In these circumstances, the member may print the transfer request and post it to their fund.

Summary of new law

1.11 This Schedule amends the SIS Act and the RSA Act to permit regulations to prescribe the operating details of the electronic portability form and to specify additional requirements.

1.12 This Schedule also grants the Commissioner general administration of the scheme and of related TFN provisions.

1.13 This Schedule amends the TFN provisions to permit the Commissioner to request a member's TFN and disclose it to a superannuation fund trustee for the purposes of the scheme, and to include the TFN on the transfer request.

1.14 This Schedule also makes a minor amendment by removing a redundant reference in relation to the division of general administration of the SIS Act.

Comparison of key features of new law and current law

New law	***Current law***
Regulations may prescribe a scheme for the portability of superannuation benefits administered by the Commissioner.	Regulations may prescribe standards relating to the portability of superannuation benefits.
The Commissioner has general administration of the prescribed scheme and related TFN provisions. The Australian Prudential Regulation Authority (APRA) retains general administration of the portability arrangements.	APRA has general administration of the portability arrangements.
The Commissioner may request a member's TFN for the purposes of the prescribed scheme.	The Commissioner is not permitted to request a member's TFN for the purposes of the portability arrangements.

New law	***Current law***
The Commissioner may require the member's TFN to be included on the transfer request.	No equivalent.
The Commissioner may disclose a member's TFN to a fund trustee for the purposes of the prescribed scheme.	The Commissioner is not permitted to disclose a member's TFN to a fund trustee for the purposes of the portability arrangements.
The member is taken to have quoted their TFN to the trustee, and quoted it at the time the Commissioner informs the trustee of the member's TFN.	No equivalent.

Detailed explanation of new law

Regulations may prescribe a scheme

1.15 The regulations may prescribe a scheme that allows the Commissioner to receive requests from fund members for the roll-over or transfer of their superannuation benefits, and to forward those requests to the trustee of the member's superannuation fund. ***[Schedule 1, item 8, section 39A of the RSA Act; item 17, section 34A of the SIS Act]***

1.16 These amendments allow the operating details of the scheme to be set out in the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Accounts Regulations 1997*. For example, the regulations may require such requests to be made in an approved form, including electronically.

1.17 The regulations may limit access to the scheme to individuals who have a superannuation interest that is recorded on the lost members register and able to be located through SuperSeeker or similar mechanism. The scheme may be extended to cover other superannuation accounts in the future as the Stronger Super reforms are progressively implemented. Current portability regulations may also need to be amended to implement the electronic portability form.

1.18 A number of headings are inserted as a consequence of the amendments made by items 8 and 17 of this Schedule. ***[Schedule 1, items 6, 7, 15 and 16 (new headings)]***

1.19 As a consequence of the insertion of new headings, a reference to provisions in the RSA Act is also updated. ***[Schedule 1, item 1, subparagraph 3(1)(a)(ii) of the RSA Act]***

General administration of the electronic portability form

1.20 The Commissioner will have general administration of the electronic portability form under the SIS Act and the RSA Act, and of new provisions relating to TFNs. ***[Schedule 1, item 3, paragraph 3(1)(e) of the RSA Act; item 13, paragraph 6(1)(g) of the SIS Act]***

1.21 These amendments do not affect APRA's general administration of the current portability arrangements.

1.22 As a result of these amendments, the provisions relating to the form and TFNs are 'taxation laws', as defined in the *Income Tax Assessment Act 1997*. Consequently, they are subject to administrative provisions of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) and offence provisions relating to taxation laws, including:

- confidentiality of taxpayer information (Division 355);
- penalties relating to false or misleading statements (Subdivision 284-B); and
- offences relating to TFNs (Part III, Division 2, Subdivision 2-BA).

1.23 The notes in subsection 3(1) of the RSA Act and in subsection 6(1) of the SIS Act are amended to clarify the provisions to which the confidentiality provisions in Division 355 in Schedule 1 to the TAA 1953 apply. Additionally, the note in subsection 6(1) of the SIS Act removes the reference to self managed superannuation funds. ***[Schedule 1, item 4, subsection 3(1)(note) of the RSA Act; item 14, subsection 6(1)(note) of the SIS Act]***

1.24 As a consequence of these changes, references elsewhere in the SIS Act and the RSA Act are updated. ***[Schedule 1, item 2, subparagraph 3(1)(a)(iii) of the RSA Act; item 12, paragraph 6(1)(b) of the SIS Act]***

1.25 Additionally, the Commissioner is included as a 'regulator' in the RSA Act. ***[Schedule 1, item 5, new paragraph 16(c) of the RSA Act]***

Tax file numbers

1.26 The Commissioner may request a member's TFN for the purposes of administering the scheme ***[Schedule 1, item 9, subsection 138A(1) of the RSA Act; item 18, subsection 299NA(1) of the SIS Act]*** and may require the quotation of the member's TFN on the form ***[Schedule 1, item 10, subsection 144(2A) of the RSA Act; item 19, subsection 299U(2A) of the SIS Act].***

1.27 It is not compulsory for the member to quote their TFN on the transfer request. However, the regulations may specify that failure to quote the TFN may affect whether the Commissioner can pass on the member's request to the transferring fund's trustee. ***[Schedule 1, item 9, subsection 138A(2) of the RSA Act; item 18, subsection 299NA(2) of the SIS Act]***

1.28 Members who do not wish to disclose their TFN on the transfer request may apply directly to their fund in writing to roll-over or transfer their benefits to another fund under the current portability requirements. The quotation of their TFN is not mandatory on the standard portability form in Schedule 2A to the *Superannuation Industry (Supervision) Regulations 1994* or on the fund's transfer form.

1.29 The Commissioner may disclose the member's TFN to the trustee of the transferring fund for the purposes of the scheme. ***[Schedule 1, item 9, subsection 138A(3) of the RSA Act; item 18, subsection 299NA(3) of the SIS Act]***

1.30 The Commissioner's disclosure of the member's TFN to the transferring fund's trustee would occur when the Commissioner electronically transmits the transfer request to the trustee.

1.31 If the Commissioner discloses the member's TFN to the transferring fund's trustee, the member is taken to have quoted their TFN to the trustee for the purposes of the superannuation legislation and at the time the Commissioner discloses the TFN to the trustee. ***[Schedule 1, item 9, subsection 138A(4) of the RSA Act; item 18, subsection 299NA(4) of the SIS Act]***

1.32 These amendments to the TFN provisions will enhance the effective administration of the superannuation system by allowing the transferring fund to better match the transfer request to their member records. It also complements other TFN provisions that allow fund trustees to use TFNs to locate member accounts and to facilitate the consolidation of multiple member accounts.

1.33 TFN use by superannuation funds is governed by the *Privacy Act 1988* and the TAA 1953 to ensure member privacy is protected and to prevent unauthorised use of TFNs.

Minor amendment

1.34 Subparagraph 6(1)(a)(xii) of the SIS Act is amended to remove the reference to Division 1. Division 1 is effectively excluded by the words of paragraph 6(1)(a) of the SIS Act, 'to the extent that administration of the provisions is not conferred on the Commissioner of Taxation'. ***[Schedule 1, item 11, subparagraph 6(1)(a)(xii) of the SIS Act]***

Application provisions

1.35 These amendments apply to benefits rolled over or transferred using the electronic portability form from the day after Royal Assent.

Chapter 2
CGT and business restructures — Part 1: Share or interest sale facilities for foreign interest holders in a restructure

Outline of chapter

2.1 Part 1 of Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure entities in a restructure can use a share or interest sale facility to deal with foreign held interests without Australian tax residents automatically failing a key requirement of certain capital gains tax (CGT) roll-overs.

2.2 For the purposes of this chapter, an interest holder is considered to be foreign where the issuing of an interest to that interest holder would be subject to a foreign law. This means that a foreign interest holder could also be an Australian resident for tax purposes or could own taxable Australian property.

2.3 All legislative references in this chapter are to the ITAA 1997 unless otherwise stated.

Context of amendments

2.4 Australian entities may have interest holders who are located in Australia or abroad. The issuing or transferring of interests when one of these entities restructures may be subject to a foreign law.

2.5 A share or interest sale facility (referred to as a 'share sale facility') is used by entities when they restructure as it:

- can be unreasonably onerous or impractical for those entities to comply with the requirements in each relevant foreign jurisdiction relating to the issuing or transferring of interests; and
- avoids inadvertent breaches of these requirements where entities, despite their best intentions, have not ascertained nor fully understood all the foreign law requirements.

2.6 Under a share sale facility, interests issued or transferred under an entity restructure in relation to the foreign interest holder's interest will be allocated to the share sale facility instead of to the foreign interest holder. The share sale facility owns these interests, but ultimately sells them and gives the capital proceeds (less expenses) to the former foreign interest holders.

2.7 However, the use of a share sale facility in an entity restructure may mean that certain requirements of any CGT roll-over relating to that restructure may not be able to be satisfied. A CGT roll-over allows a taxpayer to defer any capital gain or capital loss arising when a CGT event happens in the particular circumstances of the roll-over.

2.8 In particular, some CGT roll-overs for entity restructures require that *all* of the interest holders must exchange their interests in the original entity for interests in the new entity and that *each* interest holder owns the same, or in some instances substantially the same, percentage of interests in the new entity as they owned in the original entity (the 'same ownership requirements'). The entity restructure roll-overs that include these requirements are contained in the following provisions:

- Subdivisions 124-G, 124-H, 124-I, 124-N, 124-Q and 126-G; and

- Division 125.

2.9 The same ownership requirements generally cannot be satisfied where a share sale facility is used to deal with the interests of a foreign interest holder. This is because the interests are now owned by the share sale facility and not the foreign interest holder. Therefore, an entity with foreign interest holders may be reluctant to restructure because the interest holders that are Australian residents for tax purposes or that are foreign residents with taxable Australian property would not qualify for certain CGT roll-overs. If such a restructure occurs, these interest holders would face immediate CGT consequences from the realisation of their interests in the original entity.

2.10 Subdivisions 124-G and 124-Q and Division 125 already allow the same ownership requirements to be satisfied where a share sale facility is used to deal with certain foreign holders. However, Subdivisions 124-G and 124-Q simply disregard interests held by foreign holders rather than modifying the provisions so that the same ownership requirements can still apply to the interests held by the remaining holders. Subdivision 124-G also restricts this treatment to entities that are authorised deposit-taking institutions (ADIs).

2.11 For Division 125, the note to subsection 125-70(1) allows taxpayers access to the demerger roll-over where a share sale facility is used only if it entails a 'two step' process, involving a notional allocation of the interests to the interest holders followed by an actual allocation to a nominee.

2.12 These amendments facilitate the use of share sale facilities in a greater range of CGT entity restructure roll-overs and standardise the approach so that the interests of foreign interest holders are subject to the same ownership requirements of the relevant roll-overs as Australian interest holders.

Summary of new law

2.13 Part 1 of this Schedule treats a foreign interest holder as owning the relevant interest in an entity at a time the share sale facility owns the interest in that entity for the purposes of the relevant CGT entity restructure roll-over provisions.

2.14 For the relevant CGT roll-overs, this treatment ensures that entities can use a share sale facility in a restructure to deal with the interests of foreign interest holders without interest holders that are Australian residents for tax purposes (or foreign residents with taxable Australian property) automatically failing the same ownership requirements. The treatment also ensures that ownership requirements are appropriately maintained.

Comparison of key features of new law and current law

New law	*Current law*
An interest holder that is an Australian resident for tax purposes (or a foreign resident with taxable Australian property) could satisfy the same ownership requirements under certain CGT entity restructure roll-overs where a share sale facility is used to deal with the interests of foreign interest holders.	An interest holder that is an Australian resident for tax purposes (or a foreign resident with taxable Australian property) may fail the same ownership requirements under certain CGT entity restructure roll-overs where a share sale facility is used to deal with the interests of foreign interest holders.

Detailed explanation of new law

2.15 Part 1 of this Schedule replaces the existing share sale facility provisions in Subdivisions 124-G and 124-Q and inserts a broader share sale facility provision into the ITAA 1997 in three places. This is achieved by inserting a new Subdivision into Division 125 and inserting a new provision into Subdivisions 124-A and 126-G. Each of these new provisions uses the same general approach to allow the operation of the relevant CGT restructure roll-over provisions where a share sale facility is used to deal with the interests of foreign interest holders. ***[Schedule 2, items 1, 3, 8, 9 and 10, sections 124-20, 125-235 and 126-265]***

2.16 As Subdivision 124-A contains the share sale facility provisions for the relevant replacement-asset roll-overs contained in Division 124, notes are inserted into each relevant Subdivision in Division 124 to alert taxpayers accessing a roll-over that a share sale facility for foreign interest holders can be used without failing the same ownership requirements. ***[Schedule 2, items 2 and 4 to 7, item 15, paragraphs 124-360(1)(c)(note), 124-370(1)(e)(note), 124-445(c)(note) and 124-455(1)(e)(note), subsection 124-860(6)(note), paragraph 124-1045(1)(d)(note) and subsections 124-520(1)(note) and 124-525(1)(note)]***

2.17 These amendments do not replace the approach to accommodate certain share sale facilities in the note to subsection 125-70(1) of the demerger relief provisions, as the note covers a broader range of use of share sale facilities. Where a restructure involving the use of a share sale facility for foreign interest holders qualifies for Division 125 roll-over and the share sale facility could be accommodated under either the existing law or these amendments, taxpayers can choose the approach to use because it will result in the same outcome.

2.18 These amendments have no application where the management of an entity that is restructuring decides to comply with the foreign law of the relevant jurisdiction when issuing or transferring the interest. These amendments have potential application only where a share sale facility is used for foreign interest holders in conjunction with an entity restructure covered by certain CGT roll-overs.

Facilitating the use of share sale facilities for foreign interest holders for various CGT restructure roll-overs

2.19 These amendments facilitate the use of share sale facilities in the CGT entity restructure roll-overs in Subdivisions 124-G, 124-H, 124-I, 124-N, 124-Q and 126-G and Division 125. These amendments do this by treating a foreign interest holder as owning an interest in a relevant entity at a time where the share sale facility owns that interest, provided certain conditions are satisfied (paragraphs 2.25 to 2.28 discuss the relevant

conditions). Where the foreign interest holder is treated as owning the interest, the share sale facility will not be treated as owning the interest. ***[Schedule 2, items 1, 9 and 10, sections 124-20, 125-235 and 126-265]***

2.20 Under these amendments, using a share sale facility ensures that Australian residents for tax purposes (or foreign residents with taxable Australian property) can satisfy the same ownership requirements in each of the relevant roll-overs. This is because the original interest and the replacement interest are treated as being owned by the same foreign interest holder at the relevant test times for each of the relevant roll-overs.

The foreign interest holder is an Australian resident for tax purposes (or owns taxable Australian property)

2.21 Where the foreign interest holder is an Australian resident for tax purposes (or a foreign resident with taxable Australian property), these amendments also ensure that these interest holders can access the relevant CGT entity restructure roll-overs where the share sale facility becomes the owner of the interest. Where a roll-over is applied, this will defer any CGT consequences for the foreign interest holder until a later dealing with the asset, typically when the share sale facility disposes of the interest. ***[Schedule 2, items 1, 9 and 10, sections 124-20, 125-235 and 126-265]***

2.22 To ensure these particular entities can access the relevant CGT roll-overs in Division 124, where the conditions in paragraphs 2.25 to 2.28 are satisfied, the provisions also treat the foreign interest holder as owning the interest the share sale facility owns for the purposes of sections 124-10 and 124-15. This ensures that the requirements in these sections that the same entity own an original CGT asset or assets and a replacement CGT asset or assets, will be satisfied. ***[Schedule 2, item 1, subparagraph 124-20(3)(b)(ii)]***

2.23 The provisions also treat the foreign interest holder as owning the interest the share sale facility owns for the purposes of subsection 115-30(1). This ensures the duration that the foreign interest holder owned the interest is taken into account when determining access to the CGT discount. ***[Schedule 2, items 1 and 9, subparagraph 124-20(3)(b)(i) and paragraph 125-235(3)(b)]***

2.24 Australian residents for tax purposes (or foreign residents with taxable Australian property) that acquire a replacement interest will already satisfy the key requirement that the same owner own the original interest and the replacement interest. Therefore, the additional treatment for foreign interest holders contained in paragraphs 2.22 and 2.23 will not directly impact these interest holders.

Conditions for treating the foreign interest holder as owning the interest

2.25 The conditions that need to be satisfied for a foreign interest holder to be treated as owning an interest for the purposes of the relevant restructure roll-over provision are:

- the foreign interest holder owns an interest in a relevant entity (or for Subdivision 124-I cases, owns an interest in a body, with or without rights relating to the body);
- a transaction happens to the original interest;
- a foreign law impedes an entity's ability to issue or transfer an interest to the foreign interest holder, or alternatively, it would be impractical or unreasonably onerous to determine whether a foreign law impedes the entity's ability to issue or transfer the interest to the foreign interest holder;
- a share sale facility will acquire the interest instead of the foreign interest holder; and
- under the share sale facility, the foreign interest holder is entitled to receive the capital proceeds (less any expenses or taxes) when the share sale facility disposes of the interest.

[Schedule 2, items 1, 9 and 10, subsections 124-20(1), (4) and (5), 125-235(1) and 126-265(1)]

An entity is facing an impediment in issuing or transferring an interest

2.26 These provisions will apply where a foreign law impedes the entity's ability to issue or transfer the interest to the foreign interest holder. This may happen where it is shown that a foreign law had obstructed or hindered the entity issuing or transferring the interest. This condition would be satisfied where, for example, the foreign law would not permit the entity to issue or transfer a particular interest to a foreign interest holder. ***[Schedule 2, items 1, 9 and 10, subparagraphs 124-20(1)(c)(i), 125-235(1)(c)(i) and 126-265(1)(c)(i)]***

2.27 Alternatively, these provisions will also apply where it would be impractical or unreasonably onerous to determine whether a foreign law impedes the entity's ability to issue or transfer the interest. Even where an entity could ultimately issue or transfer an interest to a foreign interest holder, this condition would be satisfied where the entity would be required to incur substantial cost in issuing a prospectus that complies with the particular foreign law of that country for a relatively small number of shareholders (by number and value). ***[Schedule 2, items 1, 9 and 10, subparagraphs 124-20(1)(c)(ii), 125-235(1)(c)(ii) and 126-265(1)(c)(ii)]***

The share sale facility disposes of interests on a pooled basis

2.28 In some circumstances, the share sale facility may dispose of some or all the interests on a pooled basis. That is, a share sale facility would dispose of the interests together with the interests that would ordinarily be allocated to the other foreign interest holders. In these circumstances, the share sale facility will be required to give the foreign interest holder an amount equal to their proportion of the capital proceeds (less expenses or taxes). ***[Schedule 2, items 1, 9 and 10, subparagraphs 124-20(1)(e)(ii), 125-235(1)(e)(ii) and 126-265(1)(e)(ii)]***

The period when the foreign interest holder is treated as owning the interest

2.29 Each CGT restructure roll-over specifies when the ownership requirements are tested. These requirements are tested 'just before' and 'just after' a specific time or period, or are tested throughout a particular period. The concepts 'just before' and 'just after' take their ordinary meanings so that the testing begins immediately before and ends immediately after the relevant time.

2.30 Providing the share sale facility owns the interest in the same proportion as the foreign interest holder when the ownership requirements are tested, the ownership requirements will be satisfied in respect of the foreign interest holder. This is because the foreign interest holder is treated as owning the interest when the share sale facility owns that interest.

Example 2.1

> Paint Ltd (Paint) has a foreign shareholder that is a foreign tax resident that owns 1 per cent of the shares in Paint. Australian tax resident shareholders own the remaining 99 per cent.
>
> Paint proposes to interpose a non-operating holding company, Brush Ltd (Brush), between itself and its shareholders under an arrangement where its shareholders dispose of their shares in Paint for shares in Brush.
>
> Due to the onerous cost of complying with the foreign laws relating to issuing a prospectus to a single shareholder that owns 1 per cent of the shares in Paint, a share sale facility is used.
>
> For the Australian shareholders to be eligible for a CGT roll-over in Subdivision 124-G when they dispose of their shares in Paint, the Subdivision requires, amongst other things, all the shareholders in Paint to own shares in Brush just after the completion time and that each shareholder in Paint owns the same percentage (by number and value) of shares in Brush as they owned in Paint.

The new shares in Brush are issued so that each shareholder in Paint owns the same percentage (by number and value) of shares in Brush that they owned in Paint, with the exception that the 1 per cent of shares representing the foreign shareholder's shares are issued to the share sale facility.

For the purposes of Subdivision 124-G, the foreign shareholder is treated as owning the 1 per cent of shares in Brush for the time that the share sale facility owned those shares in Brush. This ensures the same ownership requirements are satisfied in the Subdivision.

Provided all the other conditions in Subdivision 124-G are satisfied, the Australian tax resident shareholders will be eligible for the CGT roll-over.

Application and transitional provisions

2.31 This measure applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010. These amendments are retrospective to ensure that transactions that have occurred since these changes were announced are covered by these amendments. ***[Schedule 2, item 11]***

2.32 These amendments are not expected to disadvantage taxpayers that could previously access the roll-overs in Subdivisions 124-G and 124-Q when using a share sale facility to deal with the original interests of foreign interest holders. This is because the level of regulatory oversight and reputational risk relevant to an ADI or stapled entity that restructures would typically mean the restructures could still satisfy the ownership requirements in Subdivisions 124-G and 124-Q that now need to be satisfied as a result of the amendments.

2.33 Other taxpayers that are involved in a relevant restructure that uses a share sale facility for foreign interest holders will benefit from these amendments.

Chapter 3
CGT and business restructures — Part 2: CGT demerger relief

Outline of chapter

3.1 Part 2 of Schedule 2 to this Bill excludes an entity from being a member of a demerger group if the entity is a corporation sole or a complying superannuation entity.

3.2 All legislative references in this chapter are to the *Income Tax Assessment Act 1997* unless otherwise stated.

Context of amendments

3.3 Division 125 allows taxpayers to choose to obtain a capital gains tax (CGT) roll-over for a capital gain or capital loss that arises on their interest in a company or trust because of the demerger of an entity from the group of which the company or trust is the head entity. This roll-over aims to make sure that CGT is not an impediment to business restructures where there is no real change in the underlying economic ownership of the entities involved.

3.4 Under a demerger, a CGT event happens to a taxpayer's interest in the head entity and they receive a new interest in the entity that is demerged. The roll-over allows the taxpayer to defer any capital gain or capital loss realised because of the demerger.

3.5 Certain capital gains or capital losses made by a demerging entity are also disregarded under Division 125. Certain dividends arising under a demerger are tax exempt.

3.6 For the relief to be available, the demerger must happen to a 'demerger group'. A ***demerger group*** is comprised of the head entity of the group and one or more demerger subsidiaries (see sections 125-65 and 125-70).

3.7 If the head entity of a demerger group is a corporation sole, the corporation sole cannot demerge any of its interests in the demerger group because the corporation sole does not issue ownership interests and therefore does not have shareholders to whom it could demerge its

interests in the demerger group. If an entity owned by the corporation sole demerged any of its interests in the demerger group, Division 125 relief does not currently apply because the corporation sole owns ownership interests in that entity and the corporation sole is still the head entity of the 'demerger group' as defined under Division 125 (see subsections 125-65(1) and (3)).

3.8 If the head entity of a demerger group is a superannuation entity, it is unable to demerge any of its interests in the demerger group. A 'demerger', as defined by Division 125, cannot happen to a demerger group if the head entity or the demerged entity is a trust which is a superannuation fund (see paragraph 125-70(1)(g)). Even if complying superannuation entities could access Division 125 demerger relief, they would most likely breach relevant regulatory requirements of the *Superannuation Industry (Supervision) Act 1993*.

3.9 In summary, groups that have a corporation sole or a complying superannuation entity as their head entity are unable to benefit from demerger relief because they can only demerge, or realistically demerge, by treating an entity below the corporation sole or complying superannuation entity as the head entity of a demerger group that does not include the corporation sole or complying superannuation entity.

Summary of new law

3.10 Part 2 of this Schedule excludes an entity from being a member of a demerger group if the entity is a corporation sole or a complying superannuation entity. This allows an entity owned by the corporation sole or complying superannuation entity to qualify as the head entity of a demerger group.

3.11 The new head entity will be able to demerge entities from the demerger group and qualify for Division 125 relief.

Comparison of key features of new law and current law

New law	***Current law***
Corporations sole and complying superannuation entities are not members of demerger groups. This allows an entity owned by the corporation sole or complying superannuation entity to be the head entity of a demerger group. This entity can now demerge its interests in a member of the demerger group and its owners potentially benefit from Division 125 relief.	Corporations sole and complying superannuation entities can be the head entity of a demerger group but are unable to demerge lower level entities in the group and qualify for Division 125 relief.

Detailed explanation of new law

3.12 These amendments ensure that corporations sole and complying superannuation entities are not members of demerger groups. ***[Schedule 2, item 12, subsection 125-65(2A)]***

3.13 This overcomes a problem with the current provisions which do not allow for demerger relief to accommodate situations where the head entity of a demerger group is a corporation sole or a complying superannuation fund.

3.14 In the corporation sole case, nobody holds an ownership interest in the head entity, and accordingly, no demerger by the head entity can occur. This is because there are no owners of the head entity to whom ownership interests in a demerged entity could be issued as required by section 125-55.

3.15 Similarly, a complying superannuation entity that is the head entity of a demerger group is unable to demerge interests in a member of the group under the existing law.

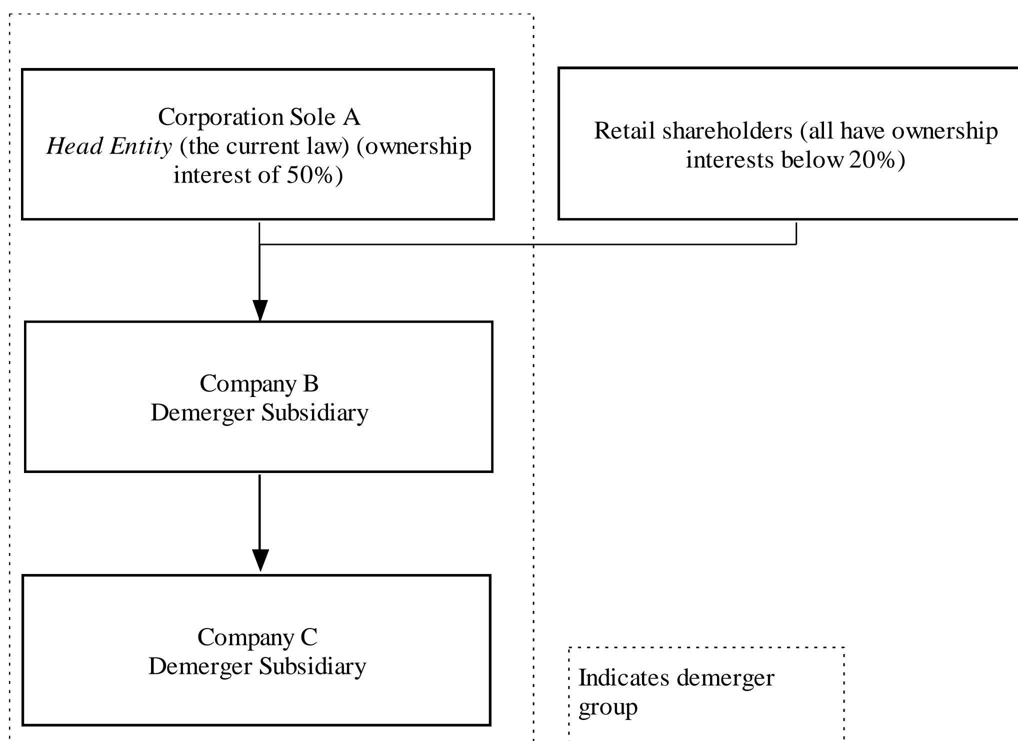
3.16 These amendments prevent a corporation sole or complying superannuation entity from being a member of a demerger group, and hence from being the head entity of a demerger group. This allows an entity owned by the corporation sole or complying superannuation entity to qualify as the head entity of a demerger group. That head entity can then demerge its interests in a member of the demerger group to the owners of the head entity.

3.17 The excluded corporation sole or complying superannuation entity now can qualify for the CGT roll-over (as the taxpayer under section 125-55) when a capital gain or capital loss arises on its interest in the head entity as part of a demerger. If relevant, the exemption for demerger dividends may also be available to the corporation sole or complying superannuation entity.

3.18 Diagrams 3.1 and 3.2 illustrate two demerger scenarios:

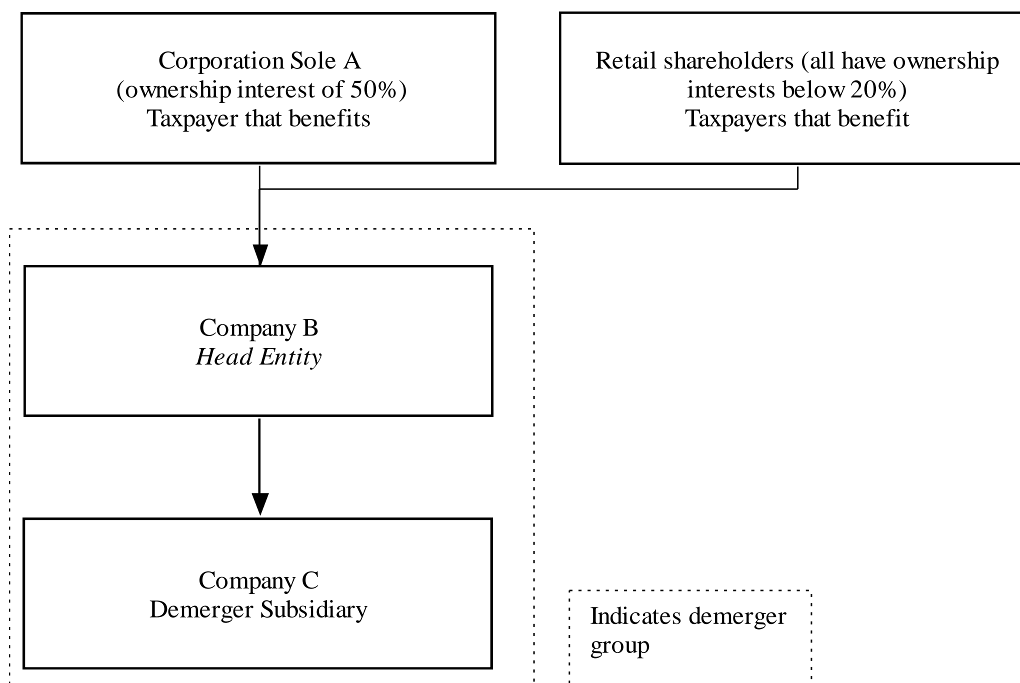
- where a corporation sole cannot demerge (the current law); and
- a demerger under the amended tax treatment with a corporation sole as an owner of the head entity of a demerger group redefined under the amendments.

Diagram 3.1: Corporation sole 'cannot demerge'



Corporation Sole A cannot demerge its subsidiaries (Company B or Company C) as it does not have shareholders (owners) to whom it can demerge its interests in Company B or Company C. This also restricts the retail shareholders from benefiting from demerger relief.

Diagram 3.2: Corporation sole as owner of a head entity of a demerger group



These amendments exclude Corporation Sole A from being a member of a demerger group. This allows Company B to be the new head entity of a demerger group. Company B can demerge its interests in Company C to Corporation Sole A and Company B's retail shareholders, who can benefit from the demerger relief.

Application and transitional provisions

3.19 Part 2 of this Schedule applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010. The amendments are beneficial to taxpayers. ***[Schedule 2, item 14]***

Consequential amendments

3.20 An amendment is made to paragraph 125-70(1)(g) so that it refers to a 'non-complying superannuation fund' rather than a 'superannuation fund'. The existing paragraph 125-70(1)(g) precludes a demerger from happening where the original interests or new interests are in a superannuation fund. The broad coverage of 'superannuation fund' is narrowed to non-complying superannuation funds because the main

amendment prevents a complying superannuation fund from being part of a demerger group, which takes them outside the scope of the application of the existing paragraph 125-70(1)(g). ***[Schedule 2, item 13, paragraph 125-70(1)(g)]***

Chapter 4
CGT business restructures — Part 3: Roll-overs for change of incorporation

Outline of chapter

4.1 Part 3 of Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to expand the existing capital gains tax (CGT) roll-over for the change of a body to an incorporated company. The expanded roll-over applies to entities that change incorporation to become a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. The expanded roll-over also covers a taxpayer's rights associated with a body, as well as their ownership interests, and situations where a body is wound up and replaced by a new company incorporated under a different law.

4.2 Part 3 also amends the ITAA 1997 to allow for tax neutral consequences for CGT, depreciating, revenue and trading stock assets of a body that is wound up and replaced by a new company incorporated under a different law, and these assets are transferred to the new company.

4.3 All legislative references in this chapter are to the ITAA 1997 unless otherwise stated.

Context of amendments

4.4 Subdivision 124-I currently provides a replacement asset roll-over for a member of a body that is established under a law (other than the *Corporations Act 2001* (Corporations Act) or a similar foreign law relating to companies) and, as a result of the body being converted to a company incorporated under the Corporations Act (or a similar foreign law), the member receives shares in the company in exchange for their interests in the body. However, the existing roll-over is subject to limitations that reduce its effectiveness.

4.5 The existing law does not provide roll-over for an Indigenous body which is converted to a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation — it is limited to bodies converting their incorporation to the Corporations Act or a similar foreign law relating to companies. This results in the members of the body realising a potential

CGT liability on the conversion of the body to a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation.

4.6 Further, the existing roll-over is not available to Indigenous companies that transfer incorporation from the Corporations Act to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, which restricts their flexibility to change their incorporation to suit their particular circumstances.

4.7 The existing roll-over requires an incorporated body to be 'converted' to a Corporations Act (or similar foreign law) company. As such the existing roll-over does not cater for situations where a body is wound up and then replaced by a new company incorporated under a different corporations law.

4.8 Also, the existing roll-over does not accommodate situations where the members of a body being converted wish to be compensated with additional shares in the new company for the value of rights (separate to their ownership interests) they held in the incorporated body.

4.9 This is because the existing roll-over only allows the new company to issue the member shares in substitution for the member's ownership interests in the body. This restricts taxpayers from receiving shares that reflect the value of their formerly held rights. They must either sacrifice the rights they previously had in the body or be ineligible for the roll-over and incur a CGT liability.

4.10 Finally, if a body is wound up and replaced by a newly incorporated company, this process may trigger the realisation of CGT assets, revenue assets, depreciating assets and trading stock, and loss of an asset's pre-CGT status, causing the body to incur a tax liability or suffer a disadvantage, which will be to the detriment of its members.

Summary of new law

4.11 These amendments allow Indigenous bodies to incorporate as *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporations without immediate CGT consequences for the body's members. Also, these amendments allow Indigenous companies incorporated under the Corporations Act to change their incorporation to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* without immediate CGT consequences.

4.12 In addition, these amendments extend the existing roll-over by allowing the value of rights associated with a body to be reflected in the shares issued by the company, when the body changes its incorporation.

4.13 These amendments also allow members to access the roll-over where the body winds up and is replaced by a new company incorporated under a different law (the 'reincorporation roll-over').

4.14 Finally, these amendments provide a tax neutral outcome for the CGT, depreciating, revenue and trading stock assets of a body that winds up and is replaced by a company incorporated under a different law.

Comparison of key features of new law and current law

New law	***Current law***
The roll-over applies where incorporated bodies convert to the Corporations Act, a similar foreign law, or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. The roll-over also applies where Indigenous corporations convert from the Corporations Act to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.	The roll-over applies where incorporated bodies convert to the Corporations Act or a similar foreign law.
The roll-over allows shares to be issued to reflect the value of the member's interests in the body and any rights associated with the body.	The roll-over requires the company to issue the member with shares in substitution for their interests in the body.
The roll-over allows for a body to be wound up and replaced by a new company.	The roll-over requires that a body must convert to a company without creating a new legal entity.
A roll-over provides a tax neutral outcome for the CGT, depreciating, revenue and trading stock assets transferred from a body to a company where the body is winding up and reincorporating and the taxpayer chooses the reincorporation roll-over.	The transfer of assets from a body to a new company, where the body is winding up and being replaced by the new company, has income tax consequences.

Detailed explanation of new law

4.15 Part 3 of this Schedule repeals the existing provisions of Subdivision 124-I, which provides a roll-over for conversion of a body to

an incorporated company, and replaces them with provisions allowing for a more flexible CGT roll-over where a body that is incorporated under one law is converted to, or replaced with, a company incorporated under a different law. ***[Schedule 2, item 15, section 124-510]***

4.16 The provisions aim to ensure that the CGT consequences of a body changing incorporation do not deter its members from changing the body's incorporation to either the Corporations Act (or a similar foreign law) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. ***[Schedule 2, item 15, section 124-515]***

4.17 The roll-over provisions have separate sections for changes of incorporation that do not involve the creation of a new legal entity and for those that involve the original body being wound up and a new company being formed. Subdivision 124-A provides the consequences for replacement-asset roll-overs generally. However, these amendments insert specific provisions modifying the operation of Subdivision 124-A where:

- shares in a company replace a mix of pre-CGT and post-CGT interests and rights in a body; and
- rights as a member of a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation replace a mix of pre-CGT and post-CGT interests and rights in a body.

[Schedule 2, item 15, sections 124-520, 124-525, 124-530 and 124-535]

Change of incorporation without change in entity

Conditions for the roll-over to apply

Eligible changes of incorporation

4.18 These amendments provide a CGT roll-over for members of bodies that change their incorporation from one law to another without forming a new legal entity where:

- a body incorporated under a law other than the Corporations Act (or a similar foreign law relating to companies) changes its incorporation to either the Corporations Act or a similar foreign law — this roll-over is a continuation of the roll-over currently available under Subdivision 124-I ; or
- a body incorporated under a law other than the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* changes its incorporation to that Act.

[Schedule 2, item 15, paragraphs 124-520(1)(a) and (b)]

Example 4.1

Farming Co-op Ltd (Farming) is a cooperative incorporated under the *Cooperatives Act 1992 (NSW)*. Its members have decided to change its incorporation from a cooperative to a company incorporated under the Corporations Act.

As the *Cooperatives Act 1992 (NSW)* allows incorporation to be transferred to the Corporations Act, Farming can convert its incorporation to being a Corporations Act company without needing to form a new legal entity.

This allows its members to access the section 124-520 roll-over if the other conditions are met.

Ownership test

4.19 In order for the roll-over to apply, it must be reasonable to conclude that there is no significant difference between the ownership, or the mix of the ownership, of the body just before and just after the conversion. This takes account of both the ownership of the body (that is, the ownership of membership interests in the body) and the ownership of rights relating to the body that were held by owners of the body. This ensures that the economic ownership of the entities remains substantially the same just before and just after the conversion of the body. ***[Schedule 2, item 15, paragraph 124-520(1)(c)]***

4.20 The first part of this ownership test requires that it is reasonable to conclude that there is no significant difference between the ownership of the body and rights relating to the body (held by the entities that owned the body) just before conversion occurs, and the ownership of the company just after conversion. This test focuses solely on who owns the body (including associated rights), not how much they own. ***[Schedule 2, item 15, subparagraph 124-520(1)(c)(i)]***

4.21 The second part of this ownership test, which concerns the mix of ownership, requires the owners of the body to have no significant difference between their proportional ownership of the company just after the conversion and their proportional ownership of the body just before the conversion occurred. This takes into account how much of the body (including associated rights) and how much of the company each member owns at the relevant times to assess whether there is a consistent mix of ownership. ***[Schedule 2, item 15, subparagraph 124-520(1)(c)(ii)]***

4.22 Taking membership interests and rights relating to the body into account allows for shares to be issued reflecting the value of those membership interests and rights. This means that an owner of the body that holds rights related to the body can have the value of those rights

reflected in the shares that they receive as an owner of the company. This was not possible under the former Subdivision 124-I. ***[Schedule 2, item 15, paragraph 124-520(1)(c)]***

4.23 Rights relating to the body encompass non-ownership interests in the body. For example, a member of an agricultural cooperative may have a right to a percentage of production of the cooperative because they are an active participant in running the business. This type of right would be of value to the taxpayer and, under these amendments, can be reflected in the ownership of the company with the issue of additional shares.

4.24 This part of the ownership test requires that it is reasonable to conclude that there is no significant difference between the mix of ownership before and after conversion. This allows for some very minor differences in mix of ownership before and after conversion which may be necessary to facilitate the conversion. However, any large discrepancy in mix of ownership before and after conversion would make the taxpayer ineligible for the roll-over.

4.25 This part of the ownership test requires a value to be ascribed to the ownership interests before and after the conversion. In some circumstances it may be easy to value ownership interests and compare those values before and after the conversion. In other circumstances it may be very difficult or costly to value ownership interests. If it is very difficult or costly to value ownership interests, it may be reasonable to conclude that there is no significant difference in the mix of ownership before and after the conversion where there is appropriate regulatory oversight of the conversion.

Example 4.2

Continuing from Example 4.1, Farming converts to a Corporations Act company, Growers Ltd, and Farming's members receive shares in Growers Ltd as a replacement for their ownership interests in Farming and rights associated with Farming.

Farming has three members, Renee, Angelo and Tomas. Each of them has an equal ownership interest worth $20,000 in Farming.

Renee and Tomas work full time for Farming, while Angelo only contributed initial capital to Farming and does not actively participate in running the business. Accordingly, Renee and Tomas have an equal participation right, which has a value of $10,000 to Renee and Tomas respectively, to the first 25 per cent of Farming's profits before the residual 75 per cent is evenly divided between Renee, Angelo and Tomas.

Upon conversion to a company, Growers Ltd issues 400 shares, which are divided between Renee, Angelo and Tomas.

> Renee and Tomas each receive 150 shares on account of their ownership interest in Farming and their ownership of the participation right relating to the body — 100 shares for the ownership interest and 50 shares for the participation right. Angelo receives 100 shares for his ownership interest in Farming.
>
> Considering the shares received by Renee, Angelo and Tomas, it is reasonable to conclude that there is no significant difference between ownership before and after conversion. This is because the division of the shares between Farming's members just after the conversion replicates the total ownership of Farming and the ownership of the participation rights just before conversion. This means that the conditions for the roll-over to apply have been met.

Conditions for the taxpayer to choose the roll-over

4.26 If the conditions for the roll-over to apply are met, the taxpayer may choose the roll-over where certain other conditions are satisfied. First, the taxpayer must receive only shares in the new company. Therefore, any rights relating to the body that were held by the taxpayer prior to the conversion, must be reflected in new shares that replicate their value to the taxpayer. This means that the taxpayer cannot have a previously held right relating to the company, continue in existence or have a new right in the company granted to them in exchange for their interests in the original body. Similarly, the taxpayer's membership interests in the body should no longer exist when shares in the company are issued to them. ***[Schedule 2, item 15, paragraph 124-520(2)(a)]***

4.27 Second, the taxpayer must be an Australian resident at the time the body is converted to a company or, if the taxpayer is a foreign resident, the interests in the body and any rights related to the body that they held must have been taxable Australian property just before the conversion time, and the shares in the company they receive must be taxable Australian property when they are issued. ***[Schedule 2, item 15, paragraph 124-520(2)(b)]***

4.28 If these other conditions are met, the taxpayer may choose to obtain the roll-over, with the standard roll-over consequences set out in Subdivision 124-A applying. Generally, this means a taxpayer that satisfies the conditions for the roll-over disregards any capital gains or capital losses arising from the ending of their membership interests in the body or rights relating to the body.

4.29 However, these amendments make specific modifications to the standard roll-over consequences for this roll-over where the taxpayer has a mix of pre-CGT and post-CGT interests and rights. These modifications are set out in paragraphs 4.49 to 4.55.

The Corporations (Aboriginal and Torres Strait Islander) Act 2006 and the rights as a member of a Corporations (Aboriginal and Torres Strait Islander) Act 2006 corporation

4.30 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporations do not issue shares to their members but issue 'rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation'. The term 'rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation' describes the bundle of rights that members of a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation have in relation to the corporation. These rights may include allowing a member to:

- attend, speak and vote at general meetings;
- be made a director;
- put forward resolutions at general meetings;
- ask the directors to call a general meeting; and
- inspect the records of the corporation.

4.31 While the conditions for taxpayers to choose the roll-over refer to shares, the roll-over applies to conversions of bodies to *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporations, even though they do not issue shares to members. Instead, when a body is converted to a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation, the roll-over conditions are modified to apply in relation to 'rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation' in the same way they apply to shares of a non-*Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. ***[Schedule 2, item 15, subsection 124-520(3)]***

4.32 The taxpayer's previously held ownership interests and any rights relating to the original body should be replaced by rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. ***[Schedule 2, item 15, subsections 124-520(2) and (3)]***

Example 4.3

River Shop Inc (River Shop) is an indigenous store that is currently incorporated under the *Associations Act 2003 (NT)*. The members of River Shop have decided to transfer its incorporation to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. They are able to transfer the body's incorporation without needing to form a new legal entity.

River Shop's incorporation is transferred to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and, accordingly, River Shop's members have their membership interests in the association replaced by 'rights as a member of a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation' (and their membership interests cease to exist). These rights are guaranteed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and allow members to attend, speak and vote at general meetings, be a director, put forward resolutions at general meetings, ask the directors to call a general meeting and inspect the records of the corporation.

River Shop's members would be eligible to choose the conversion of incorporation CGT roll-over if the conversion satisfies the ownership test (see paragraphs 4.19 to 4.25).

Exception for certain demutualisations

4.33 The provisions do not apply to demutualisation of entities if Division 326 of Schedule 2H to the *Income Tax Assessment Act 1936* applies to the demutualisation in question. Division 326 applies to mutual entities other than insurance companies and health insurers, and sets out the CGT consequences for demutualisation. ***[Schedule 2, item 15, subsection 124-520(4)]***

The old corporation is wound up

Conditions for a roll-over to apply

Eligible reincorporations

4.34 These amendments provide a CGT roll-over for members of bodies that change their incorporation from one law to another where the old incorporated body is wound up and is replaced by another corporation. ***[Schedule 2, item 15, section 124-525]***

4.35 This CGT roll-over applies to the same set of changes in incorporation as the CGT roll-over for conversions (see paragraph 4.18). ***[Schedule 2, item 15, paragraphs 124-525(1)(a) and (b)]***

4.36 This CGT roll-over requires the original body to cease to exist and the company which is replacing it to continue to exist after the time the members of the original body have received shares in the new company, or, if it is a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation, received rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. ***[Schedule 2, item 15, paragraph 124-525(1)(c)]***

4.37 The time when the members receive the shares in the company or their rights in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation, is known as the 'switch time'. The switch time is indicative of when the new company has effectively taken over from the original incorporated body, even though the latter may still exist. ***[Schedule 2, item 15, paragraph 124-525(1)(c)]***

Example 4.4

> Town Store Inc (Town Store) was incorporated under a state association Act, and in order to become a Corporations Act company must wind up and form a new legal entity. The members of Town Store want to wind up Town Store and incorporate a new company under the Corporations Act.
>
> On 15 October 2010, in preparation for winding up Town Store, its members incorporated a new company, Big Store Ltd, under the Corporations Act. Big Store Ltd issued shares to the members of Town Store on the same day.
>
> The time when the members received the shares is known as the 'switch time', and is indicative of when Big Store Ltd had effectively taken over from Town Store, even though Town Store still existed.

4.38 The switch time allows for the new company to be in existence before the original body is wound up, which reflects the commercial reality that a company can be created in anticipation of the original body ending. This allows for the use of 'shelf company' arrangements in winding up the original body and replacing it with a company.

4.39 The shares received must be issued to the members of the original body for their ownership interests and any other rights relating to the original body that they possessed. That is, the interests in the original body are exchanged for shares in the new company or rights received as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. ***[Schedule 2, item 15, subparagraphs 124-525(1)(c)(i) and (ii)]***

4.40 Similar to the CGT roll-over for conversions of incorporation described above, the members of the original body must receive only shares in the new converted company, or, rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. The shares or rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation must be received in exchange for the member's interests and rights ending, and not for any other reasons. ***[Schedule 2, item 15, paragraph 124-525(1)(d)]***

Ownership test

4.41 For this CGT roll-over to apply, it must be reasonable to conclude that there is no significant difference between the ownership, or the mix of the ownership, of the body just *before* the switch time and the ownership, or the mix of the ownership, of the company just *after* the switch time. ***[Schedule 2, item 15, paragraph 124-525(1)(e)]***

4.42 Similar to the CGT roll-over for conversions of incorporation, this provision seeks to ensure that there is consistency in the ownership of the entities subject to the roll-over. Also, this provision takes both the ownership of the body, that is, membership interests in the body, and rights relating to the body that were held by owners of the body, into account when assessing the continuity of ownership. The discussion in paragraphs 4.19 to 4.25 about the practical aspects of applying the ownership test to conversions of incorporation is relevant to applying the ownership test to reincorporations.

Asset disposal requirement

4.43 For the roll-over to apply the original body must dispose of all of its CGT assets to the new company. This ensures that the new company is the entity that continues to carry on the business. The assets must be disposed of by the switch time, that is, when the members of the body have received shares in the new company, or, if it is a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation, received rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. ***[Schedule 2, item 15, paragraph 124-525(1)(f)]***

4.44 There is a limited exception to this requirement. This exception recognises that in the process of winding up the original body, the body may be required to meet existing or expected liabilities. The exception allows it to retain some assets in order to meet those liabilities. At the time of the final winding up of the original body, it is expected that any assets not used to meet liabilities would have been disposed of to the new company. This may result in the body being required to transfer its assets in more than one tranche where the assets retained for expected liabilities are not needed to meet liabilities. ***[Schedule 2, item 15, paragraph 124-525(1)(f)]***

Conditions for the taxpayer to choose the roll-over

4.45 If the conditions for the roll-over to apply are met, the taxpayer may choose the roll-over for their interest in the original body and any associated rights where certain other conditions apply. The other conditions are that:

- the taxpayer must have been a member of the original body just before the switch time;
- the taxpayer's ownership interest in the original body must end after the switch time (known as the 'end time');
- at the end time, the taxpayer must have the shares in the new company that they received at the switch time; and
- the taxpayer must be an Australian resident, or if they are a foreign resident, the interests (or any rights) in the original body held just before the end time must be taxable Australian property and the shares in the new company received at the switch time must be taxable Australian property at the end time.

[Schedule 2, item 15, subsection 124-525(2)]

Example 4.5

Continuing from Example 4.4, after Big Store Ltd issued shares to the members of Town Store, Town Store was wound up on 20 December 2010. This is known as the 'end time' for the purposes of the roll-over. At this time, the membership interests and any rights relating to Town Store ceased to exist.

As the new shareholders of Big Store Ltd were members of Town Store just before the switch time (see Example 4.4) and the following has occurred:

- their ownership interests in Town Store have ended;
- they received shares in Big Store Ltd; and
- they were Australian residents when their ownership interest in Town Store ended,

they are able to choose the roll-over if the conditions for the reincorporation roll-over (see paragraphs 4.34 to 4.44) are met.

Corporations (Aboriginal and Torres Strait Islander) Act 2006 and rights as a member of a Corporations (Aboriginal and Torres Strait Islander) Act 2006 corporation

4.46 As explained for the roll-over for conversions of incorporation (paragraphs 4.30 to 4.32), the roll-over for wind ups and reincorporations also applies to *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporations in relation to 'rights as a member of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation' in the same way it applies to shares of a non-*Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. ***[Schedule 2, item 15, subsection 124-525(3)]***

Consequences of the roll-overs

4.47 If a taxpayer is entitled to choose the conversion of incorporation or the reincorporation roll-over, the standard roll-over consequences set out in Subdivision 124-A apply. Generally, this means the taxpayer disregards any capital gains or capital losses arising from the ending of their membership interests in the body or rights relating to the body.

4.48 However, these amendments make specific modifications to the standard roll-over consequences where the taxpayer has a mix of pre-CGT and post-CGT interests and rights. These modifications are set out in paragraphs 4.49 to 4.55. ***[Schedule 2, item 15, subsections 124-530(5) and 124-535(3)]***

A pre-CGT and a post-CGT mix of original assets of a non-Corporations (Aboriginal and Torres Strait Islander) Act 2006 corporation

4.49 Assets acquired before 20 September 1985 are known as pre-CGT assets. Capital gains and losses realised on these assets are generally disregarded. Assets acquired on or after 20 September 1985 are typically known as post-CGT assets.

4.50 If a taxpayer has chosen the conversion of incorporation or reincorporation roll-over and their interests in the original body or rights relating to the original body — the original assets — that they held were a mix of pre-CGT and post-CGT assets, there are special consequences for the shares that replaced the original assets. ***[Schedule 2, item 15, subsection 124-530(1)]***

4.51 If some of the original assets that were replaced by shares in the company were pre-CGT assets and some were post-CGT assets, some of

the shares in the new company are taken to be pre-CGT assets as is reasonable having regard to the number and market value of the:

- original assets; and
- shares in the new company.

[Schedule 2, item 15, subsection 124-530(2)]

4.52 For the shares which are not pre-CGT assets, the taxpayer calculates the first element of the cost base of each post-CGT share as is reasonable having regard to the:

- total cost bases of the original post-CGT assets; and
- number and market value of the replacement post-CGT shares.

[Schedule 2, item 15, subsection 124-530(3)]

4.53 The reduced cost base of the post-CGT shares is worked out similarly. ***[Schedule 2, item 15, subsection 124-530(4)]***

Example 4.6

Li is a part owner of a cooperative. Li acquired her ownership interest in the cooperative in 1982. Its current market value is $80,000. There is one other owner of the cooperative who has a similar ownership interest valued at $80,000.

In 1990, Li acquired a right to 25 per cent of the cooperative's production, on the basis of making a payment of $20,000 to the business. The cost base of this right is therefore $20,000 and its current market value is estimated to be $40,000.

In 2011, the cooperative converts its incorporation to the Corporations Act. Upon doing so, the new company issues Li and her business partner with shares in the company. In total 1,000 shares are issued.

Li receives 600 shares to replace her ownership interest and right relating to the cooperative. The shares have a market value of $200 each.

As Li's original assets were a mix of pre-CGT and post-CGT assets, some of her shares should be regarded as pre-CGT assets. It would be reasonable for Li to regard 400 of her shares as pre-CGT assets having regard to the number and market value of the original assets and shares. This is because two-thirds of Li's ownership value in the business resides in her ownership interest ($80,000 of the total

$120,000 value) which was a pre-CGT asset and consequently she can treat two-thirds of her shares as pre-CGT assets.

This means Li's 200 remaining shares are to be post-CGT assets. These shares should take their cost base from the cost base of Li's post-CGT right. Accordingly, the first element of the cost base of each of these shares is taken to be $100 (the $20,000 cost base of the right apportioned equally across the 200 shares).

A pre-CGT and a post-CGT mix of original assets of a Corporations (Aboriginal and Torres Strait Islander) Act 2006 corporation

4.54 If the taxpayer has chosen the conversion of incorporation or reincorporation roll-over and, under the conversion or reincorporation, they receive rights as a member of a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation there is a special rule where the original assets are a mix of pre-CGT and post-CGT assets. This special rule reduces compliance costs and reflects the difficulties in valuing pre-CGT and post-CGT rights in an Indigenous body. ***[Schedule 2, item 15, subsection 124-535(1)]***

4.55 Under the special rule, if the taxpayer has acquired any of the original assets before 20 September 1985, they are taken to have acquired all of their replacement assets before that day. This means that the rights they receive in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation are pre-CGT assets. ***[Schedule 2, item 15, subsection 124-535(2)]***

Example 4.7

Andrew is a member of IndigStore Inc (IndigStore), an incorporated association which runs an Indigenous store. Andrew acquired his membership interest in IndigStore in 1984. Also in 2000, Andrew acquired a right to half the profits from the association if it is wound up and a profit remains for distribution to members.

In 2011, the members of IndigStore decide to convert it to a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. Accordingly, Andrew's interest and right relating to IndigStore are replaced by rights as a member of a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation.

As Andrew's membership interest in IndigStore was a pre-CGT asset, and even though his right was a post-CGT asset, Andrew's rights as a member of a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation are taken to be pre-CGT assets.

A roll-over for assets of an entity winding up

4.56 These amendments insert a new Part into the Act that provides a roll-over that applies broadly across the Act to defer taxation consequences where the original body which is wound up as part of the process of changing incorporation transfers its assets to a new company. The asset roll-over automatically applies if the reincorporation roll-over applies to the original body and the company. ***[Schedule 2, Part 3-80, item 16, sections 620-5 and 620-10]***

4.57 The asset roll-over ensures that there are tax neutral consequences where the original body which is wound up disposes of its assets to a new company and the ownership of the two entities is not significantly different. This ensures that there is a tax neutral outcome for the CGT, depreciating, revenue and trading stock assets of the body in situations where the original body winds up in order to change its form of incorporation. ***[Schedule 2, Part 3-80, item 16, section 620-15]***

Consequences for CGT assets

4.58 Where an original body disposes of a CGT asset to the company replacing it because the body ceases to exist, the capital gain or loss the body makes on the transfer of that CGT asset is disregarded. ***[Schedule 2, Part 3-80, item 16, paragraph 620-20(1)(a) and subsection 620-20(2)]***

4.59 Also, if any other CGT event happens to a CGT asset of the body because the body ceases to exist, the capital gain or loss the body makes on that CGT asset is also disregarded. This caters for circumstances where the body does not dispose of the asset to the new company, but instead, an asset is no longer held by the original body in connection with its winding up. An example of this type of asset is a lease. ***[Schedule 2, Part 3-80, item 16, paragraph 620-20(1)(b) and subsection 620-20(2)]***

4.60 Where an original body disposes of a CGT asset to the new company and the body ceases to exist, the first element of the CGT asset's cost base for the new company is the asset's cost base when it was disposed of by the original body. ***[Schedule 2, Part 3-80, item 16, subsections 620-25(1) and (2)]***

4.61 The first element of the reduced cost base for the CGT asset for the new company is worked out similarly. ***[Schedule 2, Part 3-80, item 16, subsection 620-25(3)]***

4.62 If the original body acquired the asset before 20 September 1985, it will retain its pre-CGT status for the new company. ***[Schedule 2, Part 3-80, item 16, subsection 620-25(4)]***

Example 4.8

Yellow Inc (Yellow) is an association, and its members have chosen to wind it up and incorporate a new company Orange Ltd under the Corporations Act. The members choose to use the section 124-525 roll-over to disregard capital gains and losses on their ownership interests in Yellow. Yellow was wound up and its assets transferred to Orange Ltd.

Just before ceasing to exist, Yellow held business premises purchased in 1994 for $250,000 with a market value of $380,000 and a parcel of shares in Silver Pty Ltd purchased in 1983.

Yellow disposes of the business premises and the shares to Orange Ltd just before it ceases to exist.

As Yellow was the 'original body' in the reincorporation roll-over, the capital gain of $130,000 arising on the disposal of the business premises to Orange Ltd is disregarded.

The first element of the business premises' cost base for Orange Ltd is $250,000.

The shares in Silver Pty Ltd now held by Orange Ltd retain their pre-CGT status in the hands of Orange Ltd.

Consequences for depreciating assets

4.63 The disposal of a depreciating asset to a new company will cause a 'balancing adjustment event' (as defined by section 40-295) to occur. A balancing adjustment event may require the original body disposing of the depreciating asset to adjust its taxable income.

4.64 Where there is a difference between the asset's termination value (that is, the final sale price) and its adjustable value (that is, the original cost less the decline in value while it was held by the taxpayer) a balancing adjustment may be assessable or deductible under section 40-285. However, section 40-285 will not apply if the roll-over provided by section 40-340 applies.

4.65 These amendments provide roll-over relief for a balancing adjustment event arising where the original body disposes of a depreciating asset to the new company because the body ceases to exist and the disposal involves a CGT event. ***[Schedule 2, Part 3-80, item 16, subsections 620-30(1) and (2)]***

4.66 The ITAA 1997 applies as if there was roll-over relief under subsection 40-340(1) and the original body was the transferor and the new company was the transferee mentioned in that subsection and

subsection 328-243(1A). This formulation means there is automatic roll-over relief under subsection 40-340(1) for a body that is not a small business entity for any assessable balancing adjustment arising from the transfer of a depreciating asset to the new company. Although the provisions treat the body and the company as the transferor and transferee mentioned in subsection 328-243(1A), this is irrelevant for an entity that is not a small business entity because its deductions for its assets are not calculated under Division 328. If the body is a small business entity, the roll-over relief under subsection 40-340(1) is contingent on the conditions in subsection 328-243(1A) being met apart from paragraph 328-243(1A)(c). Satisfaction of paragraph 328-243(1A)(c) by the entity is excluded because the CGT roll-over for assets of an entity being wound up in a reincorporation is not listed in the table in subsection 40-340(1). ***[Schedule 2, Part 3-80, item 16, subsections 620-30(2) and (3)]***

4.67 The effects of the ITAA 1997 applying as if there were roll-over relief under subsection 40-340(1) include that:

- the balancing adjustment event does not affect the original body's assessable income or deductions (subsection 40-345(1));
- the new company can claim depreciation deductions for the depreciating asset's decline in value on the same basis that the original body did (subsection 40-345(2)); and
- the new company is treated as if it had carried out any acts that the original body had carried out in relation to the asset and the application of Division 45, which concerns the disposal of leases and leased plant (subsection 40-350(1)).

[Schedule 2, Part 3-80, item 16, subsection 620-30(2) and (note)]

Example 4.9

Continuing on from Example 4.8, Yellow owns a generator purchased on 1 July 2008 for $40,000 which is used in the business. It is a depreciating asset which the business is depreciating using the 'prime cost method'. The generator's effective life is 10 years.

In anticipation of winding up, Yellow disposes of the generator to its new company Orange Ltd on 1 July 2010. The generator's termination value (that is, the final sale price) is $35,000 and its adjustable value (that is, the original cost less the decline in value while it was held by Yellow) is $32,000. This will cause a balancing adjustment to occur when the generator is disposed of to Orange Ltd requiring Yellow to adjust its assessable income upwards by $3,000.

As Yellow's members chose to use the section 124-525 roll-over to disregard capital gains and losses on their ownership interests in Yellow upon reincorporation, the depreciating asset roll-over is available to Yellow. Under the depreciating asset roll-over, the balancing adjustment is disregarded and Yellow does not need to adjust its assessable income.

Orange Ltd will be able to continue to claim depreciation deductions from the generator using the prime cost method over the next eight years.

Consequences for trading stock

4.68 The disposal of an item of 'trading stock' (as defined by section 70-10) from the original body to the new company can result in an amount of assessable income being attributed to the original body upon disposal of the item.

4.69 For each item of trading stock that the original body disposes of to the new company because the original body ceases to exist, the original body is taken to have sold the item, and the company is taken to have bought the item (dealing with each other at arm's length) for:

- the cost of the item for the original body; or
- if it was trading stock at the start of the income year, the value of the item at that time.

[Schedule 2, Part 3-80, item 16, subsections 620-40(1) and (2)]

4.70 The disposal of the trading stock by the original body and the acquisition of it by the new company are taken to have occurred in the ordinary course of business for the entities. This avoids any doubt as to the application of the trading stock provisions, especially section 70-90, which specifies that if an item of trading stock is disposed of outside the ordinary course of business then the entity that disposed of it will include the market value of the item in its assessable income. ***[Schedule 2, Part 3-80, item 16, subsection 620-40(2)]***

4.71 The company is taken to have held the item as trading stock from the date it bought the item from the original body. ***[Schedule 2, Part 3-80, item 16, subsection 620-40(3)]***

4.72 This has the effect of giving the original body a nil profit and a nil loss for the income year it ceased to hold the item of trading stock, giving it a tax neutral outcome for disposing of the item to the company.

4.73 For the company, this treatment means that it is taken to have acquired the trading stock held by the original body for the same value that the original body was taken to have received for the trading stock. This provides the company with the same tax outcome for the trading stock (assessable income or deduction depending on the closing value of the trading stock) as would have applied if the original body had continued to exist for the relevant income year.

Example 4.10

Continuing on from Example 4.8, Yellow holds widgets that are trading stock in its business. Yellow holds 25 widgets just before it is wound up, and of these widgets:

- ten widgets were held as trading stock at the beginning of the current income year, with the value of $100 each; and
- fifteen widgets were purchased during the current income year for $90 each.

Just before Yellow ceases to exist, it disposes of the widgets to Orange Ltd.

As Yellow's members chose to use the section 124-525 roll-over to disregard capital gains and losses on their ownership interests in Yellow upon reincorporation, the trading stock roll-over automatically applies to its trading stock.

This means that Yellow is taken to have sold the 10 widgets it held as trading stock at the beginning of the current income year at $100 each to Orange Ltd and to have sold the 15 widgets it acquired during the current income year at $90 each. This results in Yellow having nil profit and nil loss on its trading stock.

Orange Ltd is taken to have acquired 10 widgets at $100 each and 15 widgets at $90 each. This effectively passes the tax attributes of the trading stock held by Yellow to the trading stock now held by Orange Ltd.

Consequences for revenue assets

4.74 A ***revenue asset*** is defined in section 977-50 as an asset for which a profit or loss on disposal, on ceasing to own the asset, or other realisation is taken into account in calculating assessable income other than as a capital gain or loss and is neither trading stock nor a depreciating asset. Disposals of revenue assets from the original body to the new company could result in the body realising a profit or loss.

4.75 The roll-over for revenue assets applies if a CGT asset that the original body disposes of to the new company, because the original body ceases to exist, is a revenue asset just before the time of the disposal. ***[Schedule 2, Part 3-80, item 16, subsection 620-50(1)]***

4.76 The original body is taken to have disposed of the revenue asset to the new company for an amount that would result in the original body not making a profit or loss because of the disposal. This means that there is no effect on the original body's taxable income. ***[Schedule 2, Part 3-80, item 16, subsection 620-50(2)]***

4.77 The new company is taken to have paid the original body the amount to acquire the asset that resulted in that body not making a profit or loss because of the disposal of the revenue asset. This amount is used by the new company to calculate future profits and losses, allowing it to be in same tax position as the original body in regards to the revenue asset at the time of the disposal. ***[Schedule 2, Part 3-80, item 16, subsection 620-50(3)]***

Example 4.11

Continuing on from Example 4.8, Yellow currently has a revenue asset. The market value of the revenue asset is $45,000 and its cost was $50,000. This means there is a $5,000 unrealised loss on the asset.

When Yellow disposes of the asset to Orange Ltd in anticipation of it ceasing to exist, it is taken to have sold the asset to Orange Ltd for $50,000, resulting in Yellow not making a profit or loss because of the disposal.

Orange Ltd is taken to have acquired the asset for $50,000, which rolls over the unrealised loss on the asset to Orange Ltd, putting it in the same position as Yellow just before the disposal.

4.78 The roll-over for revenue assets also applies to realisations of revenue assets that involve ceasing to own the asset or realising it in another way besides a disposal. For the purpose of the revenue asset roll-over, such realisations are treated as disposals and accordingly benefit from the same treatment as described in paragraphs 4.74 to 4.77. ***[Schedule 2, Part 3-80, item 16, subsections 620-50(4) and (5)]***

Application and transitional provisions

4.79 The CGT roll-over for interests in a body that change incorporation applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010. ***[Schedule 2, item 24, section 124-510 of the Income Tax (Transitional Provisions) Act 1997]***

4.80 The roll-over for the CGT, depreciating, revenue and trading stock assets of a body that must wind up and form a new company in order to change its incorporation applies in relation to the cessation of existence of bodies corporate occurring after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010. ***[Schedule 2, Part 3-80, item 25, section 620-10 of the Income Tax (Transitional Provisions) Act 1997]***

4.81 The dates of effect of these roll-overs are retrospective so that that any transactions occurring since the time of announcement are covered by the amendments so that taxpayers can benefit from the measure. The amendments are beneficial to taxpayers.

Consequential amendments

4.82 A new note is inserted at the end of subsection 40-340(1) to indicate the existence of the depreciating asset roll-over for an original body that is being wound up and replaced by a new company incorporated under a different law. ***[Schedule 2, items 17 and 18]***

4.83 Also, a note is inserted after subsection 70-80(1) to indicate that an incorporated body is treated as disposing of an item of its trading stock in the ordinary course of business where the body ceases to exist and disposes of the asset to its new company. ***[Schedule 2, item 19]***

4.84 There are also amendments to the finding tables in Subdivision 112-B, which indicate the location of certain cost base modifications made outside of Parts 3-1 and 3-3. ***[Schedule 2, items 20 to 23, sections 112-53AB, 112-97 (at the end of the table), 112-115 (the cell at item 11 in the table, the column headed 'For the rules about this roll-over' and 112-150 (at the end of the table)]***

Chapter 5
GST financial supply provisions

Outline of chapter

5.1 Schedule 3 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to implement a number of recommendations agreed to by the Government arising out of Treasury's *Review of the GST financial supply provisions*.

5.2 All legislative references in this chapter are to the GST Act unless otherwise stated.

Context of amendments

5.3 These measures implement three of the recommendations arising out of Treasury's *Review of the GST financial supply provisions*. The remaining recommendations will be implemented through amendments to the *A New Tax System (Goods and Services Tax) Regulations 1999*.

5.4 Most financial supplies are input taxed and entities making financial supplies generally cannot claim input tax credits for related acquisitions.

5.5 Input taxation of financial supplies under the goods and services tax (GST) is inefficient and reduces competition. Division 70 provides access to reduced input tax credits for a defined range of acquisitions which are listed in the GST regulations. The availability of reduced input tax credits is aimed at mitigating some of the inefficiency caused by input taxation.

5.6 In addition, to reduce compliance costs for small businesses and businesses that only make limited financial supplies, the GST law contains a number of exclusions to the input taxation of financial supplies. These include:

- the financial acquisitions threshold, which allows businesses, whose notional entitlements to input tax credits for financial acquisitions do not exceed a *de minimis* threshold, to access input tax credits (Division 189);

- the borrowing concession, which excludes borrowing-related acquisitions from the financial acquisitions threshold (section 189-15); and
- treating borrowing-related acquisitions as not relating to making input taxed supplies provided the borrowing itself does not relate to making input taxed supplies (subsection 11-15(5)).

Financial acquisitions threshold

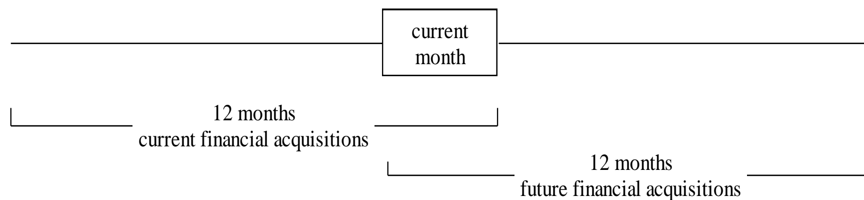
5.7 In order to keep businesses that primarily make taxable or GST-free supplies out of the financial supply regime, the GST Act allows businesses that only make a small number of low value financial supplies to claim input tax credits for acquisitions relating to the making of financial supplies where the business has not exceeded the financial acquisitions threshold.

5.8 Division 189 sets out the conditions in which an entity will exceed the financial acquisitions threshold. The financial acquisitions threshold is a two-limb test. For calculation purposes, the test assumes that there is a notional input tax credit available for financial acquisitions. An entity will exceed the financial acquisitions threshold if the dollar value of notional input tax credits for current or future financial acquisitions made by the entity exceeds either:

- $50,000 in the relevant period (first limb); or
- ten per cent of the total amount of input tax credits the entity could claim for all its purchases (including notional input tax credits for financial acquisitions) during the relevant period (second limb).

5.9 In applying the financial acquisitions threshold, it is necessary to determine the entity's current financial acquisitions and future financial acquisitions for the relevant periods. The relevant period for current financial acquisitions is the current month *plus* the previous 11 months. The relevant period for future financial acquisitions is the current month *plus* the following 11 months.

Diagram 5.1: The relevant time periods for testing against the financial acquisitions threshold



Borrowings

5.10 Subsection 11-15(5) reinstates an entity's entitlement for input tax credits for acquisitions that have been denied through paragraph 11-15(2)(a), to the extent that the acquisition relates to making a financial supply consisting of a borrowing, and the borrowing relates to the entity making supplies that are not input taxed.

5.11 This means that businesses that borrow funds to make supplies that are not input taxed are able to claim input tax credits for acquisitions that relate to the borrowing.

5.12 ***Borrowing*** is defined in the GST Act by reference to section 995-1 of the *Income Tax Assessment Act* 1997 (ITAA 1997), as any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

5.13 Currently, Australian authorised deposit-taking institutions (ADIs) make financial supplies consisting of a borrowing through the provision of deposit accounts. These entities are able to claim input tax credits for acquisitions to the extent the acquisitions relate to the financial supply consisting of a borrowing and the borrowing relates to the ADIs making supplies that are not input taxed.

Hire purchase

5.14 Under a hire purchase agreement, the entity:

- purchases goods through instalment payments;
- uses the goods while paying for them; and
- does not own the goods until the entity has paid the final instalment.

5.15 'Hire purchase agreement' is defined in section 995-1 of the ITAA 1997.

5.16 Under the GST law, a sale and purchase of goods made under a hire purchase agreement has the same GST treatment as a sale and purchase of goods under an ordinary sale agreement.

5.17 Therefore, under the existing law, the attribution of GST liabilities and input tax credits for the taxable component of a hire purchase agreement depends on whether the taxpayer accounts on a cash or non-cash basis.

5.18 Taxpayers who account on a cash basis attribute their GST liabilities and input tax credits when they make or receive each instalment payment.

5.19 On the other hand, taxpayers who account on a non-cash basis account for their GST liabilities upfront when the first payment is received or an invoice is issued (whichever is earlier). Similarly, they are able to claim their input tax credits upfront at the earlier of when the first payment is made (if they hold a valid tax invoice for the acquisition) or when the tax invoice is obtained.

Summary of new law

5.20 This Schedule increases the first limb of the financial acquisition threshold from $50,000 to $150,000, excludes financial supplies consisting of a borrowing that are made through the provision of a deposit account by an Australian ADI from the current concession for borrowings, and allows taxpayers who account on a cash basis to treat an acquisition made under a hire purchase agreement as though they do not account on a cash basis.

Comparison of key features of new law and current law

New law	*Current law*
An entity will exceed the financial acquisitions threshold if the dollar value of notional input tax credits for current or future financial acquisitions made by the entity exceeds $150,000 in the relevant period.	An entity will exceed the financial acquisitions threshold if the dollar value of notional input tax credits for current or future financial acquisitions made by the entity exceeds $50,000 in the relevant period.

New law	*Current law*
Australian ADIs who make financial supplies consisting of a borrowing through the provision of deposit accounts are not able to claim input tax credits for acquisitions that relate to the financial supply consisting of a borrowing, even where the borrowing relates to making supplies that are not input taxed.	Australian ADIs who make financial supplies consisting of a borrowing through the provision of deposit accounts are able to claim input tax credits for acquisitions to the extent that the acquisitions relate to the financial supply consisting of a borrowing and the borrowing relates to making supplies that are not input taxed.
Input tax credits on acquisitions made under a hire purchase agreement are available to cash basis taxpayers as if they had accounted on a non-cash basis for that transaction. This means that input tax credits are available upfront.	Input tax credits on acquisitions made under a hire purchase agreement are not available to cash basis taxpayers upfront and are only available when each instalment payment is made.
Supplies or acquisitions of goods or credit made under a hire purchase agreement are not supplies or acquisitions made on a progressive or periodic basis.	The attribution rules contained in Division 156 provide that supplies or acquisitions made on a progressive or periodic basis are to be treated as if each progressive or periodic component of the supply or acquisition is a separate supply or acquisition.

Detailed explanation of new law

Financial acquisitions threshold

5.21 Part 1 amends Division 189 to increase the first limb of the financial acquisitions threshold from $50,000 to $150,000.

5.22 This means that from 1 July 2012, an entity is able to claim input tax credits for acquisitions that relate to the making of financial supplies if the dollar value of notional input tax credits for current or future financial acquisitions made by the entity does not exceed $150,000 in the relevant period. ***[Schedule 3, item 1, paragraphs 189-5(1)(a) and (2)(a); item 2, paragraphs 189-10(1)(a) and (2)(a)]***

5.23 This new threshold means that an entity can now make up to $1,650,000 of financial acquisitions in the relevant period before exceeding this limb of the financial acquisitions threshold. This compares with up to $550,000 of similar acquisitions prior to 1 July 2012.

5.24 The relevant periods in which financial acquisitions made (current financial acquisitions), or anticipated to be made (future financial acquisitions), by the entity remain the same.

Example 5.1

> Alpha Co provides financial services to its clients. In the 12 months leading up to and including July 2012, Alpha Co has $80,000 worth of notional input tax credits (in respect of $880,000 of current financial acquisitions). It predicts that for July 2012 and the subsequent 11 months (future financial acquisitions), it will have $85,000 worth of notional input tax credits. Alpha Co satisfies the first limb of the financial acquisitions threshold at the time of undertaking the test in July 2012, as neither its entitlement to notional input tax credits for current or future financial acquisitions exceed $150,000.

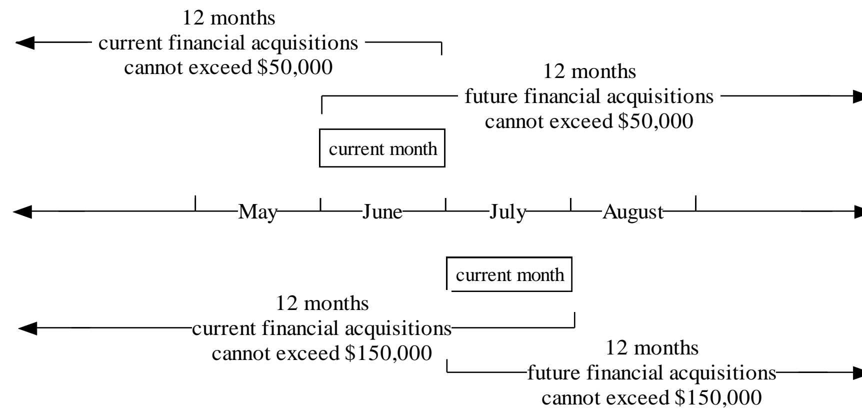
5.25 The 10 per cent threshold (second limb of the financial acquisitions threshold) remains unchanged. If an entity's notional input tax credits for its current or future financial acquisitions exceed 10 per cent of the total amount of notional input tax credits for all of its purchases (including financial acquisitions) during the relevant period, then the financial acquisitions threshold will have been breached even if the dollar value of input tax credits does not exceed $150,000.

Example 5.2

> Assuming the same facts as in Example 5.1, if the total amount of notional input tax credits Alpha Co could claim for all of its purchases is $150,000, then Alpha Co would exceed the financial acquisitions threshold as the amount of notional input tax credits for its current or future financial acquisitions is more than 10 per cent of the total amount of input tax credits (including notional input tax credits) for all of its purchases.

5.26 The amendment to the threshold applies when working out whether the financial acquisitions threshold has been exceeded during July 2012 or later months. When working out whether the threshold has been exceeded in June 2012 and prior months, the old threshold of $50,000 applies. ***[Schedule 3, item 3]***

Diagram 5.2: Applicable thresholds at June 2012 and July 2012



Example 5.3

On 15 June 2012, Beta Co calculates its notional input tax credit entitlement for its current financial acquisitions to be $45,000 and its notional input tax credit entitlement for its future financial acquisitions to be $60,000. As Beta Co's notional input tax credit entitlement for its future financial acquisitions exceed the threshold of $50,000, it will have exceeded the financial acquisitions threshold and will be denied input tax credits for acquisitions that relate to the making of financial supplies.

On 15 July 2012, Beta Co tests its current and future input tax credit entitlement for its financial acquisitions again. Its notional input tax credit entitlement for its current financial acquisitions is $48,000 and for its future financial acquisitions is $55,000. As neither Beta Co's current nor future input tax credit entitlement for its financial acquisitions exceed the new threshold of $150,000, it satisfies the first limb of the financial acquisitions threshold.

Borrowings

5.27 Part 2 amends section 11-15 to restrict the financial supply consisting of a borrowing referred to in paragraph 11-15(5)(a) by excluding borrowings made through a deposit account.

5.28 This means that input tax credits denied under paragraph 11-15(2)(a) for acquisitions that relate to the Australian ADI making a financial supply consisting of a borrowing through a deposit account are not re-instated under subsection 11-15(5). ***[Schedule 3, item 4, paragraph 11-15(5)(a)]***

Example 5.4

RDC Bank makes deposit accounts available to its customers. Rob has an account with RDC Bank and deposits $50,000 into the account on 1 August 2012. RDC Bank makes a financial supply consisting of a borrowing through the provision of the deposit account to Rob. It therefore does not satisfy paragraph 11-15(5)(a) and is not able to claim input tax credits denied under paragraph 11-15(2)(a) for acquisitions made on or after 1 July 2012, that relate to it providing the account to Rob.

5.29 ***Deposit account*** is defined to mean an account that is made available by an Australian ADI in the course of carrying on a banking business, where amounts credited to the account represent money taken by the ADI on deposit, other than as part-payment for identified goods or services. 'Australian ADI' is defined in the *Corporations Act 2001* and 'banking business' is defined in the *Banking Act 1959*. ***[Schedule 3, item 5, definition of 'deposit account' in section 195-1]***

5.30 The exclusion only applies to deposit accounts made available by Australian ADIs and does not apply where a debenture (as defined in section 9 of the *Corporations Act 2001*) issued by the ADI relates to any of the amounts credited to the account. ***[Schedule 3, item 5, definition of 'deposit account' in section 195-1]***

5.31 These amendments apply in relation to acquisitions made on or after 1 July 2012. ***[Schedule 3, item 6]***

Hire purchase agreements

5.32 Part 3 inserts Division 158 which establishes a special rule for taxpayers who account on a cash basis to attribute their input tax credits on acquisitions made under hire purchase arrangements as though they do not account on a cash basis. ***[Schedule 3, item 10, Division 158]***

5.33 This means that taxpayers who account on a cash basis are now able to claim input tax credits for acquisitions they make under a hire purchase agreement upfront instead of waiting until each instalment payment is made. This removes the current distortion that exists between hire purchase and other forms of financing for cash-based taxpayers.

5.34 The special rules relating to acquisitions made under hire purchase agreements also apply to representatives of incapacitated entities that are entitled to input tax credits or are required to make adjustments under subsection 58-10(1). ***[Schedule 3, item 10, paragraph 158-5(2)(b)]***

5.35 The non-cash basis treatment also applies if there are other GST consequences that relate to the relevant acquisitions. For example, the entity will be treated as accounting on a non-cash basis when determining if a bad debt adjustment arises under Division 21 for the relevant acquisitions.

5.36 The attribution rules contained in Division 156 currently treat supplies and acquisitions made on a progressive or periodic basis as if each progressive or periodic component of the supply or acquisition is a separate supply or acquisition.

5.37 In order to ensure that GST and input tax credits are attributable upfront for supplies and acquisitions of credit made under a hire purchase agreement, section 156-23 is inserted to provide that supplies or acquisitions of goods or credit under hire purchase agreements are not treated as supplies or acquisitions made on a progressive or periodic basis. ***[Schedule 3, item 9, section 156-23]***

5.38 The section clarifies that the existing treatment of goods supplied and acquired under a hire purchase agreement as not being made on a progressive or periodic basis is not changed by these amendments. It further ensures that the credit component supplied and acquired under a hire purchase agreement is also not treated as a supply made on a progressive or periodic basis.

5.39 Division 158 will override the operation of the following provisions in respect to acquisitions made under a hire purchase agreement where an entity accounts on a cash basis:

- paragraph 19-10(2)(c) (Adjustment events);
- subsection 21-15(2) (Bad debts written off (creditable acquisitions));
- subsection 29-10(2) (Attributing the input tax credits for your creditable acquisitions);
- subsection 29-20(2) (Attributing your adjustments);
- subsection 66-15(2) (Attributing input tax credits for creditable acquisitions of second-hand goods); and
- subsections 90-35(1) and (2) (Amalgamating companies accounting on a cash basis).

5.40 The following provisions may apply in respect to acquisitions made under a hire purchase agreement as a result of Division 158, even though the entity accounts on a cash basis in respect to other transactions:

- section 19-10 (Adjustment events);
- subsection 21-15(1) (Bad debts written off (creditable acquisitions);
- subsection 29-10(1) (Attributing the input tax credits for your creditable acquisitions);
- subsection 29-20(1) (Attributing your adjustments);
- subsection 66-15(1) (Attributing input tax credits for creditable acquisitions of second-hand goods); and
- section 90-25 (Entitlement after amalgamation to input tax credits for amalgamating company's acquisitions).

5.41 Hire purchase agreements are also added to the list of special rules relating to attribution rules and the list of special rules relating to accounting on a cash basis. ***[Schedule 3, items 7 and 8, sections 29-39 and 29-69]***

5.42 These amendments apply in relation to hire purchase agreements entered into on or after 1 July 2012. ***[Schedule 3, item 11]***

Example 5.5

Melissa owns a small fashion business with a turnover of $1.5 million. The business is registered for GST and accounts on a cash basis. On 15 April 2012, Melissa enters into a hire purchase agreement (where the credit component is not disclosed) with Patrick to purchase a new sewing machine for her business for $3,300 and pays her first instalment of $110. As Melissa accounts for GST on a cash basis, her input tax credit entitlement is limited to $10 (1/11 of $110) for the first instalment, in the period she actually pays the instalment. Had Melissa been accounting for GST on a non-cash basis she would have been able to claim an input tax credit of $300 (1/11 of $3,300) in the tax period in which she first holds a tax invoice for acquisition.

After 1 July 2012, Melissa must continue to account for input tax credits on the purchase of the sewing machine when each instalment payment is made. The amendments do not apply because she has entered into the hire purchase agreement before 1 July 2012.

On 20 July 2012, Melissa enters into another hire purchase agreement (with an undisclosed credit component) with Patrick to purchase a delivery vehicle for her business for $55,000. As the agreement was

entered into after 1 July 2012, Melissa can claim a full input tax credit of $5,000 (1/11 of $55,000) for the tax period in which she first holds a tax invoice, irrespective of whether Melissa accounts for GST on a cash or non-cash basis.

Application and transitional provisions

5.43 The amendments in Part 1 apply when working out whether an entity has exceeded the financial acquisitions threshold for months commencing on or after 1 July 2012.

5.44 The amendments in Part 2 apply in relation to acquisitions made on or after 1 July 2012.

5.45 The amendments in Part 3 apply in relation to hire purchase agreements entered into on or after 1 July 2012.

Chapter 6
GST treatment of new residential premises

Outline of chapter

6.1 Schedule 4 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure that sales or long-term leases of new residential premises by a registered entity are taxable supplies and that sales or long-term leases of residential premises (other than new residential premises) are input taxed supplies.

6.2 These amendments will also ensure that:

- first, the supply, by way of assignment of a long-term leasehold interest, of newly constructed residential premises is a taxable supply of new residential premises; and
- second, the reconfiguration of the title with respect to existing residential premises (other than new residential premises), of itself, will not result in the subsequent supply of those residential premises being a taxable supply of new residential premises.

6.3 These proposed amendments also clarify that premises that become new residential premises because of substantial renovations or because they have been built to replace demolished premises, cease to be new residential premises once they are subsequently sold or supplied by way of long-term lease as residential premises.

6.4 Except for item 2 in this Schedule (see paragraph 6.3), the provisions take effect from 27 January 2011 (the date of the Government's announcement). Item 2 of this Schedule (referred to in paragraph 6.3) applies in relation to supplies of residential premises on or after the day this Schedule commences.

6.5 All legislative references in this chapter are to the GST Act unless otherwise stated.

Context of amendments

6.6 Under section 40-65, the sale of residential premises to be used predominantly for residential accommodation is input taxed to the extent that the premises are not commercial residential premises or new residential premises.

6.7 Section 40-70 provides that a supply by way of long-term lease of residential premises to be used predominantly for residential accommodation is also input taxed to the extent that the premises are not commercial residential premises or new residential premises.

6.8 Section 40-75 provides the meaning of 'new residential premises'. Under this section, 'new residential premises' are residential premises:

- that have not previously been sold as residential premises, or have not previously been the subject of a long-term lease; or
- that have been created by 'substantial' renovations of a building; or
- that have been built to replace demolished premises on the same land, or which contain a building that has been built for that purpose.

6.9 The Full Federal Court decision in *Commissioner of Taxation v Gloxinia Investments (Trustee)* [2010] FCAFC 46 (*Gloxinia*), handed down on 24 May 2010, held that a developer's sales of newly constructed residential premises, constructed under a particular arrangement with a land owner (sometimes referred to as a 'development lease' arrangement), are input taxed supplies of residential premises. This outcome is contrary to the policy intent to tax the sale of newly constructed residential premises by GST registered entities who are selling the premises as part of their enterprise activities.

6.10 The Federal Court's decision in *Gloxinia* also highlights that the current law may not achieve the stated policy intent with respect to the goods and services tax (GST) treatment of residential premises in other circumstances. In those parts of Australia where land tenure is held by way of long-term lease, such as in the Australian Capital Territory (ACT), the process of building, 'strata titling' and selling what would otherwise be new residential premises subject to GST may result in those sales being treated as input taxed and not subject to GST.

6.11 Although not specifically addressed by the Federal Court in *Gloxinia*, the reasons for the Court's decision may also be considered to

raise doubt as to whether the current law achieves the desired policy intent where there is an alteration to property title arrangements for existing residential premises (other than new residential premises) held by way of freehold title. For example, the decision may be considered to suggest that the subdivision of an existing block of flats into strata title units, or the excising of a vacant lot from land comprising existing residential premises, may result in the premises becoming new residential premises and their subsequent supply being subject to GST rather than being input taxed.

6.12 These outcomes are contrary to the general policy intent in relation to the taxation of property under the GST Act.

6.13 The Government has therefore decided to amend the GST law with effect from 27 January 2011 (the date of the Government's announcement) to ensure that it achieves the intended policy outcome for the GST treatment of residential premises. The amendments made by this Schedule, except for item 2, apply in relation to supplies on or after 27 January 2011, subject to certain exceptions contained in items 12 and 13.

6.14 Retrospective amendment of the GST law is considered appropriate as it will provide certainty to taxpayers with respect to the GST treatment of supplies of affected premises. It is also considered that retrospective amendment of the GST law will limit any future potential competitive advantage that may otherwise arise for those taxpayers that construct new residential premises under relevant arrangements and which, under the current law, may result in reduced GST liabilities.

6.15 These amendments confirm the interpretative approach applied by the Australian Taxation Office (ATO) and followed by taxpayers prior to the decision in relation to the GST treatment of newly constructed residential premises that are subdivided or strata-titled prior to their sale or supply by long term lease.

6.16 Similarly, these amendments confirm and remove any doubt with respect to the interpretative approach applied by the ATO and followed by taxpayers prior to the decision with respect to changes to the configuration of property title relating to existing residential premises (other than new residential premises). That is, the amendments confirm and remove any doubt that the subdivision or strata titling of residential premises (other than new residential premises) does not result in the creation of new residential premises.

6.17 A transitional provision applies to ensure that taxpayers, who have entered into specified arrangements, on the basis of the current law

as held to apply by the Federal Court in *Gloxinia*, will not be disadvantaged.

Summary of new law

6.18 This Schedule amends subsection 40-75(1) to remove any doubt that premises that become new residential premises because of substantial renovations or because they have been built to replace demolished premises, cease to be new residential premises once they are sold or supplied by way of long-term lease as residential premises.

6.19 Schedule 4 inserts new subsection 40-75(2AA) into the GST Act to clarify and remove any doubt that the subdivision of existing residential premises that are not new residential premises, by itself, does not result in the subdivided premises being new residential premises.

6.20 This Schedule inserts new subsection 40-75(2B) into the GST Act to provide that a 'wholesale supply' of residential premises is disregarded in certain circumstances for the purposes of determining whether a subsequent supply of the premises is a supply of new residential premises.

6.21 This Schedule also inserts new subsection 40-75(2C) into the GST Act to provide that any supply of residential premises by a government body as a result of the lodgment of a property subdivision plan, for example, the grant of strata-lot leases in relation to residential premises, is disregarded for the purposes of determining whether a subsequent supply of the premises is a supply of new residential premises.

Comparison of key features of new law and current law

New law	***Current law***
Premises that become new residential premises because of substantial renovations or because they have been built to replace demolished premises, cease to be new residential premises once they are sold or supplied by way of long-term lease.	New residential premises that have been created through substantial renovations or built to replace existing premises are no longer new residential premises after they are subsequently sold or supplied by way of a long-term lease. However, this outcome may not be readily apparent or clear from the wording of the current law.

New law	***Current law***
The subdivision of existing residential premises that are not new residential premises does not result in the subdivided premises becoming new residential premises.	The subdivision or strata titling of residential premises (other than new residential premises) does not result in the creation of new residential premises. However, the decision in *Gloxinia* may raise doubts as to the GST consequences arising from the subdivision or strata titling of residential premises (other than new residential premises).
The 'wholesale supply' of residential premises under certain arrangements is disregarded in determining whether the subsequent supply of the premises is a supply of new residential premises. The earlier 'wholesale supply' is also a supply of new residential premises which will be a taxable supply if made by a GST registered entity.	The supply of newly constructed residential premises that have been constructed under certain arrangements is input taxed and the earlier 'wholesale supply' is a taxable supply of new residential premises.
The strata titling and grant of a strata-lot lease over newly constructed residential premises does not of itself cause these premises to cease to be new residential premises and not subject to GST when sold to home buyers and investors.	The strata titling and grant of a strata-lot lease over newly constructed residential premises causes these premises to cease to be new residential premises and not subject to GST when sold to home buyers and investors.

Detailed explanation of new law

6.22 These amendments add words and notes to subsection 40-75(1) to clarify that premises that become new residential premises because of substantial renovations or because they have been built to replace demolished premises, cease to be new residential premises once they are sold or supplied by way of long-term lease as residential premises. ***[Schedule 4, item 2, subsection 40-75(1)]***

6.23 These amendments also provide that residential premises are not new residential premises if they are created from residential premises that became the subject of a 'property subdivision plan' and the residential premises were not new residential premises immediately before they became the subject of that plan ***[Schedule 4, item 5, subsection 40-75(2AA)]***. The term ***property subdivision plan*** has been defined to mean a plan for the division of real property that is registered (however described) under an Australian law. The note to the definition explains that strata title plans

and plans to subdivide land are examples of a 'property subdivision plan'. ***[Schedule 4, item 10, definition of 'property subdivision plan' in section 195-1]***

6.24 The intention of new subsection 40-75(2AA) is to clarify that the subdivision of existing residential premises that are not new residential premises does not, by itself, result in the subdivided premises being new residential premises. Subsection 40-75(2AA) will not prevent premises from being treated as new residential premises for the purposes of paragraph 40-75(1)(b) or (c) should they subsequently be substantially renovated or demolished and replaced. The premises referred to in paragraph (2AA)(a) include associated land as well as buildings.

6.25 These amendments also provide that a 'wholesale supply' of residential premises is disregarded in certain circumstances for the purposes of determining whether a subsequent supply of residential premises is a supply of new residential premises. ***[Schedule 4, item 8, subsection 40-75(2B)]***

6.26 The intention of new subsection 40-75(2B) is to ensure that certain sales of newly constructed residential premises by a developer to home buyers and investors will be taxable supplies of new residential premises even though there may have been an earlier 'wholesale supply' of the premises. The earlier supply is disregarded for the purposes of determining whether or not residential premises are new residential premises if the residential premises have been constructed pursuant to a particular arrangement (including an agreement). The particular arrangement being an arrangement between a developer or builder and a land holder, whereby the developer or builder (or an associate of the developer or builder) becomes entitled to the freehold or long-term leasehold title in the premises conditional on specified building or renovation work being undertaken by the developer or builder.

6.27 These amendments are intended to ensure that GST is payable on the full value added to premises by developers and builders.

6.28 The earlier 'wholesale supply' is also a supply of new residential premises. The consideration for the 'wholesale supply' of the residential premises includes the GST-inclusive market value of the specified building or renovation work undertaken on the land by the developer or builder prior to the transfer of the premises to the developer or builder. This is consistent with the Federal Court's approach in *Gloxinia* where it was held that the Council supplied the completed residential premises to the developer, and not just vacant land, when the title to each of the individual residential apartments was granted to the developer upon their completion of the development and construction of the residential premises.

6.29 These amendments also provide for a regulation-making power to allow for future arrangements which may result in similar unintended policy outcomes to be included in and addressed by new subsection 40-75(2B) ***[Schedule 4, item 8, subparagraph 40-75(2B)(c)(ii)].*** Any proposed regulations would be subject to public consultation in accordance with the Government's tax design policies.

6.30 These amendments further provide that the supply of premises by a government body as a direct result of the lodgment of a property subdivision plan, for example, the grant of strata-lot leases in relation to residential premises, is disregarded for the purposes of determining whether a supply of premises is a supply of new residential premises. ***[Schedule 4, item 8, subsection 40-75(2C)]***

6.31 New subsection 40-75(2C) is intended to deal with the issue of strata titling of a long-term leasehold interest in newly constructed residential premises (which is particularly relevant in those States and Territories where land tenure is held by way of long-term leasehold, for example, the ACT). Specifically the new subsection is intended to ensure that the granting of individual strata lot leases over newly constructed residential premises upon registration of a property subdivision plan is not, by itself, sufficient to cause those premises to cease to be new residential premises and to be input taxed when they are subsequently sold or supplied by way of long-term lease. The supply that this new subsection captures is limited to the supply that a government body makes, for example, the grant of strata lot leases, as a direct result of the lodgment of a strata plan by an entity.

6.32 As noted in paragraph 6.26, the consideration for a 'wholesale supply' of residential premises under an arrangement of a kind described in new subsection 40-75(2B) includes the GST inclusive market value of the development and building works undertaken on the land by the developer or builder prior to the 'wholesale supply' being made. The developer also makes a supply of those development and building works to the land owner. The attribution rules and tax invoice requirements in Division 29 apply in relation to these respective supplies.

Example 6.1

On 1 February 2011, Government X enters into a deed with DeveloperCo for the development and sale of improved land that Government X held at 1 July 2000. The deed between Government X and DeveloperCo provides for the grant of a development lease for a period of three years. DeveloperCo is required to undertake certain development works on the land, including the construction of residential apartments, subject to the terms of the development lease. The deed between Government X and DeveloperCo provides that upon completion of the development works, Government X will transfer

freehold title to the land including the development works to DeveloperCo in return for payment of $22 million.

The GST-inclusive market value of the works undertaken on the land by the developer is $220 million.

The value of the land as at 1 July 2000 was $11 million.

On 1 February 2014, the development works are completed and, in accordance with the terms of the deed, Government X transfers freehold title to the premises to DeveloperCo in return for a monetary payment of $22 million from DeveloperCo to Government X.

GST outcomes under the new law — margin scheme is applied

(i) The supply of development services by DeveloperCo and the acquisition of those development services by Government X.

In undertaking the development works on the land, under the terms of the deed and the development lease, DeveloperCo makes a taxable supply of those development works to Government X.

The consideration for the development works undertaken by DeveloperCo is the GST-inclusive market value of the freehold interest in the development transferred to DeveloperCo *less* the $22 million payment that DeveloperCo made in return for that transfer. In this case, it is accepted this amount is equivalent to the GST inclusive market value of the development works undertaken by the developer, that is, $220 million.

On the basis set out above, DeveloperCo's GST liability for its supply of the development works to Government X would be:

$220 / 11 = $20m.

Government X is entitled to an input tax credit for its acquisition of the development works from DeveloperCo, equivalent to the GST payable on the supply of the development works by DeveloperCo, that is, $20 million.

DeveloperCo is entitled to input tax credits on the taxable supplies it acquires to undertake the development works.

(ii) The wholesale supply of the premises to DeveloperCo on 1 February 2014.

The transfer of the freehold title to the premises to DeveloperCo on 1 February 2014 is a wholesale supply to which proposed subsection 40-75(2B) will apply.

This wholesale supply of the premises is a taxable supply.

The consideration for the wholesale supply of the premises is the $22 million paid by the developer plus the GST-inclusive market value ($220 million) of the development works that the developer undertook on the land under the terms of the deed and the development lease.

Therefore the total consideration for Government X's wholesale supply of the premises is $242 million.

Government X's GST liability on its wholesale supply of the premises under the margin scheme is:

$242m − $11m / 11 = $21m.

(iii) The developer's acquisition of the completed development and subsequent sale of residential premises to home buyers and investors.

The developer will not be entitled to an input tax credit for its acquisition of the completed development from Government X because it was supplied to the developer under the margin scheme (section 75-20).

The developer's sale of the residential apartments constructed under the development lease arrangement will be taxable supplies of new residential premises.

The developer will be liable for GST on its supplies of the residential apartments to home buyers and investors.

Where the margin scheme is applied, the GST liability applicable to the sale of each individual apartment will be equal to:

(the sale price of the apartment — the applicable proportion of the $242m consideration that the developer provided for the entire development) / 11.

GST outcomes under the new law — the margin scheme is not applied

The GST outcomes will be the same if the margin scheme is not applied, except that:

- Government X's GST liability on its wholesale supply of the completed premises to DeveloperCo will be calculated on the entire consideration received:

  $242m / 11 = $22m

- DeveloperCo will be entitled to an input tax credit of $22 million for its acquisition of the completed premises from Government X.

- DeveloperCo's GST liability on the sale of individual residential apartments to home buyers and investors will be calculated as 1/11 of the entire sale price for each apartment.

Application and transitional provisions

6.33 The amendments made by this Schedule (other than item 2) apply in relation to supplies of residential premises on or after 27 January 2011. Retrospective application of the amendments is considered necessary for the reasons outlined in paragraphs 6.14 to 6.16. However, some sales of residential premises after 27 January 2011 will not be subject to these amendments if the conditions contained in items 12 and 13 are satisfied. ***[Schedule 4, subitems 11(1) and (2)]***

6.34 The amendment made by item 2 applies in relation to supplies of residential premises on or after the day after this Schedule commences. ***[Schedule 4, subitem 11(3)]***

6.35 The first exception to the other amendments (that is, other than those made by item 2) excludes certain 'wholesale supplies' of residential premises made on after or before 27 January 2011, from the application of the new law, subject to certain conditions being satisfied in relation to the 'wholesale supply'. ***[Schedule 4, item 12, subitem 12(1)]***

6.36 The first condition that needs to be satisfied is that the premises from which the residential premises were created had earlier been supplied to the recipient of the wholesale supply or the recipient's associate. ***[Schedule 4, item 12, paragraph 12(2)(a)]***

6.37 The second condition is that the recipient of the wholesale supply, or the recipient's associate, was 'commercially committed' to an arrangement, under which the 'wholesale supply' was or is to be made, immediately before 27 January 2011. ***[Schedule 4,item 12, paragraph 12(2)(b)]***

6.38 The third condition is that the wholesale supply was conditional on specified building or renovation work being undertaken by the recipient of the earlier supply or their associate. ***[Schedule 4, item 12, paragraph 12(2)(c)]***

6.39 The fourth condition is that any acquisitions relating to a subsequent sale or supply by way of long-term lease of the residential premises by the recipient of the 'wholesale supply', have not been treated as being creditable acquisitions for which an input tax credit entitlement arises. This condition is also satisfied where a GST return has subsequently been amended so that the net amount reported by the recipient of the wholesale supply for any tax period does not include an

amount equivalent to the input tax credits, or any part of the input tax credits, that the recipient of the 'wholesale supply' would have been entitled to if its acquisitions relating to the next sale or long-term lease of the residential premises were creditable acquisitions. ***[Schedule 4, item 12, paragraph 12(2)(d)]***

6.40 The term 'arrangement' in subitem (2) includes, but is not limited to, an agreement. ***[Schedule 4, subitem 12(3)]***

6.41 The term ***commercially committed***, in relation to an arrangement, means:

- to be a party to the arrangement, where the arrangement is legally binding;
- to be the preferred tenderer (however described) in the final step in a bidding or tendering process relating to the arrangement;
- to have directly made (with associates) acquisitions, having a total GST exclusive value of at least $200,000, in relation to the arrangement; or
- to have directly incurred (with associates) internal direct costs, of at least $200,000, in relation to the arrangement.

[Schedule 4, subitem 12(3)]

6.42 A second exception relating to the other amendments excludes supplies of residential premises made on or after 27 January 2011 from the application of the new law, if the supply was made because a 'property subdivision plan' was lodged for registration before 27 January 2011 by the recipient of the supply or the recipient's associate. ***[Schedule 4, item 13]***

Consequential amendments

6.43 The words 'When premises are new residential premises' are inserted as a heading before subsection 40-75(1). ***[Schedule 4, item 1, subsection 40-75(1)]***

6.44 Subsection 40-75(2) is amended by omitting the words 'premises are not new residential premises' and substituting with the words 'residential premises are not 'new residential premises'. ***[Schedule 4, item 3, subsection 40-75(2)]***

6.45 Paragraph 40-75(2)(a) is amended by omitting the words '*residential premises' and substituting with the words 'residential premises'. ***[Schedule 4, item 4, paragraph 40-75(2)(a)]***

6.46 The words 'Disregard certain supplies of the premises' are inserted as a heading before subsection 40-75(2A). ***[Schedule 4, item 6, subsection 40-75(2A)]***

6.47 Subsection 40-75(2A) is amended by omitting the words 'premises is disregarded as a sale' and substituting with the words 'residential premises is disregarded as a sale or supply'. ***[Schedule 4, item 7, subsection 40-75(2A)]***

6.48 Two notes are included in the legislation to direct users of the legislation to the existence of the transitional provisions. ***[Schedule 4, item 8, subsection 40-75(2B) (note 3) and subsection 40-75(2C) (note)]***

6.49 The words 'New residential premises include associated land' are inserted as a heading before subsection 40-75(3). ***[Schedule 4, item 9, subsection 40-75(3)]***

Chapter 7
Deductible gift recipients

Outline of chapter

7.1 Schedule 5 to this Bill amends the *Income Tax Assessment Act* 1997 (ITAA 1997) to update the list of deductible gift recipients (DGRs) by adding one entity as a DGR, and changing the name of another entity already specifically listed.

7.2 All legislative references in this chapter are to the ITAA 1997 unless otherwise stated.

Context of amendments

7.3 The income tax law allows income tax deductions for taxpayers who make gifts of $2 or more to DGRs. To be a DGR, an organisation must fall within one of the general categories set out in Division 30 or be specifically listed by name in that Division.

7.4 DGR status assists eligible funds and organisations to attract public support for their activities.

Summary of new law

7.5 These amendments add Rhodes Trust in Australia as a DGR, and amend the name of 'Playgroup Australia Incorporated' to 'Playgroup Australia Limited'.

Detailed explanation of new law

Rhodes Trust in Australia (ABN 24 218 682 610)

7.6 Taxpayers may claim a deduction for gifts made to Rhodes Trust in Australia after 20 October 2011. ***[Schedule 5, item 2, item 9.2.24 in the table in subsection 30-80(2)]***

7.7 The purpose of Rhodes Trust in Australia is to raise monies in Australia to augment the existing Rhodes Scholarship program at Oxford University in the United Kingdom. All monies raised in Australia will be used to provide scholarships to Australians to undertake tertiary education at Oxford University in the United Kingdom.

Playgroup Australia Limited (ABN 31 142 795 695)

7.8 Playgroup Australia is currently listed as a DGR in the table in subsection 30-70(2) under Playgroup Australia Incorporated (ABN 22 512 105 603).

7.9 This Schedule changes the name of ‘Playgroup Australia Incorporated’ to ‘Playgroup Australia Limited’. The entity has undertaken a restructure to become a company limited by guarantee, and has changed its name to reflect this. There has been no change to the objectives or purposes of Playgroup Australia, or the purposes for which it has been specifically listed as a DGR. ***[Schedule 5, item 1, item 8.2.12 in the table in section 30-70(2)]***

Consequential amendments

7.10 Changes have been made to update the index in Division 30 to add Rhodes Trust in Australia, and to reflect the change in name of Playgroup Australia Limited. ***[Schedule 5, items 3 and 4, items 97AAA and 86AA in the table in section 30-315]***

Chapter 8
Miscellaneous amendments to the tax laws

Outline of chapter

8.1 Schedule 6 to this Bill makes miscellaneous amendments to the taxation laws.

Context of amendments

8.2 These amendments essentially seek to ensure the taxation law operates as intended. They correct technical or drafting defects, removing anomalies and addressing unintended outcomes. These amendments are part of the Government's commitment to the care and maintenance of the taxation laws.

8.3 Miscellaneous amendment packages include addressing issues raised through the Tax Issues Entry System (TIES).

- The TIES website (www.ties.gov.au), which the Australian Taxation Office (ATO) and Treasury jointly operate, provides a way for tax professionals and the general public to raise issues relating to the care and maintenance of the tax system. Relevant parts of this chapter identify TIES issues.

Summary of new law

8.4 These amendments deal with issues including:

- correcting grammatical, referencing and asterisking errors;
- clarifying the operation and application of the tax law;
- ensuring that provisions are consistent with their original policy intent; and
- repealing inoperative provisions.

8.5 Table 8.1 maps the content of this Schedule.

Table 8.1

Part	***Title***
1	Corrections to cross-references
2	Repeal of references to Cultural Bequests Program and redundant subsection numbers
3	List of tax offsets
4	*Taxation Administration Act 1953*
5	Foreign superannuation funds
6	Asterisks
7	References to Acts
8	Extensions of time
9	Cessation of membership of GST groups etc.
10	Small business participation percentage
11	Exempt income
12	Complying superannuation/First Home Saver Account life insurance policies
13	Applications for tax file numbers
14	Taxable professional income
15	Consolidated groups
16	Demutualisation
17	Mining and quarrying definitions
18	BAS amount
19	Corporate tax rate
20	United Kingdom wounds and disability pension
21	Repeal of redundant provisions
22	Limited amendment period
23	Definition of managed investment trust
24	Equivalent foreign collective investment vehicles
25	Self managed superannuation funds
26	Untaxed plan cap
27	Correction of a typographical errors
28	Foreign income tax offset, the Medicare levy and the Medicare levy surcharge
29	Adjusted tax
30	Section 109CA of the *Income Tax Assessment Act 1936*
31	Franking debits

8.6 More significant amendments include:

- providing the Commissioner of Taxation (Commissioner) with a discretion to extend the two-year ownership period in which the trustee of a deceased estate or beneficiary of such an estate must dispose of their interest in the deceased's dwelling to access either a full or a more generous partial capital gains tax (CGT) main residence exemption (Part 8, comprising items 94 to 96);

- ensuring that taxpayers can have a non-zero direct small business participation percentage. This may occur in situations where shares in a company are held jointly by taxpayers and a discretionary trust has not make a distribution in an income year where the trust had a tax loss or no net income for that year. (This issue was identified through **TIES issues 0002-2010 and 0003-2011**) (Part 10, comprising items 106 to 116);

- allowing a complying superannuation/ First Home Saver Account life insurance policy to include a deferred annuity policy held by an individual that was purchased before 1 July 2007 from an eligible termination payment. (This issue was identified through **TIES issue 0037-2009**) (Part 12, comprising items 149 to 152);

- enabling lost policy holders with an interest in a demutualisation receive equal CGT treatment to other policy holders where the other relevant conditions are satisfied. The amendment will apply in relation to demutualisations occurring on or after 1 July 2008, so that demutualisations that have already applied the demutualisation concessions can benefit from this amendment (Part 16, comprising items 162 and 163); and

- ensuring that the continuity of ownership test applies to payments made on or after 1 July 2009 and not from the time that the company acquired the dwelling. The intent of the continuity of ownership test is to ensure that the ownership of a dwelling does not change on or after 1 July 2009 rather than before 1 July 2009 (Part 30, comprising items 252 and 253).

8.7 All of the amendments in Schedule 6 apply from the date of Royal Assent unless otherwise stated.

Detailed explanation of new law

Schedule 6 — Miscellaneous amendments

Part 1 — Corrections to cross-references
Division 1

Table 8.2: Amendments to the *Income Tax Assessment Act 1936*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1936 102MA(2)(a) 102MA(2)(b) ***[Schedule 6, items 1 and 2]***	Corrects the cross-references in these provisions.

Division 2

Table 8.3: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 207-59(1) 230-380(2) and (3) 230-380(6)(a) 995-1(1)(definition of 'non-arm's length limited resource debt') ***[Schedule 6, items 3 to 6]***	Corrects the cross-references in these provisions.

Division 3 — Citizenship

Table 8.4: Amendments to the *Income Tax Assessment Act 1997* and the *Tax Laws Amendment (2006 Measures No. 3) Act 2006*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 30-37(a) ***Tax Laws Amendment (2006 Measures No. 3) Act 2006*** 2(1)(item 10 in the table) Item 3 of Schedule 11 ***[Schedule 6, items 7 to 9]***	Corrects the reference which should refer to the *Australian Citizenship Act 2007*.

Division 4 — Tax-related liabilities

Table 8.5: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 721-25(1A)(a) ***[Schedule 6, item 10]***	Corrects the cross-reference in this provision.

Part 2 — Repeal of references to Cultural Bequests Program and redundant subsection numbers

Division 1 — Cultural Bequest Program

Table 8.6: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 30-5(1) 30-5(1)(note 1) 30-5(1)(note 2) 30-15(2)(note 1) 30-15(2)(note 2) 30-115 30-D 30-315(item 41 in the table) 104-185(2)(c) 112-48(item 1 in the table) 118-60(1) ***[Schedule 6, items 11 to 20]***	Removes references to the now inoperative Cultural Bequests Program.

Table 8.7: Amendments to the *Income Tax (Transitional Provisions) Act 1997*

Provision being amended	***What the amendment does***
Income Tax (Transitional Provisions) Act 1997 30-10 30-15 30-20 ***[Schedule 6, item 21]***	Removes references to the now inoperative Cultural Bequests Program.

Division 2 — Redundant subsection numbers

Table 8.8: Amendments to the *A New Tax System (Medicare Levy Surcharge — Fringe Benefits) Act 1999*

Provision being amended	*What the amendment does*
A New Tax System (Medicare Levy Surcharge — Fringe Benefits) Act 1999 11(1) ***[Schedule 6, item 22]***	Removes a redundant subsection number.

Table 8.9: Amendments to the *Superannuation Industry (Supervision) Act 1993*

Provision being amended	*What the amendment does*
Superannuation Industry (Supervision) Act 1993 252(1) ***[Schedule 6, item 23]***	Removes a redundant subsection number.

Table 8.10: Amendments to the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Act 1991*

Provision being amended	*What the amendment does*
Superannuation (Self Managed Superannuation Funds) Supervisory Levy Act 1991 7(1) ***[Schedule 6, item 24]***	Removes a redundant subsection number.

Part 3 — List of tax offsets

Table 8.11: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 13-1 ***[Schedule 6, items 25 and 26]***	Updates the list of tax offsets to include references to ‘film’ and to ‘life insurance company. As a result of this amendment, the list of tax offsets includes references to ‘film’ covered in Division 376 and to ‘life insurance company subsidiary joining consolidated group’ in subsection 713-545(5).

Part 4 — Taxation Administration Act 1953

Table 8.12: Amendments to the *Taxation Administration Act 1953*

Provision being amended	*What the amendment does*
Taxation Administration Act 1953 2(1) 3AA(1A) ***[Schedule 6, items 27 and 28]***	This amendment makes it explicit that expressions used in the body of the *Taxation Administration Act 1953* (TAA 1953) do not take the meaning given by definitions in the *Income Tax Assessment Act 1997* (ITAA 1997) (or in Schedule 1 to the TAA 1953), except where specific provision is made to the contrary. This separation of definitions is consistent with a similar separation of definitions between the ITAA 1997 and the *Income Tax Assessment Act 1936* (ITAA 1936): see subsection 995-1(2) of the ITAA 1997 and subsection 6(1AA) of the ITAA 1936. One reason for this is that the ITAA 1936 does not follow the 'one expression, one meaning' approach generally adopted in the ITAA 1997. The body of the TAA 1953 also does not follow the 'one expression, one meaning' approach. By contrast, Schedule 1 to the TAA 1953 is effectively incorporated into the ITAA 1997, and does follow that approach.
Taxation Administration Act 1953 8C(1)(a) ***[Schedule 6, item 29]***	The object of section 8C of the TAA 1953 is to make it an offence to fail to comply with requirements under the taxation law. Paragraph 8C(1)(a) is intended to make it an offence to fail to provide any information or document to the Commissioner as required under a taxation law. The purpose of this amendment is to clarify that an offence under paragraph 8C(1)(a) is not limited to failure to furnish an approved form as defined in Schedule 1 to the TAA 1953, or any other particular form. For example, it would include a failure to lodge a Superannuation Guarantee statement as required under the *Superannuation Guarantee (Administration) Act 1992*.

Part 5 — Foreign superannuation funds

Division 1 — Pensions and annuities

Table 8.13: Amendments to the *Income Tax Assessment Act 1936*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1936 603(1)(h) ***[Schedule 6, items 30 and 31]***	Ensure that amounts paid from foreign superannuation funds are not subject to double taxation on distribution where amounts were subject to tax under the attribution rules contained in the former foreign investment fund provisions. The amendment applies to the 2007-08 and later income years. The amendment will allow the law to operate as intended and will not have a detrimental effect on taxpayers.

Division 2 — Superannuation lump sums

Table 8.14: Amendments to the *Income Tax (Transitional Provisions) Act 1997*

Provision being amended	***What the amendment does***
Income Tax (Transitional Provisions) Act 1997 Div 305 ***[Schedule 6, item 32]***	Ensure that amounts transferred from foreign superannuation funds are not subject to double taxation on distribution where amounts were subject to tax under the attribution rules contained in the former foreign investment fund provisions. Section 305-80 is a continuation of the deduction previously allowable under former section 533B of Part XI of the ITAA 1936. The amendment applies to the 2010-2011 and later income years. The amendment will allow the law to operate as intended and will not have a detrimental effect on taxpayers.

Part 6 — Asterisking

Division 1 — A New Tax System (Wine Equalisation Tax) Act 1999

Table 8.15: Amendments to the *A New Tax System (Wine Equalisation Tax) Act 1999*

Provision being amended	*What the amendment does*
A New Tax System (Wine Equalisation Tax) Act 1999 19-20(1)(a) 33-1 (definition of 'connected with') ***[Schedule 6, items 33 and 34]***	Asterisks the term 'ITAA 1997', as it is a defined term.

Division 2 — Trading stock and revenue assets

Table 8.16: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 28-170(3)(item 2 in the table, column 2) 28-175(3)(b) 70-30(5) 70-35(1)(b) 70-100(6)(b) and 10(b) 165-115BB(2) (paragraph (a) of the definition of 'previous capital losses, deductions or trading stock losses') 165-115F(3) and (4) 385-135(3)(b)(ii) 715-145(2)(item 2 in the table, column headed 'If:') 723-50(2)(a) 723-50(2)(b) 725-225(5) 725-245(item 1 in the table, column headed 'Up interest') 725-245(item 2 in the table, column headed 'Up interest') 725-245(item 3 in the table, column headed 'Up interest') 725-310(2) 725-315 725-315(a)	Ensures that the terms 'trading stock' and 'revenue assets' are correctly asterisked.

Provision being amended	*What the amendment does*
725-315(2) 725-335(3)(item 2 in the table, column headed 'To:') 725-335(3)(items 4 to 6 in the table, column headed 'To:') 977-25(3)(b) 977-35(2)(b) 995-1(1)(paragraph (b) of the definition of 'apportionable deductions') 995-1(1)(paragraph (b) of the definition of 'consideration receivable') ***[Schedule 6, items 35 to 59]***	

Division 3 — Other amendments

Table 8.17: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 36-25(item 5 in the table relating to tax losses of companies) 36-25(item 1 in the table relating to tax losses of corporate tax entities) 36-25(item 1 in the table relating to tax losses of entities that become foreign hybrids) 70-80(3)(a) 115-228(1) (definition of 'net financial benefit') 124-445(a) 216-10(1)(b) 216-30 ***[Schedule 6, items 60 to 67]***	Corrects the asterisking of the references to: 'capital gain', 'corporate tax', 'excess franking offsets', 'foreign hybrid', 'life insurance company', 'member', 'tax loss', 'business', 'securities lending arrangement' and 'securities lending arrangements'.

Part 7 — References to Acts

Table 8.18: Amendments to the *A New Tax System (Goods and Services Tax) Act 1999*, to the *Income Tax Assessment Act 1997* and to the *Taxation Administration Act 1953*

Provision being amended	*What the amendment does*
A New Tax System (Goods and Services Tax) Act 1999 9-20(1)(d) 113-5(1) 177-12(4)(b) 195-1(definition of 'non-cash benefit') 195-1(definition of 'withholding payment' covered by a particular provision in Schedule 1 to the *Taxation Administration Act 1953*) 195-1(definition of 'withholding payment') ***Income Tax Assessment Act 1997*** 995-1 (Various definitions) ***Taxation Administration Act 1953*** 426-1 in Schedule 1 426-5(a) in Schedule 1 426-5(b) in Schedule 1 426-40(1) in Schedule 1 (paragraph (a) of note 1) 426-55(1) in Schedule 1 (paragraph (a) of note 1) 426-65(1)(a) in Schedule 1 426-65(1)(b) in Schedule 1 446-5(6) in Schedule 1 (items 9 and 10 in the table) 850-100(8)(a) in Schedule 1 (example) 850-100(8)(b) in Schedule 1 (example) ***[Schedule 6, items 68 to 93]***	Replaces references to the *A New Tax System (Goods and Services Tax) Act 1999* and to the *Income Tax Assessment Act 1997* with the asterisked acronyms of '*GST Act' and '*ITAA 1997' respectively, as these are defined terms.

Part 8 — Extensions of time

Table 8.19: Amendments to the *Income Tax Assessment Act 1997*

<table>
<tr><th>Provision being amended</th><th>What the amendment does</th></tr>
<tr><td>Income Tax Assessment Act 1997
118-195(1) (at the end of the cell in item 1 in the table, column headed ‘And also one of these items’)
118-200(3)
[Schedule 6, items 94 to 96]

Income Tax Assessment Act 1936
170
170A
[Schedule 6, subitem 4(1) and item 188]</td><td>Subsection 118-195(1) of the ITAA 1997 (all references in this Part are to this Act) provides a CGT exemption to a beneficiary or trustee of a deceased estate where a CGT event happens to a dwelling (or an ownership interest in a dwelling) acquired from a deceased estate. An exemption is provided where the following conditions are satisfied:
• the beneficiary or trustee’s ownership interest in the dwelling ends within two years of the deceased’s death; and
• just before the deceased’s death, for post-CGT dwellings:
– the dwelling was their main residence; and
– it was not then being used to produce assessable income.
Where a trustee or beneficiary of a deceased estate cannot access a CGT exemption under section 118-195, section 118-200 may provide a partial exemption.
In particular, subsection 118-200(3) ensures that for post-CGT dwellings, where the trustee or beneficiary’s ownership interest ends within two years of the deceased’s death, the period between the deceased’s death and when their ownership interest ends can be ignored when calculating a capital gain or capital loss.
The amendments give the Commissioner discretion to extend the time period in subsections 118-195(1) and 118-200(3) where the trustee or beneficiary of a deceased estate’s ownership interest ends after two years from the deceased’s death.
The Commissioner would be expected to exercise discretion in situations such as where:
• the ownership of a dwelling or a will is challenged;
• the complexity of a deceased estate delays the completion of administration of the estate;</td></tr>
</table>

Provision being amended	*What the amendment does*
	• a trustee or beneficiary is unable to attend to the deceased estate due to unforeseen or serious personal circumstances arising during the two-year period (for example, the taxpayer or a family member has a severe illness or injury); or • settlement of a contract of sale over the dwelling is unexpectedly delayed or falls through for circumstances outside the beneficiary or trustee's control. These examples are not exhaustive. In exercising this discretion, the Commissioner is expected to consider whether and to what extent the dwelling is used to produce assessable income and the period that the trustee or beneficiary held the ownership interest in the dwelling. The amendments will apply in relation to CGT events that happen in the 2008-09 income year and later income years. The amendments are beneficial to taxpayers. The operation of section 170 of the ITAA 1936 is modified so that taxpayers are able to seek an amended assessment to take advantage of these amendments where their original assessment was made before the commencement of these amendments but their period for seeking an amendment to their tax return has expired. Broadly, taxpayers are able to seek an amended assessment in these circumstances within two years of that commencement.

Part 9 — Cessation of membership of GST groups etc.

Table 8.20: Amendments to the *A New Tax System (Goods and Services Tax) Act 1999*

Provision being amended	*What the amendment does*
A New Tax System (Goods and Services Tax) Act 1999 48-110(1) 48-115(1)(b) 48-110(2)(b) 51-110(1) 51-115(1)(b) 51-115(2)(b) 195-1 (definition of 'cease to be a member of a GST group') 195-1 (definition of 'cease to be a participant of a GST joint venture') ***[Schedule 6, items 97 to 105]***	These amendments give effect to the suggestion made through **TIES issue 0013-2010**. Section 195-1 of the GST Act defines the terms 'cease to be a member of a GST group' and 'cease to be a participant of a GST joint venture' by reference to the Commissioner's approval of revocation of a member of a GST group or a participant of a GST joint venture respectively. These amendments remove these definitions as they are no longer needed following the introduction of a self-assessment system for GST groups and GST joint ventures by the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010*. These amendments also make consequential amendments to Division 48 (GST groups) and Division 51 (GST joint ventures) by deleting the asterisk in front of the words 'cease to be a member of a GST group' and 'cease to be a participant of a GST joint venture' respectively.

Part 10 — Small business participation percentage

Division 1 — Companies

Table 8.21: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 152-70(2) and (3) ***[Schedule 6, items 106 to 109]*** ***Income Tax Assessment Act 1936*** 170 170A ***[Schedule 6, subitem 4(2) and item 188]***	These amendments give effect to the suggestion made through **TIES issue 0003-2011**. Division 152 of the ITAA 1997 (all references in this Part are to this Act unless otherwise stated) provides four small business CGT concessions. To access these concessions in relation to a share in a company, it is necessary for that company to have one or more significant individuals. The significant individual test represents a readily verifiable proxy for active participation in a small business.

Provision being amended	What the amendment does
	However, where shares are jointly held, those joint holders may be unable to qualify as a significant individual. To qualify as a significant individual, the individual's direct and indirect small business participation percentage in the company must be at least 20 per cent (sections 152-55 and 152-65). Under subsection 152-70(1), an entity's direct small business participation percentage in a company is the smallest of the entity's percentage of: • the voting power in the company the entity is entitled to exercise; • any dividend payment that the entity is entitled to receive; and • any capital distribution that the entity is entitled to receive. Where shares are jointly held, it is arguable that each joint holder in their own right has a zero percentage of voting power as no joint holder individually controls the voting power bestowed on the jointly held shares. This gives each joint holder a direct small business participation percentage of zero in relation to those jointly held shares and consequently may exclude them from qualifying for the small business CGT concessions. These amendments switch off the voting power calculation in subsection 152-70(1) to accommodate joint shareholders for the purpose of qualifying for the small business CGT concessions. This has the effect that joint shareholders calculate their small business participation percentage based on the lesser of their percentage entitlement to any dividend or capital distribution of the company. These amendments apply to CGT events happening in the 2006-07 income year and later income years, in line with the commencement of the original provisions. These amendments are beneficial for taxpayers. The operation of section 170 of the ITAA 1936 is modified so that taxpayers are able to seek an amended assessment to take advantage of these amendments where their

Provision being amended	*What the amendment does*
	original assessment was made before the commencement of these amendments but their period for seeking an amendment to their tax return has expired. Broadly, taxpayers are able to seek an amended assessment in these circumstances within two years of that commencement.

Division 2 — Discretionary trusts

8.8 These amendments give effect to a suggestion made through **TIES issues 0002-2010** and **0002-2011**.

8.9 Section 152-120 currently treats a trust (where entities do not have entitlements to all of the income and capital of the trust) as if it had a significant individual during an income year in which the trustee did not make a distribution of income or capital if the trust had a tax loss or no taxable income for that year. This applies only for the purposes of meeting the condition required in particular circumstances in the small business 15-year exemption that a trust must have a significant individual for at least 15 years — see paragraphs 152-105(c) and 152-110(1)(c).

8.10 However, section 152-120 does not work for indirectly held entities as it does not give the assumed significant individual a direct small business participation percentage in the first entity in the chain (the trust of the kind mentioned in the previous paragraph), which is needed to calculate their small business participation percentage in the final entity in the chain (the indirectly held entity).

8.11 Also, section 152-120 does not work in relation to paragraphs 152-110(1)(d) and 152-125(1)(b) for directly-held entities where a trust (of the kind mentioned in paragraph 8.9) does not make a distribution in the income year that the relevant CGT event happens (the CGT event year). This is because those paragraphs require the trust to have respectively a significant individual or a CGT concession stakeholder just prior to the CGT event who must also satisfy other conditions (such as an age condition). By deeming there to be a significant individual but not identifying that individual, these conditions cannot be satisfied.

8.12 The issues with section 152-120 are effectively issues with the operation of section 152-70. Section 152-70 provides that an entity's small business participation percentage at the relevant time in a trust (of the kind mentioned in paragraph 8.9) is equal to the smaller of the percentage of income or capital distribution the entity was beneficially entitled to during the income year in which that time occurs.

8.13 A problem arises when the trustee of the trust does not make a distribution in an income year, which results in the trust not having a significant individual, apart from the assumed significant individual mentioned in paragraph 8.9, or any CGT concession stakeholders for that income year. This is particularly problematic if the income year is the CGT event year because access to the small business CGT concessions in particular circumstances requires an entity to have a significant individual or a CGT concession stakeholder (for example, see subsection 152-10(2) and paragraph 152-305(2)(b)).

8.14 The amendments allow, for the purpose of accessing the small business CGT concessions, an entity to work out their direct small business participation percentage in a trust (of the kind mentioned in paragraph 8.9) at the relevant time if during the income year that includes that time (the relevant year), the trustee of the trust:

- does not make a distribution of income; and
- does not make a distribution of capital.

However, an entity is able to work out a direct small business participation percentage greater than zero only if the trust did not have net income or had a tax loss for the relevant year. ***[Schedule 6, item 112, subsections 152-70(4) and (6)]***

8.15 Following on from the previous paragraph, if the trustee of the trust made a distribution in the CGT event year, the entity's direct small business participation percentage at the relevant time is worked out via item 3 in the table in subsection 152-70(1) using the percentage of the distributions the entity was beneficially entitled to in the CGT event year. This is achieved by treating, if the trustee made a distribution in the CGT event year, the references in that item to the 'relevant year' as being references to the CGT event year, which means the relevant time at which the small business participation percentage is being calculated is treated as occurring during the CGT event year. If the trustee of the trust did not make a distribution in the CGT event year, the entity's direct small business participation percentage at the relevant time is worked out using the percentage of the distributions the entity was beneficially entitled to in the last income year before the CGT event year in which the trustee made a distribution. ***[Schedule 6, item 112, subsection 152-70(5)]***

Example 8.1

XYZ trust is a trust where entities do not have entitlements to all of the income and capital of the trust. XYZ trust operates a business and owns land that it has used in the course of carrying on its business for the last 20 years. Evan, Mario, Denise and Katrina are all objects of XYZ trust and have been so for the last 20 years.

After suffering a bad trading year, XYZ trust decides to sell the land. XYZ trust's aggregated turnover for the income year in which it sells the land (the CGT event year) is less than $2 million. XYZ trust wants to exempt the capital gain under the small business 15-year exemption and pay out the exempt amount to Evan, Mario, Denise and Katrina.

In order for XYZ trust to meet the conditions of the small business 15-year exemption, Evan, Mario, Denise and Katrina have to work out a small business participation percentage in XYZ trust.

The trustee of XYZ trust did not make a distribution in the CGT event year and the trust had a tax loss for that year. The trustee made a distribution of income in the year prior to the CGT event year with Evan being beneficially entitled to 40 per cent of the income and Mario, Denis and Katrina each being beneficially entitled to 20 per cent of the income. The trustee did not make a distribution of capital in that year.

In all the other income years except the income year 14 years before the CGT event year, the trustee of XYZ trust made a distribution and XYZ trust had a significant individual. In the income year 14 years before the CGT event year, the trustee did not make a distribution and the trust had a tax loss for that year.

The amendments allow a direct small business participation percentage to be calculated for Evan, Mario, Denise and Katrina for the CGT event year and for the income year 14 years before the CGT event year. As there is no distribution in the CGT event year, the focus shifts to the last income year before the CGT event year in which there was a distribution — that is, the income year prior to the CGT event year. Therefore, in the CGT event year and in the income year 14 years before the CGT event year the direct small business participation percentages are as follows: 40 per cent for Evan; and 20 per cent for each of Mario, Denise and Katrina.

In the circumstances of this example, the amendments allow XYZ trust to have a significant individual in the two tax-loss years. As Mario was 60 years of age just before the land was sold, XYZ trust would be able use the small business 15-year exemption to exempt the capital gain on the sale of the land so long as the other relevant conditions of the small business 15-year exemption are met.

8.16 If a trust (of the kind mentioned in paragraph 8.9) had net income for the relevant year and did not have a tax loss for that year, an entity's direct small business participation percentage at the relevant time in the trust is zero, as the trustee has decided not to distribute the net income. ***[Schedule 6, item 112, paragraph 152-70(6)(a)]***

8.17 An entity's direct small business participation percentage at a relevant time in a trust (of the kind mentioned in paragraph 8.9) is also

zero if the trustee did not make a distribution at any time before the end of the CGT event year. This would apply where the trustee of the trust had never made a distribution in the income years (including the CGT event year) that the entity was an object of the trust and the trust had no net income or had a tax loss in each of those income years.

- A distribution by the trustee during the CGT event year of some or all of the capital gain made from the CGT event is a distribution for the purpose of assigning an small business participation percentage in that income year to the objects of the trust. Trust law would determine whether the distribution is a distribution of income or capital.

[Schedule 6, item 112, paragraph 152-70(6)(b)]

8.18 The amendments also enable an entity to calculate a small business participation percentage in another entity in which it has an indirect interest. For example, suppose an entity is an object of Trust A (which is a trust of the kind mentioned in paragraph 8.9) that owns an interest in Trust B (which is a trust of the kind mentioned in item 2 in the table in subsection 152-70(1)) that carries on a business. If the trustee of Trust A did not make a distribution in an income year and Trust A had a tax loss or did not have net income for that income year, the amendments allow the entity to calculate its direct small business participation percentage in Trust A as long as the trustee made a distribution to the entity while it was an object of the trust. The entity can then use its direct small business participation percentage in Trust A and Trust A’s direct small business participation percentage in Trust B to calculate the entity’s small business participation percentage in Trust B.

8.19 The amendments repeal section 152-120 as it is no longer required and repeal notes elsewhere in the legislation that refer to that section. The amendments replace the term ‘current year’ in item 3 in the table in subsection 152-70(1) with ‘relevant year’, as ‘current year’ is a defined term in section 995-1. ***[Schedule 6, items 110 and 111 and 113 to 115, subsection 152-70(1) (paragraph (a) in the cell in item 3 in the table, column headed ‘Is:’), subsection 152-70(1) (paragraph (b) in the cell in item 3 in the table, column headed ‘Is:’), paragraph 152-105(c)(note), paragraph 152-110(1)(c)(note) and section 152-120]***

8.20 The amendments generally apply in relation to CGT events happening in the 2006-07 income year and later income years to align with the date of effect of the amendments that introduced the ‘significant individual’ test. ***[Schedule 6, subitem 116(1)]***

8.21 The operation of section 170 of the ITAA 1936 is modified so that taxpayers are able to seek an amended assessment to take advantage of these amendments where their original assessment was made before the

commencement of these amendments but their period for seeking an amendment to their tax return has expired. Broadly, taxpayers are able to seek an amended assessment in these circumstances within two years of that commencement. ***[Schedule 6, subitem 4(3), item 188]***

Part 11 — Exempt income

Division 1 — Repeal of spent provisions

Table 8.22: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 11-15(item in the table headed 'family assistance') 11-15(item in the table headed 'social security or like payments') 52-10(1)(b) 52-10(1B) and (1C) 52-65(1)(bb) and (c) 52-65(1B) and (1C) 52-75(item 1C in the table) 52-75(cell in item 1 in the table, column headed 'Payment made because of a person's death') 52-75(cell in item 3 in the table, column headed 'Payment made because of a person's death') 52-75(cell in item 6 in the table, column headed 'Payment made because of a person's death') 52-75(cell in item 7 in the table, column headed 'Payment made because of a person's death') 52-75(cell in item 9 in the table, column headed 'Payment made because of a person's death') 52-150(1) 52-150(2) ***[Schedule 6, items 117 to 131]***	Ensures the income tax law contains only one provision dealing with exempt payments to individuals. Repeals certain provisions from Division 52 that exempt payments from income tax which are no longer being made.

Division 2 — Lists of exempt incomes

Table 8.23: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 6-20(1)(note) 11-1 11-1(b) and (c) 11-10 11-15(heading) 11-15(after items in the table headed 'family assistance ' and 'foreign aspects of income taxation') 11-15(after item in the table headed 'health') 11-15(after item in the table headed 'life-insurance companies') 11-15(after item in the table headed 'social security or like payments') 11-15(after item in the table headed 'superannuation and related business') ***[Schedule 6, items 132 to 142]***	Combines the lists that were previously in sections 11-10 and 11-15, and ensures that the references are correct.

Division 3 — Australian Victim of Terrorism Overseas Payment

Table 8.24: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 11-15(item in the table headed 'social security or like payments') ***[Schedule 6, item 143]***	Inserts a reference to 'Australian Victim of Terrorism Overseas Payment', as they also qualify as a social security payment.

Division 4 — Amendments contingent on the Clean Energy (Household Assistance Amendments) Act 2011

Table 8.25: Amendments to the *Clean Energy (Household Assistance Amendments) Act 2011*

Provision being amended	***What the amendment does***
Clean Energy (Household Assistance Amendments) Act 2011 Item 16 of Schedule 10 (heading) Item 2 of Schedule 10 11-15(item in the table headed 'family assistance') 11-15(at the end of item in the table headed 'family') ***[Schedule 6, items 144 and 145]*** ***Income Tax Assessment Act 1997*** 11-15(item in the table headed 'family assistance') 11-15(item in the table headed 'social security or like payments') ***[Schedule 6, items 146 to 148]***	This amendment ensures that numbering and references are correct.

Part 12 — Complying superannuation / First Home Saver Account life insurance policies

Divisions 1 and 2 — Virtual pooled superannuation trust life insurance policies and complying superannuation/ First Home Saver Account life insurance policies

Table 8.26: Amendments to the *Income Tax Transitional Provisions Act 1997*

Provision being amended	***What the amendment does***
Income Tax Transitional Provisions Act 1997 320F 320-180 320-180(1) ***[Schedule 6, items 149 to 152]***	This amendment gives effect to the suggestion made through **TIES issue 0037-2009**. The amendment ensures that a deferred annuity policy held by an individual that was purchased before 1 July 2007 from an eligible termination payment is included in the complying superannuation business of life insurance companies. Prior to the introduction of the First Home

Provision being amended	***What the amendment does***
	Saver Account life insurance policies rules, deferred annuity policies were treated as virtual pooled superannuation trust policies. When the First Home Saver Account life insurance policies rules were introduced, virtual pooled superannuation trust policies were changed to complying superannuation / First Home Saver Account life insurance policies. Therefore from that time deferred annuity policies will be treated as complying superannuation / First Home Saver Account life insurance policies. This amendment requires retrospective application from the 2007-08 income year, as that is when the Better Super reforms commenced. This amendment will be beneficial to affected taxpayers.

Part 13 — Applications for tax file numbers

Table 8.27: Amendments to the *Income Tax Assessment Act 1936*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1936 202B(2) ***[Schedule 6, items 153 to 156]***	This amendment gives effect to the suggestion made through **TIES issue 0052-2009** and makes a minor change to the existing TFN application process to remove the requirement for documentary evidence of the applicant's identity to be attached to the electronic TFN application form. In particular, the Commissioner will be able to determine the most efficient application method and how the documentary evidence is to be provided. This will enable electronic lodgment of applications and ensure there is clear and consistent direction as to the manner in which a TFN application is to be made.

Part 14 — Taxable professional income

Table 8.28: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 405-45 (formula in step 2 in the method statement)	Certain taxpayers such as sportspersons, inventors and artists can have significant fluctuations in their income. Division 405 of the ITAA 1997 provides a regime to lessen

Provision being amended	***What the amendment does***
[Schedule 6, items 157 and 158]	the impact of these fluctuations on marginal tax rates in the income years when a taxpayer's taxable professional income is above their average as determined under that Division. Section 405-45 of the ITAA 1997 shows how to work out taxable professional income. Step 2 of the formula in section 405-45 is used to determine the amount of certain apportionable deductions (such as gifts and donations) that can be allocated to a taxpayer's assessable professional income and other income. This calculation is relevant for the purposes of determining taxable professional income. Taxable professional income is then subject to averaging for the purposes of determining whether a taxpayer has above average professional income. Division 405 of the ITAA 1997 was enacted by the *Tax Law Improvement Act (No. 1) 1998*. Section 405-45 was designed to replace section 158J of the ITAA 1936. Section 158J contained a formula to allocate apportionable deductions between the taxpayer's special professional income and their other income. When the section 158J formula was reproduced in section 405-45, the denominator was transcribed incorrectly such that '+' became '–'. Both before and after 1998, the ATO systems have consistently calculated taxable professional income using a '+' in the denominator when applying the formula. A retrospective amendment would ensure that the formula contained in the Act accords with the intent of the law, and ATO processing of tax returns.

Part 15 — Consolidated groups

Division 1 — Partnerships

Table 8.29: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 713-265(heading) ***[Schedule 6, item 159]***	This amendment gives effect to a suggestion made through **TIES issue 0005-2009** to modify the heading to section 713-265, so that it refers to a partner (rather than a partnership) that leaves the group.

Division 2 — Amendments applying from 1 July 2002

Table 8.30: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 715-90(2) ***[Schedule 6, items 160 and 161]***	This amendment gives effect to a suggestion made through **TIES issue 0029-2010** to clarify how the same business test applies when an entity leaves a consolidated group for the purposes of determining whether the integrity rules relating to unrealised net losses apply. The amendment ensures that the leaving entity can apply the assumptions that are ordinarily applied in respect of trading stock losses for the purposes of determining whether it satisfies the same business test. This amendment applies from the commencement of section 715- 90, which was 1 July 2002. The amendment is beneficial to taxpayers, as it will make it easier for them to satisfy the same business test (and therefore avoid the operation of the integrity rules).

Part 16 — Demutualisation

Table 8.31: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 316-155(2) ***[Schedule 6, items 162 and 163]***	Division 316 of the ITAA 1997 (all references in this Part are to this Act) disregards various capital gains and capital losses that may arise when a friendly society demutualises to become a ‘for profit’ entity. Demutualisation involves the participants of a friendly society giving up the right to benefit

Provision being amended	***What the amendment does***
	in the future from any accumulated mutual surplus that has been (or may be) built up in the fund. Upon demutualisation there is effectively a distribution of any accumulated mutual surplus to the participants. Ordinarily, this triggers a CGT taxing point as participants may receive shares, rights to acquire shares or cash. There are different conditions to access the CGT concessions under Division 316 depending on if the demutualising friendly society has lost policy holders or not. If a mutual fund does not have lost policy holders, there is no requirement that the demutualisation scheme be court-approved. If a friendly society has lost policy holders, the demutualisation scheme must be court-approved and a lost policy holders' trust must be established to hold distributed assets or cash on the behalf of the lost policy holders (subsection 316-155(2)). Since the introduction of Division 316, it has become apparent that where there are lost policy holders a demutualisation can proceed without court approval. Accordingly, the requirement in subsection 316-155(2) for court approval is an unnecessary impediment to demutualisations where there are lost policy holders. The amendments will remove the requirement in subsection 316-155(2) that the lost policy holders' trust has to exist under a scheme approved by a court. This will ensure that lost policy holders that have an interest in the demutualisation will receive equal CGT treatment to other policy holders where the other relevant conditions are satisfied. The amendment applies in relation to demutualisations occurring on or after 1 July 2008 so that demutualisations that have already applied the demutualisation concessions may benefit from this amendment.

Part 17 — Mining and quarrying definitions

Table 8.32: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 40-80(1)(c)(i) 40-95(11)(b) 40-110(3B) 40-740(1)(d) 124-710(1)(a) 855-20(b) 995-1 (definition of 'exploration or prospecting') 995-1(1) (paragraph (b) of the definition of 'housing and welfare') 995-1 (definition of 'minerals') 995-1 (definition of 'mining operations') 995-1 (definition of 'mining, quarrying or prospecting information') 995-1 (definition of 'mining, quarrying or prospecting rights') 995-1 (definition of 'natural resources') 995-1 (definition of 'petroleum') ***[Schedule 6, items 164 to 176]***	Improve the definitions of: 'exploration or prospecting', 'minerals', 'petroleum', 'mining operations', and 'mining, quarrying or prospecting information' which pointed the reader to definitions in section 40-730, by referring to the relevant subsections. The amendments also fix the asterisking of the terms 'minerals' and 'petroleum'. Corrects the spelling of the word 'education' in paragraph (b) of the definition of 'housing and welfare'.

Part 18 — BAS amount

Table 8.33: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	***What the amendment does***
Income Tax Assessment Act 1997 995-1(1) ***[Schedule 6, items 177 and 178]***	This amendment converts the definition of the term 'BAS amounts' into the singular 'BAS amount'.

Part 19 — Corporate tax rate

Table 8.34: Amendments to the *Income Tax Assessment Act 1997* and to the *Taxation Administration Act 1953*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 705-115(1) (formula) 711-45(1) 711-45(3) (formula) ***Taxation Administration Act 1953*** 288-80(3) in Schedule 1 (formula) ***[Schedule 6, items 179 to 182]***	Substitutes the term '*corporate tax rate' in place of '*general company tax rate' to ensure that the correct term is used in the formulae in the legislation.

Part 20 — United Kingdom wounds and disability pension

Table 8.35: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 53-10 (paragraph (a) of the cell in item 5 in the table, column headed '... is exempt subject to these exemptions and special conditions:') ***[Schedule 6, item 183]***	This amendment gives effect to the suggestion made through **TIES issue 0012-2010**. This amendment ensures that an income tax exemption for a United Kingdom wounds and disability pension paid to members of the armed services continue. The reference to 'subsection 315(2) of the *Income and Corporation Taxes Act 1988* of the United Kingdom' in column 3 of item 5 in the table in section 53-10 is being replaced with the reference to 'section 641 of the *Income Tax (Earnings and Pensions) Act 2003 (UK)*'.

Part 21 — Repeal of redundant provisions

Table 8.36: Amendments to the *A New Tax System (Goods and Services Tax) Act 1999*

Provision being amended	*What the amendment does*
A New Tax System (Goods and Services Tax) Act 1999 195-1(definition of 'electronic signature') ***[Schedule 6, item 184]***	This amendment repeals the definition of the term 'electronic signature', as this term is not used in the GST Act.

Table 8.37: Amendments to the *Income Tax Rates Act 1986*

Provision being amended	*What the amendment does*
Income Tax Rates Act 1986 22 ***[Schedule 6, item 185]***	This amendment repeals a redundant provision.

Table 8.38: Amendments to the *Taxation Administration Act 1953*

Provision being amended	*What the amendment does*
Taxation Administration Act 1953 45-910(3)(c) in Schedule 1 45-910(3) in Schedule 1 (note) ***[Schedule 6, items 186 and 187]***	This amendment repeals a redundant provision and ensures that the numbering is correct.

Part 22 — Limited amendment period

Table 8.39: Amendments to the *Income Tax Assessment Act 1936*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1936 170A ***[Schedule 6, items 188 and 189]***	This amendment gives effect to the suggestion made through **TIES issue 0022-2010**. A taxpayer can take advantage of retrospective changes to the law provided the ATO processes their request for an amendment to an assessment and issues an amended assessment. The Commissioner can amend an ordinary assessment after a limited amendment period expires if, broadly, the taxpayer has raised an issue affecting the assessment before the period expires and the Commissioner is still considering the issue. Therefore, it is proposed to allow the Commissioner to amend an assessment after the two-year period that commences from the date of Royal Assent to the amending Act to allow a taxpayer to take advantage of the retrospective change in circumstances. This amendment ensures that taxpayers are not unfairly disadvantaged if the ATO is unable to issue an amended assessment, despite the request for amendment being lodged and having been considered, within a two-year period.

Provision being amended	***What the amendment does***
	Example *Tax Laws Amendment (2010 Measures No. 1) Act 2010* inserted section 716-860 (which is about CGT events which straddle the time that an entity joins or leaves a consolidated group) into the ITAA 1997. Section 4 of the *Tax Laws Amendment (2010 Measures No. 1) Act 2010* provides for the amendment of assessments in respect of section 713-725. It effectively requires that an amended assessment must be made by 3 June 2012, two years after Royal Assent. Head Co lodges a request for a private ruling on 1 June 2012. The private ruling is for the purpose of amending their assessment in respect of section 713-725. Section 170A extends the period in which the Commissioner has to amend Head Co's assessment beyond 3 June 2012.

Part 23 — Definition of managed investment trust

Table 8.40: Amendments to the *Tax Laws Amendment (2010 Measures No. 3) Act 2010*

Provision being amended	*What the amendment does*
Tax Laws Amendment (2010 Measures No. 3) Act 2010 7-1 of Schedule 5 ***[Schedule 6, item 190]***	There is some doubt as to whether the application and transitional provisions of the *Tax Laws Amendment (2010 Measures No. 3) Act 2010* apply for the purposes of Division 275 of the ITAA 1997 as intended in relation to trusts in existence in the 2008-09 and 2009-10 income years. That could mean, for example, that a trust in existence in the 2008-09 and/or the 2009-10 income year could use the definition of a 'managed investment trust' that applied before the amendments made by the *Tax Laws Amendment (2010 Measures No. 3) Act 2010* for the purpose of making an election under Division 275 of the ITAA 1997. The amendment, to insert subitem 7(2), ensures that the transitional rules do apply as intended to ensure a trust that was in existence in either (or both) of the 2008-09 and 2009-10 income years and that was a managed investment trust within the meaning of section 12-400 in Schedule 1 to the TAA 1953 immediately before the commencement of Schedule 5 to the *Tax Laws Amendment (2010 Measures No. 3) Act 2010*, can make an election under Division 275 of the ITAA 1997.

Part 24 — Equivalent foreign collective investment vehicles

Table 8.41: Amendments to the *Taxation Administration Act 1953*

Provision being amended	*What the amendment does*
Taxation Administration Act 1953 12-402(3)(e) in Schedule 1 ***[Schedule 6, items 191 and 192]***	There is some doubt as to whether paragraph 12-402(3)(e) in Schedule 1 to the TAA 1953 is applying as intended. That could mean that an entity that is recognised under a foreign law as being used for collective investment may not qualify under paragraph 12-402(3)(e) if the foreign law itself does not specify the entity must have at least 50 members. The amendment to paragraph 12-402(3)(e) ensures that the paragraph is applying as intended, to include an entity that is recognised under a foreign law as being used for collective investment by pooling the contribution of its members, provided the entity has at least 50 members and the contributing members that have acquired rights to benefits produced by the entity do not have day-to-day control over the entity's operation. A contributing member would include members who have acquired interests in the entity from the initial pooling of contributions or subsequently from one or more other members (for example, in the case of a limited partnership where a partner acquires rights to benefits produced by a limited partnership when taking up the interests of a retiring limited partner).

Part 25 — Self managed superannuation funds

Division 1 — Definition of self managed superannuation fund

Table 8.42: Amendments to the *Superannuation Industry (Supervision) Act 1993*

Provision being amended	*What the amendment does*
Superannuation Industry (Supervision) Act 1993 10(1) (definition of 'self managed superannuation fund') 17(A)(heading) 17(A)(1) 17(a)(2)	This amendment gives effect to the suggestion made through **TIES issue 0017-2010**. Amends paragraph 17A(3)(c) so that if the trustee of the self managed superannuation fund is a body corporate, a parent or guardian can be director of the body corporate in place of a member who is a minor and does not

Provision being amended	What the amendment does
17A(3)(c) 17B *[Schedule 6, items 193 to 199]*	have a legal personal representative. The definition of 'self managed superannuation fund' includes that all members must be a trustee of the fund or a director of the corporate trustee. Paragraph 17A(3)(c) contains an exception where a parent or guardian can be trustee in place of a member who is a minor and does not have a legal personal representative. This amendment corrects an oversight when this paragraph was inserted so that the exception also applies to self managed superannuation funds with a corporate trustee. This amendment applies from 8 October 1999, because that is when paragraph 17A(3)(c) was inserted. This amendment clarifies that the prohibition on the remuneration of trustees and directors of a body corporate that is trustee of the fund applies only to duties or services performed in the capacity of trustee or in the capacity of director and in connection with the body corporate's capacity of trustee. The definition of 'self managed superannuation fund' specifies that trustees or directors of the body corporate, if the trustee is a body corporate, cannot receive remuneration for duties or services performed in relation to the fund. Section 17B also places certain restrictions on trustee remuneration for non-trustee duties and services. The purpose of these restrictions is to ensure that trustee remuneration is not used by trustees to obtain access to their superannuation benefits before they are eligible. Trustees and directors may be remunerated for non-trustee duties or services, provided that: • they are appropriately qualified and licensed to perform the duties or services; • the duties or services are performed as part of a business through which the trustee or director provides the same services to the public; and • the remuneration is on an arm's length

Provision being amended	What the amendment does
	basis. Subsection 17B(1), which applies to remuneration of trustees, applies from 8 October 1999 because this is when paragraphs 17A(1)(f) and (2)(c) were inserted. Subsection 17B(2), which applies to the remuneration of a director of a body corporate that is trustee of the fund, applies to the 2007-08 income year and later income years because those are the income years to which paragraphs 17A(1)(g) and (2)(d) apply. These amendments ensure that the law operates as it was intended will not have detrimental effects on taxpayers.

Division 2 — References to self managed superannuation funds

Table 8.43: Amendments to references to self managed superannuation funds

Provision being amended	What the amendment does
Income Tax Assessment Act 1997 210-70(1)(b)(i) 210-70(1)(b)(ii) 210-170(2)(a) 210-170(2)(b) ***[Schedule 6, items 200 to 203]*** ***Superannuation Industry (Supervision) Act 1993*** 6(1)(note) 17A(6)(notes 1 and 2) 29N(1A) 35B(heading) 35D(heading) 229(1)(aa)(i) 229(3) and 231(3) 327 (paragraph (aa) of the definition of 'modifiable provision') ***[Schedule 6, items 204 to 211]*** ***Taxation Administration Act 1953*** 355-65(3) in Schedule 1 (paragraph (a) in the cell in item 8 in the table,	Updates the references to the definition of 'self managed superannuation fund'. Corrects references to 'self managed superannuation fund' that incorrectly used a hyphen.

Provision being amended	What the amendment does
column headed 'and the record or disclosure...') 355-65(3) in Schedule 1 (paragraphs (b) and (c) in the cell in item 8 in the table, column headed 'and the record or disclosure...') ***[Schedule 6, items 212 and 213]***	

Part 26 — Untaxed plan cap

Table 8.44: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	What the amendment does
Income Tax Assessment Act 1997 307-350(2) 307-350(2A) ***[Schedule 6, items 214 to 216]***	Clarifies that when a person receives a superannuation lump sum that contains an untaxed element, the person's untaxed plan cap amount is only reduced by the untaxed element of a superannuation lump sum, rather than by the whole lump sum. Updates a reference to the amended subsection 307-350(2). These amendments apply on and after 1 July 2007 because that is when subsection 307-350(2) was inserted. These amendments do not have an adverse effect on taxpayers.

Part 27 — Correction of typographical errors

Table 8.45: Amendments to the *Income Tax Assessment Act 1997*

Provision being amended	What the amendment does
Income Tax Assessment Act 1997 775-205(c)(i) ***[Schedule 6, item 217]***	Fixes a typographical error.

Table 8.46: Amendments to the *Taxation Administration Act 1953*

Provision being amended	What the amendment does
Taxation Administration Act 1953 16-153(2)(c) ***[Schedule 6, item 218]***	Fixes a typographical error.

Part 28 — Foreign income tax offset, the Medicare levy and the Medicare levy surcharge

Table 8.47: Amendments to the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1936*, the *Taxation Administration Act 1953* and the *Taxation (Interest on Overpayments and Early Payments) Act 1983*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1997 63-10(1) 770-5 770-10(1) 995-1(1) ***Income Tax Assessment Act 1936*** 6(1) 160AD 251R 251S(1) 251T 251U 251V 251VA 251W 251X 251Z ***Taxation Administration Act 1953 — Schedule 1*** 11-1(b) 15-30(b) 45-5(1)(b) 45340 45-375 90-1 ***Taxation (Interest on Overpayments and Early Payments) Act 1983*** 3(1) ***[Schedule 6, items 219 to 248]***	There is some doubt whether the ITAA 1997 and Schedule 1 to the TAA 1953 apply, as intended, to the Medicare levy and the Medicare levy surcharge in the same way as they apply to normal income tax. Amendments made in 2010 to insert section 90-1 of Schedule 1 to the TAA 1953 operate to ensure taxpayers calculating the limit on their foreign income tax offset for an income year include the Medicare levy and the Medicare levy surcharge. Amendments are made to the ITAA 1997 to ensure that any foreign income tax offset for an income year that remains after being applied against a taxpayer's basic income tax liability can be applied first to reduce any liability for the Medicare levy for the income year and if any remains, to reduce any liability for the Medicare levy surcharge for the income year. Consequential amendments are also made to the ITAA 1936, the TAA 1953, the ITAA 1997 and the *Taxation (Interest on Overpayments and Early Payments) Act 1983* to include definitions of the Medicare levy and the Medicare levy (fringe benefits) surcharge in subsection 6(1) of the ITAA 1936, and to include a definition of the 'Medicare levy' in the ITAA 1997. The amendments apply to income years starting on or after 1 July 2008 — the start date for the new foreign income tax offset rules — to ensure those rules apply, as intended, from their first application.

Part 29 — Adjusted tax

Table 8.48: Amendments to the *Taxation Administration Act 1953*

Provision being amended	*What the amendment does*
Taxation Administration Act 1953 45-340 in Schedule 1 (step 4 in the method statement) 45-375 in Schedule 1 (step 4 in the method statement) ***[Schedule 6, items 249 to 251]***	Corrects the calculation of the adjusted tax on the adjusted taxable income or adjusted withholding income. Family Tax Benefit can no longer be claimed through the ATO when lodging an annual income tax return and Family Tax Benefit is no longer applicable for inclusion in step 4 a calculation which reduces the adjusted tax amount. This amendment will not have a dertrimental effect on taxpayers. It will apply from 1 July 2009, as that was the date from which claims for Family Tax Benefit, including previous year claims could no longer be accepted by the ATO as a result of the *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009*.

Part 30 — Section 109CA of the Income Tax Assessment Act 1936

Table 8.49: Amendments to the section 109CA of the *Income Tax Assessment Act 1936*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1936 109CA ***[Schedule 6, items 252 and 253]***	Enables taxpayers to access the exception, where the ownership of a dwelling changed before 1 July 2009. The amendment fixes an unintended outcome that the continuity of ownership test applies to payments made after 1 July 2009 and not from the time that the company acquired the dwelling. This situation was inappropriate because the intent of the continuity of ownership was to ensure that the ownership of a dwelling does not change on or after 1 July 2009 rather than before 1 July 2009. This amendment will enable the law to operate as intended and will not have a detrimental effect on taxpayers.

Part 31 — Franking debits

Table 8.50: Amendments to the *Income Tax Assessment Act 1936*

Provision being amended	*What the amendment does*
Income Tax Assessment Act 1936 45C(3)(b) ***[Schedule 6, items 254 and 255]***	Removes an inappropriately onerous outcome for taxpayers. Paragraph 45C(3)(b) is amended to the effect that the amount of the franking debit is the amount that (if the company had paid a dividend of an amount equal to the amount of the capital benefit, etc) would have been the amount of the maximum franking credit on the dividend. This amendment is to apply to notices of determination, under subsection 45A(2) or 45B(3) of the ITAA 1936, served on or after 1 July 2002. This will ensure that the law operates as it was originally intended.

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