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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TAX LAWS AMENDMENT (2012 MEASURES NO. 3) BILL 2012  
INCOME TAX (SEASONAL LABOUR MOBILITY PROGRAM  
WITHHOLDING TAX) BILL 2012  
TAX LAWS AMENDMENT (INCOME TAX RATES) BILL 2012

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EXPLANATORY MEMORANDUM

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







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## ***Glossary***

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

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
ETP	employment termination payment
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
IT(TP) Act 1997	<i>Income Tax (Transitional Provisions) Act 1997</i>
Program	Seasonal Labour Mobility Program
Rates Act	<i>Income Tax Rates Act 1986</i>
SLMP	Seasonal Labour Mobility Program
TAA 1953	<i>Taxation Administration Act 1953</i>



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## **General outline and financial impact**

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### **Seasonal Labour Mobility Program — final withholding tax**

Schedule 1 to this Bill creates a new final withholding tax regime that applies to income derived by non-resident workers participating in the Seasonal Labour Mobility Program (Program) by:

- inserting Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) which creates the obligations to withhold amounts;
- inserting Subdivision 840-S in the *Income Tax Assessment Act 1997* (ITAA 1997) which establishes the liability to pay tax on income derived under the Program;
- inserting Subdivision 840-S into the *Income Tax (Transitional Provisions) Act 1997*; and
- making consequential amendments to the *Income Tax Assessment Act 1936*, the ITAA 1997 and the TAA 1953.

The formal imposition of income tax, and the establishment of the applicable rate of tax, is provided for by means of the Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012.

This measure reduces the compliance costs for seasonal workers participating in the Program by removing the requirement to lodge a tax return and simplifying administration for employers and the Australian Taxation Office (ATO).

**Date of effect:** This measure will apply with effect from 1 July 2012.

**Proposal announced:** This measure was announced by the then Minister for Foreign Affairs, the Minister for Employment and Workplace Relations, Financial Services and Superannuation and the Minister for Resources and Energy and Minister for Tourism's Joint Media Release of 18 December 2011.

**Financial impact:** This measure will have the following impact:

<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>
-\$1m	-\$1.3m	-\$1.8m	-\$2.4m

**Human rights implications:** This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.57 to 1.61.

**Compliance cost impact:** Low. This measure will only affect a small number of employers and employees. Employees are not required to

lodge an income tax return. The employers and the ATO will be required to make minimal system changes as a result of the change.

## **Taxation of blends of gaseous and aviation fuels — further consequential amendments**

Schedule 2 to this Bill amends the *Excise Act 1901* so that blends of the same types of gaseous fuels or the same types of aviation fuels, where each amount of the gaseous fuel or each amount of the aviation fuel has been taxed at a different rate as a result of time-related excise phase-in arrangements or time-related carbon price changes, are not treated as excise manufacture and therefore subject to additional duty.

**Date of effect:** The amendments will apply from 1 July 2012.

**Proposal announced:** These amendments are technical in nature and ensure that the 2011 Alternative Fuels and Clean Energy legislation works as intended. They have not been announced.

**Financial impact:** Nil.

**Human rights implications:** This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.18 to 2.21.

**Compliance cost impact:** Minimal.

## **Low-income tax offset**

Schedule 3 to this Bill amends the *Income Tax Assessment Act 1936* to ensure that where a trustee is assessed on the income of a minor, the trustee will not have access to the low income tax offset in circumstances where the income is considered to be unearned income of that minor.

**Date of effect:** This measure applies to assessments for the 2011-12 income year and later income years.

The retrospective application date is appropriate because the Government's announcement of the measure in the 2011-12 Budget made it clear that the new arrangements would apply to all unearned income derived by minors, including through trusts.

**Proposal announced:** Removing eligibility for the low income tax offset on unearned income of minors was announced in the then Assistant Treasurer's Media Release No. 072 of 10 May 2011.

**Financial impact:** Nil.

**Human rights implications:** This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 3, paragraphs 3.8 to 3.10.



**Compliance cost impact:** Low. The measure removes the ability of a particular group of taxpayers to claim the low income tax offset on part of their income.

## Clean energy payments

Schedule 4 to this Bill amends the *Income Tax Assessment Act 1997* to exempt clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans' Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional family farm payment and exceptional circumstances relief payment.

**Date of effect:** This measure applies to assessments for the 2011-12 income year and later income years.

The amendments may have a retrospective impact but are of a beneficial nature to tax payers.

**Proposal announced:** This measure was announced in the Deputy Prime Minister and Treasurer's Media Release No. 083 of 10 July 2011.

**Financial impact:** Nil.

**Human rights implications:** This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.8 to 4.10.

**Compliance cost impact:** None. Payments will be provided automatically to recipients of the education payments covered by the amendments.

## Better targeting of the employment termination payment tax offset

Schedule 5 to this Bill amends the *Income Tax Assessment Act 1997* so that access to the employment termination payment (ETP) tax offset and the amount of offset received takes into account an individual's taxable ETP as well as any other taxable income in the year they receive the ETP. From 1 July 2012, any taxable component of an ETP that takes a person's total taxable income in a year above \$180,000 will be taxed at marginal rates.

**Date of effect:** 1 July 2012.

**Proposal announced:** This measure was announced in the 2012-13 Budget.

**Financial impact:** This measure provides savings of \$196.4 million over the forward estimates period.

<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>
\$17.1m	\$14.7m	\$49.7m	\$54.9m	\$60.0m

**Human rights implications:** This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 5, paragraphs 5.30 to 5.33.

**Compliance cost impact:** Low.

## **Aligning the non-resident tax rates**

The Tax Laws Amendment (Income Tax Rates) Bill 2012 amends the *Income Tax Rates Act 1986* to align more closely the personal income tax rates for non-residents for Australian tax purposes with the personal income tax rates for Australian resident taxpayers, by:

- merging the first two personal marginal tax rate thresholds for non-residents into a single threshold; and
- aligning the rate for this new threshold to the second marginal tax rate for residents (32.5 per cent from 1 July 2012, increasing to 33 per cent from 1 July 2015).

**Date of effect:** These changes will apply for the 2012-13 and later income years.

**Proposal announced:** This measure was announced in the 2012-13 Budget.

**Financial impact:** This measure will have the following revenue implications:

<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>
-\$19.3m	-\$22.2m	-\$22.2m	-\$25.2m

**Human rights implications:** This Bill does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 6, paragraphs 6.13 to 6.16.

**Compliance cost impact:** Low.

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# **Seasonal Labour Mobility Program — final withholding tax**

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## **Outline of chapter**

1.1 Schedule 1 to this Bill creates a new final withholding tax regime that applies to income derived by non-resident workers participating in the Seasonal Labour Mobility Program (Program) by:

- inserting Subdivision 12-FC in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) which creates the obligations to withhold amounts;
- inserting Subdivision 840-S in the *Income Tax Assessment Act 1997* (ITAA 1997) which establishes the liability to pay tax on income derived under the Program;
- inserting Subdivision 840-S into the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) Act 1997); and
- making consequential amendments to the *Income Tax Assessment Act 1936* (ITAA 1936), the ITAA 1997 and the TAA 1953.

1.2 The formal imposition of income tax, and the establishment of the applicable rate of tax, is provided for by means of the Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012.

1.3 The changes apply from 1 July 2012.

1.4 All legislative references are to Schedule 1 to the TAA 1953, unless otherwise stated.

## **Context of amendments**

1.5 The Pacific Seasonal Worker Pilot Scheme (Pilot Scheme) was announced in August 2008. It is an important element of the Pacific Engagement Strategy, a whole-of-government strategy to advance Australia's engagement in the Pacific, a key objective announced in the March 2008 *Port Moresby Declaration*.

1.6 The key objectives of the Pilot Scheme were to:

- assist Australian horticulturalists to source seasonal workers;

- encourage both skills transfer between Australia and the Pacific Islands, and remittances home to Pacific Islands; and
- support Australia's Pacific Engagement Strategy and Pacific Partnerships.

1.7 The Government announced changes to the taxation of participants in the Pilot Scheme in the 2011-12 Budget to:

- improve remittance outcomes; and
- address equity concerns raised by high effective tax rates.

1.8 These changes reduced the marginal tax rates for non-resident workers participating in the Pilot Scheme from 29 per cent to 15 per cent for the first dollar of income up to \$37,000. All other marginal tax rates for Pacific Seasonal Workers remained unchanged. The new marginal rate applied for the 2011-12 income year only.

1.9 Currently, participants in the Pilot Scheme are subject to tax at the following rates:

<i>2011-12 taxable income</i>	<i>Marginal tax rate</i>
\$0 — \$37,000	15%
\$37,001 — \$80,000	30%
\$80,001 — \$180,000	37%
\$180,001 and over	45%

1.10 The legislation for these changes was enacted via the *Tax Laws Amendment (2011 Measures No. 7) Act 2011* which received Royal Assent on 29 November 2011. The Pilot Scheme will conclude on 30 June 2012.

1.11 On 18 December 2011, the Government announced that the Pilot Scheme would be extended to an ongoing program known as the Seasonal Labour Mobility Program. The Program is effectively a continuation of the Pilot Scheme, with the following exceptions:

- the number of participating countries has been extended to include East Timor;
- the Program will be implemented on an ongoing basis in the horticultural sector (as previously), but will also be trialed in the broader agricultural industry (particularly the cotton and cane industries), the fishing industry (particularly aquaculture) and the tourism industry; and
- the Program will be demand driven but will have a minimum employment period of 14 weeks (with a maximum of seven

months in any twelve month period) and workers will be employed on average 30 hours per week.

1.12 The tax changes made under the Pilot Scheme will also be extended as part of the Program. However, the reduced rate of 15 per cent under the ongoing Program will be administered as a final withholding tax, rather than on an assessment basis (as was with the Pilot Scheme). This will reduce the compliance costs for Seasonal Workers participating in the Program by removing the requirement to lodge a tax return (provided they have no other income) and simplify administration for employers and the Australian Taxation Office (ATO).

### Summary of new law

1.13 This Schedule implements a final withholding tax rate of 15 per cent to Seasonal Workers in the Program, with effect from the 2012-13 income year.

1.14 This rate only applies to holders of a Special Program Visa (subclass 416) who are employed by ‘approved employers’ under the Program.

1.15 Subdivision 12-FC imposes an obligation on an entity (payer) to withhold amounts from payments of salary, wages, commission, bonuses or allowances paid to employees under the Program.

1.16 The final withholding tax only applies to salary, wages, commission, bonuses or allowances derived by employees under the Program. Other Australian sourced income remains assessable. Subdivision 840-S of the ITAA 1997 imposes a liability to Seasonal Labour Mobility Program withholding tax (SLMP withholding tax).

### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A final withholding tax of 15 per cent applies to each dollar of income derived by workers participating in the Program.	Pacific Seasonal Workers’ lowest marginal tax rate of 15 per cent applies from the first dollar of income up to \$37,000. All other tax brackets are subject to the normal non-resident tax rates.
Workers under the Program do not have to lodge an income tax return unless they earn other Australian sourced income.	Workers under the Pilot Scheme have to lodge an income tax return.

## **Detailed explanation of new law**

### **Obligation to withhold under the Program**

1.17 Subdivision 12-FC imposes an obligation on an entity (payer) to withhold an amount from salary, wages, commission, bonuses or allowances it pays to an employee under the Program.

1.18 An entity (payer) must withhold an amount from salary, wages, commission, bonuses or allowances it pays to individuals that are non-resident workers who hold a Special Program Visa (subclass 416) and who are employed by ‘approved employers’ under the Program. *[Schedule 1, item 10, section 12-319A]*

1.19 The amount to be withheld is a final SLMP withholding tax of 15 per cent worked out under the *Taxation Administration Regulations 1976*.

1.20 To encourage compliance, an entity (payer) is not entitled to a deduction for payments of salary, wages, commission, bonuses or allowances that it has paid to the extent that it fails to withhold an amount, or after withholding the amount, fails to pay the amount to the Commissioner of Taxation (Commissioner). *[Schedule 1, item 4, subsection 26-25A(1) of the ITAA 1997]*

1.21 An entity (payer) can deduct salary, wages, commission, bonuses or allowances to the extent that the SLMP withholding tax has been paid for that income year. *[Schedule 1, item 4, subsection 26-25A(2) of the ITAA 1997]*

#### **Example 1.1**

Tevita derived a wage of \$100. The amount of SLMP withholding tax to be withheld is \$15 (that is, 15 per cent of \$100). Charles, the payer, instead withheld an amount of \$12 (80 per cent of the amount that should have been withheld). Charles paid the \$12 to the Commissioner by the due date. Charles is entitled to claim a deduction of \$80 ( $12/15 \times \$100$ ) only of the wages paid (that is, to the extent that the Seasonal Labour Mobility Program (SLMP) withholding tax has been paid).

### **Who is liable to the Seasonal Labour Mobility Program withholding tax?**

1.22 Subdivision 840-S of the ITAA 1997 provides the rules for determining if there is a liability to SLMP withholding tax.

1.23 Broadly, the liability for SLMP withholding tax is imposed on foreign residents who hold a Special Program Visa (subclass 416) (the employee) in respect of amounts of salary, wages, commission, bonuses or allowances paid to them under the Program. However, the employee is entitled to a credit equal to the amount of SLMP withholding tax withheld by the payer. *[Schedule 1, item 5, sections 840-900 to 840-905 of the ITAA 1997, item 20, section 18-33]*

1.24 The applicable rate of tax is provided for in the Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012.

**Example 1.2**

Following on from Example 1.1, Tevita is liable for the \$15 SLMP withholding tax. She receives a credit for the \$12 withheld by the payer Charles.

Tevita remains liable for the \$3 withholding tax that was not withheld by Charles due to a clerical error (that is, 20 per cent of \$15).

**Amounts on which SLMP withholding tax is imposed are non-assessable and non-exempt income**

1.25 An amount on which there is a liability to pay SLMP withholding tax is non-assessable non-exempt income of an individual. *[Schedule 1, item 5, section 840-915 of the ITAA 1997]*

1.26 This is consistent with the purpose of the new SLMP withholding tax regime to impose a final rate of withholding tax on income subject to SLMP withholding tax.

1.27 It is also consistent with the approach adopted in Division 11A of Part III of the ITAA 1936, which (except in some limited cases) makes dividends, interest and royalties that are subject to withholding tax not assessable and not exempt income of a person (under section 128D of the ITAA 1936).

1.28 Making the income non-assessable and non-exempt income of an individual ensures that:

- the amounts upon which the tax is imposed are not assessable under any other provision of the income tax law in the hands of an individual; and
- deductions (in respect of expenses relating to the derivation of that income) cannot be claimed as no relevant amount is included in assessable income (refer to subsection 8-1(2) of the ITAA 1997).

**When is SLMP withholding tax payable?**

1.29 SLMP withholding tax is due and payable at the end of 21 days after the end of the income year in which the employee derived the income to which the tax relates. An employee derives the income when they receive the salary or wages. *[Schedule 1, item 5, subsection 840-910(1) of the ITAA 1997]*

***What happens if the SLMP withholding tax remains unpaid?***

1.30 Once due and payable, the SLMP withholding tax becomes a debt due to the Commonwealth. The Commissioner may give a notice of the amount of the SLMP withholding tax due and the date on which that

tax became due and payable. This is consistent with the approach adopted in relation to other final withholding taxes in Division 11A of Part III of the ITAA 1936. *[Schedule 1, item 5, subsection 840-910(3) of the ITAA 1997]*

1.31 If the SLMP withholding tax remains unpaid, a liability for the general interest charge arises from the date upon which the liability was due to be paid. The general interest charge is calculated on the unpaid SLMP withholding tax and any accumulated general interest charge from the date the SLMP withholding tax was due to be paid until the last day on which the SLMP withholding tax and general interest charge thereon remains unpaid. *[Schedule 1, item 5, subsection 840-910(2) of the ITAA 1997]*

1.32 The general interest charge is worked out under Part IIA of the TAA 1953.

1.33 The Commissioner may make a determination of the amount of SLMP withholding tax payable from the salary, wages, commission, bonuses or allowances paid to employees under the Program. The ascertainment of an amount of SLMP withholding tax is not an assessment. *[Schedule 1, item 5, subsection 840-910(4) of the ITAA 1997]*

1.34 The production of the Commissioner's notice of the amount of SLMP withholding tax or a certified copy by the Commissioner is conclusive evidence that the notice and its particulars has been given, except on review or appeal under Part IVC of the TAA 1953. *[Schedule 1, item 5, subsection 840-910(5) of the ITAA 1997]*

1.35 A person who is dissatisfied with the Commissioner's notice may object to the notice in the manner set out in Part IVC of the TAA 1953. *[Schedule 1, item 5, subsection 840-910(6) of the ITAA 1997]*

#### ***What happens if SLMP withholding tax is overpaid?***

1.36 The SLMP withholding tax is overpaid when an entity has withheld more than the 15 per cent SLMP withholding tax. If the SLMP withholding tax is overpaid, the Commissioner must refund the overpaid amount of SLMP withholding tax to the employee. The employee is not entitled to a credit under section 18-33 for the overpaid amount. *[Schedule 1, item 5, section 840-920 of the ITAA 1997]*

### **How is SLMP withholding tax discharged?**

#### ***Credit for amounts withheld***

1.37 An individual (employee) that has a liability to SLMP withholding tax is entitled to a credit which is used to offset their liability where:

- their ordinary or statutory income includes salary, wages, commission, bonuses or allowances; and



- all or part of an amount is withheld from payments of salary, wages, commission, bonuses or allowances that are paid to an employee under Subdivision 12-FC.

*[Schedule 1, item 20, section 18-33]*

1.38 This crediting provision is based on existing crediting provisions that apply in the case of dividends, interest and royalties and the managed investment trust withholding tax.

1.39 The first requirement for a credit is that the individual's ordinary or statutory income includes salary, wages, commission, bonuses or allowances. Although the imposition of SLMP withholding tax will result in the amount being non-assessable non-exempt it can still be described as ordinary or statutory income within the meaning of the ITAA 1997.

1.40 The second requirement for a credit is that an amount is withheld from payments of salary, wages, commission, bonuses or allowances paid to an employee under Subdivision 12-FC.

1.41 The amount withheld and therefore the amount available to be credited from a particular payment of salary, wages, commission, bonus or allowance may be greater than or less than the amount of the SLMP withholding tax liability that arises in respect of that payment.

1.42 If the credit to which an individual is entitled is insufficient to fully discharge the individual's SLMP withholding tax liability in respect of that payment, the individual will have a debt to the Commonwealth remaining due and payable and subject to the general interest charge (see Example 1.2). Further discussion of the application of the general interest charge can be found in paragraphs 1.31 to 1.32. *[Schedule 1, item 5, sections 840-905 and 840-910 of the ITAA 1997]*

1.43 A payer who fails to withhold an amount or part thereof under section 12-319A as required may be liable to a penalty to withhold under sections 16-30 or 16-35.

***Credits for administrative penalties***

1.44 If an entity (payer) fails to withhold SLMP withholding tax in respect of a payment they make to an employee, they become liable to an administrative penalty equal to the amount of SLMP withholding tax not withheld. If the penalty is not paid by the date due and payable, a general interest charge may be applied.

1.45 When the entity (payer) makes a payment of all or part of the administrative penalty and any resulting general interest charge, the entity (employee) liable to the SLMP withholding tax in respect of the amount upon which the penalty was imposed is entitled to a credit.

1.46 The amount of the credit is calculated to provide the employee with a credit equal to the sum of the penalty and general interest charge paid, capped at the amount of the SLMP withholding tax liability (and any

resulting general interest charge) that arose for the employee in respect of the original payment. Capping the amount of the credit ensures that the employee will not receive a refund of the general interest charge paid by the payer.

1.47 This is achieved by crediting the employee with the lesser of:

- the amount of the penalty paid plus any general interest charges paid by the payer (as appropriate); and
- the amount of the SLMP withholding tax liability and any accrued general interest charges of the employee.

*[Schedule 1, item 22, paragraphs 18-35(1AA)(a) to (c)]*

1.48 This is consistent with the approach adopted in respect of the management investment trust withholding tax.

### **Example 1.3**

Barry Pty Ltd (payer), paid Eloni a wage of \$1,000. Barry Pty Ltd failed to withhold an amount of \$150 (as required under section 12-319A) from wages he paid to Eloni. Therefore, Barry Pty Ltd had to pay a penalty of \$150 plus a general interest charge of say \$10, creating a total liability for the payer of \$160.

At the end of 21 days after the end of the income year, Eloni's liability to SLMP withholding tax is \$150 and as amounts have not been withheld from her payment she will not receive a credit under section 18-33. Eloni will be charged with general interest of \$5 from the date the SLMP withholding tax is payable, making a total of \$155.

Barry Pty Ltd subsequently makes a payment of \$110 (penalty of \$100 plus general interest charge of \$10). (Barry Pty Ltd can recover the penalty from Eloni under section 16-195.) Eloni is entitled to a credit (under subsection 18-35(1AA)) equal to the lesser of the payment of the penalty, including the general interest charge that the payer paid (\$160), and her liability and her general interest charge (\$155). Eloni will receive a credit of \$155. This is offset against her outstanding SLMP withholding tax and general interest charge liability of \$155.

1.49 The amount of the credits that the employee is entitled to receive is reduced by:

- credits for amounts *withheld* by the payer in respect of that payment under section 18-33; and
- prior credits generated from part payment of the penalty under subsection 18-35(1AA).

*[Schedule 1, item 22, paragraph 18-35(1AA)(d)]*

### **Example 1.4**

Following on from Example 1.3, assume at the time of making the payment of wages to Eloni, Barry Pty Ltd withheld an amount of \$50. Barry Pty Ltd incurs an administrative penalty of \$100 for failing to

withhold (under section 16-30). Barry Pty Ltd subsequently incurs a general interest charge of \$10.

Barry Pty Ltd subsequently pays \$110 (penalty of \$100 and general interest charge of \$10).

The amount of SLMP withholding tax and general interest charge that Eloni is liable for is \$155 (sections 840-905 and 840-910 of the ITAA 1997).

The credit that Eloni will receive is the lesser of:

- \$110 (the amount paid by Barry Pty Ltd); and
- \$105 (SLMP withholding tax liability *less* other listed credits):
  - \$155 (the SLMP withholding tax liability *plus* general interest charge incurred by Eloni); *minus*
  - \$50 (the credit for the amount withheld under section 18-33).

1.50 If all or part of the amount of penalty or general interest charge paid by the entity (payer) liable to the administrative penalty is subsequently remitted by the Commissioner, the amount of the credit available to the employee liable to the SLMP withholding tax is reduced and the Commissioner must pay the amount of penalty or general interest charge remitted to the entity (payer) liable to pay the penalty. [*Schedule 1, items 23 to 26, paragraphs 18-35(2)(a) and (c) and (3)(a) and (c)*]

1.51 The entity (payer) liable to pay the administrative penalty is entitled to recover the amount of the penalty, capped at the SLMP withholding tax liability, from the employee liable to that tax. [*Schedule 1, item 16, paragraph 16-195(1)(ab)*]

### Example 1.5

Following on from Example 1.4, assume Eloni pays the outstanding \$105 SLMP withholding tax liability before Barry Pty Ltd pays the \$110 penalty and general interest charge. Assume the Commissioner subsequently remits \$110 of the penalty and general interest charge paid by Barry Pty Ltd.

Eloni is liable to SLMP withholding tax of \$150 plus \$5 general interest charge.

Eloni will receive a credit for:

- \$50 (the amount paid by Barry Pty Ltd);
- \$100 cash payment of SLMP withholding tax made by Eloni; and
- \$5 cash payment of general interest charge.

Eloni receives a credit of \$5 (under subsections 18-35(1AA) and 18-35(2)). The credit is the lesser of Barry Pty Ltd's payment of \$110 and Eloni's liability of \$105 ( $\$155 - \$50 = \$105$ ). The \$105 credit is reduced by the amount of credit that is remitted of \$100 thereby producing a \$5 credit for Eloni which will produce a \$5 refund. ( $\$105 - \$100 = \$5$ ).

Barry Pty Ltd was required to withhold \$150.

- Barry Pty Ltd withheld \$50 (the amount paid by Barry Pty Ltd);
- paid \$100 penalty; and
- paid \$10 general interest charge.

Barry Pty Ltd received \$100 remitted penalty from the Commissioner.  
Barry Pty Ltd has no outstanding liability.

## **Application and transitional provisions**

1.52 Subdivision 12-FC applies to salary, wages, commission, bonuses or allowances paid on or after 1 July 2012. *[Schedule 1, item 11]*

1.53 Subdivision 840-S of the ITAA 1997 applies to income derived on or after 1 July 2012. *[Schedule 1, item 7, section 840-905 of the IT(TP) Act 1997]*

## **Consequential amendments**

1.54 Many consequential amendments result from inserting Subdivision 12-FC into Schedule 1 of Division 12 of the TAA 1953. This ensures the cross referencing of Subdivision 12-FC, sections 26-25A and 12-319A in items in the table, inserting notes, heading changes, and cross referencing of subsection 18-35(1AA). *[Schedule 1, items 1, 3, 9, 12 to 19, 21 and 23 to 26, subsection 170(10AA) (after item 5 in the table) of the ITAA 1936, section 12-5 (item headed 'employees' in the table), item 22D in the table in subsection 10-5(1) (after item 22C in the table), subsection 15-10(2), subsection 15-15(1), note 3A to subsection 15-15(1) (after note 3), paragraphs 16-153(1)(a) and 16-195(1)(ab), section 18-1, subsection 18-10(1), group heading before section 18-30, section 18-35 (heading), and paragraphs 18-35(2)(a) and (c), (3)(a) and (c) in Schedule 1 to the TAA 1953]*

1.55 Many consequential amendments also result from inserting Subdivision 840-S into Division 840 of the ITAA 1997. This ensures the cross referencing of SLMP withholding tax in the items in the table. *[Schedule 1, items 2, 8, 27 and 28, section 11-55 (item in the table headed 'foreign aspects of income taxation') of the ITAA 1997, item 18A in the table in subsection 8AAB(4) (after item 18 in the table) and item 39AA in subsection 250-10(2) (after item 39A in the table) and subsection 340-10(2) in Schedule 1 to the TAA 1953 (after paragraph (d) of item 6 in the table, column headed 'Provision(s))']*

1.56 A definition of 'Seasonal Labour Mobility Program withholding tax' is inserted into the Dictionary in Division 995-1 of the ITAA 1997. *[Schedule 1, item 6, definition of 'Seasonal Labour Mobility Program withholding tax' in subsection 995-1(1)]*

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

### **Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

#### ***Seasonal Labour Mobility Program — final withholding tax***

1.57 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

1.58 This Schedule:

- inserts Subdivision 12-FC in Schedule 1 to the TAA 1953 which creates the obligations to withhold amounts;
- inserts Subdivision 840-S in the ITAA 1997 which establishes the liability to pay tax on income derived under the Program;
- inserts Subdivision 840-S into the IT(TP) Act 1997; and
- makes consequential amendments to the ITAA 1936, the ITAA 1997 and the TAA 1953.

1.59 The formal imposition of income tax, and the establishment of the applicable rate of tax, is provided for by means of the Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012.

#### **Human rights implications**

1.60 This Schedule does not engage any of the applicable rights or freedoms.

#### **Conclusion**

1.61 This Schedule is compatible with human rights as it does not raise any human rights issues.

**Assistant Treasurer, the Hon David Bradbury**



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# ***Taxation of blends of gaseous and aviation fuels — further consequential amendments***

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## **Outline of chapter**

2.1 Schedule 2 to this Bill amends the *Excise Act 1901*, so that blending of liquefied petroleum gas (LPG) with other LPG that has been taxed at a different rate, blending of liquefied natural gas (LNG) with other LNG that has been taxed at a different rate, blending of compressed natural gas (CNG) with other CNG that has been taxed at a different rate, blending of aviation kerosene with other aviation kerosene that has been taxed at a different rate, and blending of aviation gasoline with other aviation gasoline that has been taxed at a different rate in some specified circumstances is not treated as excise manufacture and therefore subject to additional excise. The specified circumstances are those that arise from the phase-in (progressive increase in rates) of excise and excise-equivalent customs duty on LPG, LNG and CNG, and from fluctuations in the carbon price.

## **Context of amendments**

### **Gaseous fuel blends**

2.2 LPG, LNG and CNG (the gaseous fuels) intended for use in an internal combustion engine for road transport entered the excise and excise equivalent customs duty systems on 1 December 2011, when excise and excise equivalent customs duty was applied to these fuels. Non-transport LPG and LNG is also subject to duty. However, the duty, under current law is fully remitted via a customs or excise remission. CNG manufactured for a non-transport use is exempt and therefore not subject to excise or excise equivalent customs duty.

2.3 Excise and excise equivalent customs duty on the transport gaseous fuels is to be phased in over the period 1 December 2011 to 1 July 2015, with the final full rate applying from 1 July 2015.

2.4 As a result of the phase-in, it is likely that gaseous fuel for transport at the new rate will be delivered into tanks containing the same gaseous fuel that has been taxed at the old rate. Under current law this is a blend of two types of transport fuel taxed at different rates and will

constitute excise manufacture and the resultant blend will be subject to duty.

**Example 2.1: Mixed duty rates — current law**

On 3 July 2012 Simon received a tanker load of 18,000 litres of LPG intended for transport use at the new excise rate of \$0.05 per litre to top up his bulk tank. There was already 1200 litres of LPG intended for transport use remaining in the tank on which excise duty of \$0.025 per litre had already been paid using the pre 1 July duty rate. The blending of these two quantities of LPG that have been subject to duty at different rates is excise manufacture under the *Excise Act 1901* and as such Simon is required to be licensed to manufacture LPG and the resultant blend will be subject to duty.

2.5 A similar situation of blends of fuels taxed at different rates giving rise to additional fuel tax arises when an effective carbon charge is applied to non-transport use LPG and LNG using the fuel tax system. In this circumstance, the full remission that currently applies is reduced to a partial remission from 1 July 2012 to 30 June 2013. Around the beginning and end of this period, under current law, the blending would constitute excise manufacture and the resultant blend would be subject to duty.

**Example 2.2: Mixed remission arrangements – current law**

Prior to 1 July 2012 Universal LPG delivered LPG to Neroli's BBQ Supplies in bulk for non-transport use under the automatic remission as Neroli fills 9 kilogram bottles with the LPG for use by her clients in their barbeques. On the 2 July 2012 Universal LPG delivered 4,000 litres of LPG to Neroli's BBQ Supplies under the partial remission which now includes a carbon charge of \$0.0368 per litre. As there was already 2000 litres in Neroli's Tank the blending of full remission LPG with partial remission LPG is excise manufacture under the *Excise Act 1901*. As such Neroli is required to be licensed to manufacture LPG and the resultant blend is subject to duty.

2.6 From 1 July 2013, LPG and LNG used for non-transport purposes will be subject to the carbon pricing mechanism directly. This should result in a return to the current remission arrangements where a full remission of duty in relation to non-transport LPG and LNG is available. As a result, there are no implications for excise manufacture when goods subject to full remission are subsequently blended after they have been entered into home consumption.

**Aviation fuel blends**

2.7 Aviation fuel (gasoline or kerosene for use as fuel in aircraft) is currently subject to a small rate of excise, which is earmarked for funding the operations of the Civil Aviation Safety Authority. For domestic aviation fuel, the 2011 Clean Energy legislation package will adjust this excise upwards from 1 July 2012 by an amount equal to the notional



carbon price that would be put on the fuel emissions had aviation fuel been subject to a carbon charge. Fuels used in international aviation will not be subject to a carbon charge.

2.8 During the fixed price period of the carbon charge, the non-earmarked part of the excise that represents the effective carbon price will vary each time a new carbon price is implemented. As a result, blending of aviation kerosene with other aviation kerosene and blending of aviation gasoline with other aviation gasoline around the time of the carbon price change will involve the blending of fuels that have been taxed at different rates, and therefore, under the current law, would constitute excise manufacture, and the resultant blend would be subject to duty.

2.9 A similar situation will arise after the fixed price period when the carbon price is set by the price prevailing in the market for emission permits. The market price will vary so that the excise that represents the carbon price will also vary, resulting in additional duty because of the excise manufacture.

2.10 Under the current law, the blending of kerosene or gasoline that are for use as fuel in an aircraft with like kerosene or gasoline that are not for use as fuel in an aircraft (essentially blending aircraft fuel with non-aircraft fuel) constitutes excise manufacture and the resultant blend is subject to duty. The new blending exemptions are not intended to alter this outcome.

## **Summary of new law**

2.11 To avoid these potential situations of duty being imposed a second time the law will be amended to exclude blends of the same type of gaseous fuel from being treated as excise manufacture in specified circumstances and therefore subject to additional duty. This is achieved by considering the intended use of each component of the blend, when the duty payable (if any) on each component was first determined. If the duty liability of all components of a blend was determined on the same basis (transport or non-transport) at the time they were entered, then their blending will not constitute excise manufacture. A further requirement is that any duty that was payable on each of the components of the blend has been paid.

### **Example 2.3: Mixed duty rates — new law**

A quantity of LPG was duty paid on 3 July 2012 at a rate of \$0.05 per litre (with no remission available because it was intended for use in transport), and it is added to a tank containing a quantity of LPG that was duty paid prior to 1 July 2012 at a rate of \$0.025 (also with no remission available because it was intended for a transport use), then the blending will not constitute manufacture.

2.12 The blending exemptions will also cover the blending of non-transport like gaseous fuel in instances where the fuel has been eligible for an excise or customs remission, regardless of the level of remission.

**Example 2.4: Blending fuels subject to remission — new law**

Euan’s BBQ Bonanza Gas receives a delivery of 10,000 litres of LPG on 15 July 2012 that his supplier has applied the partial remission to as he knows that Euan’s BBQ Bonanza only supply LPG in 9 kilogram barbeque bottles. The LPG is delivered into Euan’s bulk tank that already contains 4,000 litres of LPG delivered on 20 June 2012 that was the subject of the full remission. Under the new law the blending of these two quantities of LPG, although subject to different duty rates does not constitute excise manufacture and therefore the blend is not subject to duty.

2.13 However, the blending exemptions do not exempt the blending of a quantity of transport gaseous fuel with a quantity of non-transport gaseous fuel. This is because the components of the blend were not subject to duty on the same basis when they were entered.

**Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
The exemption for blending fuels taxed at different rates only applies to relevant fuels (that is, gaseous and aviation fuels) when blended with the same relevant fuel.	Exemption from excise is available only for fuels that have been taxed at the same rate.
A test is applied to such blends arising as a result of the phase-in arrangements or a changing carbon price to determine whether they should be exempt from further excise.	The blending of fuels is treated as excise manufacture of a fuel and hence subject to excise, unless the fuels have been taxed at the same rate, in which case an exemption applies. A phase-in of excise and excise equivalent customs duty was implemented when gaseous fuels became subject to excise and excise equivalent customs duties from 1 December 2012. On 1 July each year an increased rate of excise applies until 1 July 2015 when the final rate of excise applies. Near the time of the duty increases, gaseous fuels taxed at different rates will be blended as fuel taxed at the new rate is delivered into tanks containing fuel taxed at the old rate, hence subject to

<i>New law</i>	<i>Current law</i>
	additional duty. A similar situation applies to aviation fuels when excise rates change as the carbon price changes.

## Detailed explanation of new law

### Definition of ‘relevant fuel’

2.14 The excise blending exemptions specified in these amendments apply only to **relevant fuel**, which is defined as gasoline for use in aircraft; kerosene for use in aircraft; liquefied petroleum gas; liquefied natural gas; or compressed natural gas classified to subitem 10.19C of the Schedule to the *Excise Tariff Act 1921*. [*Schedule 2, item 3, subsection 77H(5)*]

### Blending exemptions for certain blends of ‘relevant fuels’

2.15 The intention of the amendments in this section is to exclude the blending of some ‘relevant fuels’, where the same rate of tax does not apply to each amount in the blend, from being treated as excise manufacture and subject to additional duty.

2.16 In general, the different tax rates on these fuels result from either the phase-in of excise and excise-equivalent customs duty (including the blending of non-transport gaseous fuels subject to a different level of remission), interaction between the excise and excise-equivalent customs duty systems with the carbon pricing mechanism, or the varying carbon prices applied to these relevant fuels. However, this does not include different effective tax rates resulting from the blending of transport and non-transport fuels. [*Schedule 2, item 1, subsection 77H(2A) and subsection 77(H)2B*]

### Application and transitional provisions

2.17 The amendments to the *Excise Act 1901* and the *Excise Tariff Act 1921* made by this Schedule apply in relation to goods that are the product of blending ‘relevant fuel’ if the blending occurs after 1 July 2012, whether the relevant fuel being blended was manufactured, produced or imported before or after that time.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

**Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

### ***Taxation of blends of gaseous and aviation fuels — further consequential amendments***

2.18 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

2.19 Schedule provides exemptions from excise and excise licensing for entities that incidentally blend taxable fuels where the taxable fuels have been taxed at different rates.

#### **Human rights implications**

2.20 This Schedule does not engage any of the applicable rights or freedoms.

#### **Conclusion**

2.21 This Schedule is compatible with human rights as it does not raise any human rights issues.

**Assistant Treasurer, the Hon David Bradbury**

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## ***Low-income tax offset***

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### **Outline of chapter**

3.1 Schedule 3 to this Bill amends the *Income Tax Assessment Act 1936* (ITAA 1936) to ensure that where a trustee is assessed on the income of a beneficiary who is a minor, the trustee will not have access to the low income tax offset in circumstances where the income is considered to be unearned income of the minor.

### **Context of amendments**

3.2 In the 2011-12 Budget, the Government removed the ability of minors to access the low income tax offset to reduce tax payable in their unearned income. This measure was designed to discourage income splitting between adults and children, including through the use of trusts. The amendment contained in Schedule 3 ensures that this policy applies where a trustee is assessed for tax on trust income of a beneficiary that is a minor, which is considered unearned income of that minor.

### **Summary of new law**

3.3 This Schedule amends the ITAA 1936 to ensure that where a trustee is assessed on the income of a minor, the trustee will not have access to the low income tax offset in circumstances where the income is considered to be unearned income of the minor.

## **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
A trustee who is assessed under section 98 of the ITAA 1936 on a share of the trust's net income in respect of a beneficiary is not entitled to the low income tax offset to the extent that share is subject to Division 6AA of Part III of the ITAA 1936.	The application of Division 6AA of Part III of the ITAA 1936 is not taken into account to determine whether the low income tax offset can apply to a trustee that is assessed on a share of the trust's net income in respect of a beneficiary's income

### **Detailed explanation of new law**

3.4 Schedule 3 ensures that a trustee who is assessed and liable to pay tax under section 98 of the ITAA 1936 on a share of trust net income in respect of a beneficiary will not be entitled to a low income rebate of tax to the extent that share is subject to Division 6AA of Part III of the ITAA 1936. These amendments ensure that the policy objective to restrict the availability of the low income tax offset for unearned income of minors, through the operation of Division 6AA of Part III of the ITAA 1936, is properly applied in respect of trustee tax assessments. *[Schedule 3, item 1, section 159N]*

### **Application and transitional provisions**

3.5 The amendment commences on the day the Bill receives Royal Assent. *[Schedule 3, item 2]*

3.6 The amendment applies to income tax assessments for the 2011-12 and later income years.

3.7 The retrospective application date is appropriate because the Government's announcement of the measure in the 2011-12 Budget made it clear that the new arrangements would apply to all unearned income derived by minors, including through trusts.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

### **Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

#### **Low-income tax offset**

3.8 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Human rights implications**

3.9 This Schedule does not engage any of the applicable rights or freedoms.

#### **Conclusion**

3.10 This Schedule is compatible with human rights as it does not raise any human rights issues.

**Assistant Treasurer, the Hon David Bradbury**





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## ***Clean energy payments***

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### **Outline of chapter**

4.1 Schedule 4 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to exempt clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans' Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family payment and exceptional circumstances relief payment.

### **Context of amendments**

4.2 Clean energy payments are being provided to recipients of pensions, allowances and family payments to assist with the cost-of-living impacts of putting a price on emissions of carbon dioxide and other greenhouse gases.

### **Summary of new law**

4.3 This Schedule provides an income tax exemption for clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans' Children Education Scheme, and Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family payment and exceptional circumstances relief payment.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans' Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family payment and exceptional circumstances relief payment will be exempt from income tax.	No specific exemption is provided for clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans' Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family payment and exceptional circumstances relief payment, but such payments are not currently being made.

## Detailed explanation of new law

4.4 These amendments provide an income tax exemption for clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans' Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family payment and exceptional circumstances relief payment.

4.5 This Schedule:

- adds clean energy payments under the scheme prepared under Part VII of the *Veterans' Entitlement Act 1986* to the list of types of ordinary or statutory income in section 11-15 of the ITAA 1997 which are exempt if derived by certain entities [*Schedule 4, item 1, section 11-15*];
- adds clean energy payments under the scheme determined under section 258 of the *Military Rehabilitation and Compensation Act 2004* to the list of types of ordinary or statutory income in section 11-15 of the ITAA 1997 which are exempt if derived by certain entities [*Schedule 4, item 1, section 11-15*];
- adds the transitional farm family payment to the list of types of ordinary or statutory income in section 11-15 of the ITAA 1997 which are exempt if derived by certain entities [*Schedule 4, item 1, section 11-15*];
- adds a reference to clean energy payments under the scheme prepared under Part VII of the *Veterans' Entitlement Act 1986* to the list of payments that are not dealt with in the table in section 52-65 of the ITAA 1997. Payments not dealt with in the table are dealt with elsewhere in section 52-65 [*Schedule 4, item 4, subsection 52-65(1)*];

- repeals the existing subsection 52-65(1G) of the ITAA 1997 and replaces it with an expanded reference to clean energy payments being exempt from income tax under the *Veterans' Entitlement Act 1986* generally as well as under the scheme prepared under Part VII of that Act that concerns educating veterans' children [*Schedule 4, item 5, subsection 52-65(1G)*];
- inserts a reference to clean energy payments under the Veterans' Children Education Scheme to the list of items under which veterans' affairs payments are exempt from income tax under Subdivision 52-B of the ITAA 1997 [*Schedule 4, item 6, section 52-75*];
- amends item 16 in the table in section 52-114 by including a clean energy payment in the type of ordinary payment that is exempt from income tax [*Schedule 4, item 7, section 52-114*];
- adds a note to section 52-114 to make clear that the supplementary amount of a payment covered by item 16 of the table in section 52-114 is also exempt from income tax [*Schedule 4, item 8, section 52-114*];
- specifies that a clean energy payment made under the ABSTUDY scheme is exempt from income tax [*Schedule 4, item 9, subsection 52-131(2)*];
- inserts 'or clean energy payment' after 'crisis payment' in the list of payments under the ABSTUDY scheme that are not an ordinary payment. An ordinary payment is generally not exempt from income tax [*Schedule 4, item 10, subsection 52-131(8)*];
- adds the clean energy supplement to the list of components of supplementary amounts of payment under the ABSTUDY scheme. Supplementary payments under the ABSTUDY scheme are generally exempt from income tax [*Schedule 4, item 11, section 52-132*];
- adds a reference to clean energy supplement paid to recipients of Commonwealth education or training payments to the list of supplementary amounts of payments to such students. Supplementary amounts of such payments are exempt from income tax [*Schedule 4, item 12, subsection 52-140(3)*];
- provides that payments in lieu of clean energy advance and by way of clean energy supplement to recipients of transitional farm family payments are exempt from income tax [*Schedule 4, item 13, subsection 53-10*]; and

- includes clean energy supplements paid to recipients of exceptional circumstances relief payment in the supplementary amount of exceptional circumstances relief payment. The supplementary amount of exceptional circumstances relief payment is exempt from income tax [Schedule 4, item 14, subsection 53-15].

## **Application and transitional provisions**

4.6 The amendments commence on the day the Act receives Royal Assent. [Schedule 4, item 15].

4.7 The amendments apply to income tax assessments for the 2011-12 and later income years, other than the amendments made by items 3 and 13, which apply to income tax assessments for the 2012-13 and later income years.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

### **Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

#### ***Clean energy payments***

4.8 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Human rights implications**

4.9 This Schedule does not engage any of the applicable rights or freedoms.

#### **Conclusion**

4.10 This Schedule is compatible with human rights as it does not raise any human rights issues.

**Assistant Treasurer, the Hon David Bradbury**

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## ***Better targeting of the employment termination payment tax offset***

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### **Outline of chapter**

5.1 Schedule 5 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) so that access to the employment termination payment (ETP) tax offset and the amount of offset received takes into account an individual's taxable ETP as well as any other taxable income in the year they receive the ETP. From 1 July 2012, any taxable component of an ETP that takes a person's total taxable income in a year above \$180,000 will be taxed at marginal rates.

### **Context of amendments**

5.2 An *employment termination payment* is a payment, or property in lieu of a payment, given to an employee, or another person, as a consequence of the termination of that employee's job (section 82-130 of the ITAA 1997).

- It does not matter who pays the termination payment, as long as it is paid in consequence of the termination of a person's employment.
- A person's employment is terminated where it ceases, regardless of the reason for that person's job ending. This means termination includes retirement, resignation, dismissal or termination due to death.
- Examples of ETPs include gratuities, severance pay, payments in lieu of notice of termination, taxable components of genuine redundancy payments and, in limited contexts, compensation payments arising out of employment disputes.

5.3 A payment made upon termination of employment may be tax free (in whole or in part). For example, genuine redundancy and early retirement scheme payments have a tax free component calculated according to an employee's years of service. Death benefits paid to an employee's dependants are tax free up to the ETP cap amount (\$175,000 in 2012-13, indexed). Other ETPs, such as gratuities, may include a tax free component if the payment relates to invalidity or work performed prior to July 1983 (section 82-140).

5.4 A tax offset applies to the taxable component of ETPs. This offset ensures that the maximum tax payable on a person's ETP is:

- 30 per cent (excluding the Medicare levy), if the ETP recipient is under preservation age (55 years of age in 2012-13); or
- 15 per cent (excluding the Medicare levy), if the ETP recipient is over preservation age (subsection 82-10(3)).

5.5 The ETP tax offset is available for taxable ETPs up to an ETP cap amount which is indexed by the rules set out at Subdivision 960-M in ITAA 1997 (section 82-160). The ETP cap amount is \$175,000 in 2012-13.

5.6 The design of the ETP tax offset provides the most benefit to taxpayers on the top marginal tax rate. Taxpayers on low incomes get little or no benefit from the ETP tax offset.

5.7 Based on marginal tax rates in 2011-12:

- For taxpayers aged under 55, those taxpayers with taxable income of \$80,000 or less (including their ETP) are not able to benefit from the offset.
- For taxpayers aged 55 and over, those taxpayers with taxable income of \$37,000 or less (including their ETP) are not able to benefit from the offset.

5.8 High income earners are twice as likely as low-income earners to receive taxable ETPs and, on average, receive payments that are more than forty times as large.

5.9 To make the taxation of ETPs fairer, the Deputy Prime Minister and Treasurer announced in the 2012-13 Budget that the Government would scale back the tax offset applying to ETPs, such as gratuities, while keeping the existing offset for ETPs relating to hardship.

## **Summary of new law**

5.10 This Schedule reforms eligibility for the ETP tax offset for termination payments, so that the amount of a payment that attracts the ETP tax offset is dependent on an individual's total taxable income (including the ETP) in a year they receive an ETP.

5.11 The part of a taxable component of an ETP that, when added last to an individual's other taxable income, is equal to or below a 'whole-of-income cap' of \$180,000 will continue to be eligible for the ETP tax offset. Any amount of a taxable component of an ETP that takes a person's total taxable income over \$180,000 will be taxed at marginal rates.

- The \$180,000 whole-of-income cap will not be indexed.
- The existing ETP cap (\$175,000 in 2012-13, indexed) will work in conjunction with the whole-of-income cap so that, regardless of other taxable income, ETPs can only access the offset for ETP amounts up to a maximum of the ETP cap amount.

5.12 People who:

- receive genuine redundancy payments (or who would have but for existing age or retirement restrictions on genuine redundancy payments);
- lose their job due to invalidity (regardless of how close to retirement);
- receive compensation due to a genuine employment related dispute relating to personal injury, harassment, discrimination or unfair dismissal (where the payment is currently considered an ETP); or
- receive a non-superannuation death benefit ETP;

would continue to receive the current tax treatment (ETP tax offset up to the existing ETP cap, excluding other income, of \$175,000 in 2012-13, indexed) and continue to have access to the full benefit of the ETP tax offset.

5.13 Any tax free component of a termination payment, such as invalidity or pre-July 1983 employment components, will continue to be tax free. This includes the tax free component of genuine redundancy and early retirement scheme payments, as well as tax free components of death benefit ETPs.

5.14 Foreign termination payments and the offset for unused annual leave and unused long service leave will also be unaffected by these amendments.

### **Comparison of key features of new and current law**

<i>New law</i>	<i>Current law</i>
People who receive a life benefit ETP not related to genuine redundancy, early retirement, invalidity or certain types of compensation, are eligible for the ETP tax offset for that part of the ETP that takes their total taxable income up to \$180,000, from 1 July 2012.	People who receive an ETP are eligible for a tax offset for the first \$175,000 (in 2012-13, indexed) of the taxable component of the ETP, after which marginal rates apply.

<i>New law</i>	<i>Current law</i>
The existing ETP cap amount continues to apply to ETPs so that a maximum \$175,000 (in 2012-13, indexed) of an ETP can receive the ETP tax offset (where the \$180,000 whole-of-income cap has not already been breached).	

## Detailed explanation of new law

5.15 These amendments provide that the ETP tax offset mentioned in subsection 82-10(3) of the ITAA 1997 takes account of a person's other taxable income in the year that they receive an ETP.

5.16 The amendments give effect to the 2012-13 Budget measure to provide a fairer tax treatment of ETPs, such as golden handshakes.

5.17 The ETP tax offset in subsection 82-10(3) applies to the amount worked out under subsection 82-10(4).

5.18 Subsection 82-10(4) is amended so that the ETP tax offset applies to so much of the taxable component of an ETP that does not exceed the smallest of the amounts worked out under the ETP cap or the new whole-of-income cap of \$180,000. [*Schedule 5, item 1, subsection 82-10(4)*]

- The amendments only apply to life benefit termination payments. Death benefit termination payments will continue to receive their existing tax treatment.
- The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination. This is a feature of the existing ETP cap.

5.19 The \$180,000 whole-of-income cap will operate by subtracting a person's non-ETP taxable income from \$180,000, leaving an amount equal to or less than \$180,000 (but not less than zero) which will be eligible for the ETP tax offset. [*Schedule 5, item 1, paragraph 82-10(4)(c)*]

5.20 This is achieved by reducing the \$180,000 whole-of-income cap by a person's taxable income for the income year in which the ETP is made (disregarding as a part of taxable income the ETP in question or any ETPs received later in the income year). [*Schedule 5, item 1, paragraph 82-10(4)(c) and subsection 82-10(5)*]

### Example 5.1

Percival has taxable income from wages and investments of \$100,000 in 2012-13. He retired from his job in December 2012 and received a termination package of \$100,000, paid in two instalments of \$50,000



(one in December 2012 and one in June 2013) which forms a taxable ETP in its entirety.

Under the whole-of-income cap, \$180,000 is reduced by Percival's taxable income for the income year, disregarding the total of the first termination payment received and subsequent termination payments. For Percival's first payment of \$50,000, the entire amount would fall within the whole-of-income cap (\$180,000 whole of income cap, *less* \$100,000 wage and investment income, leaves \$80,000 of termination payment that can fall within the whole-of-income cap).

For the second payment of \$50,000, only \$30,000 will fall within the whole-of-income cap (\$180,000 whole of income cap, *less* \$100,000 wage and investment income, *less* \$50,000 taxable termination payment received earlier in the income year, *equals* \$30,000 remaining cap available). As only \$30,000 of the second payment falls within this amount, only \$30,000 of Percival's second termination payment will be eligible for the ETP tax offset.

This means in total, Percival is eligible for the ETP tax offset on \$80,000 (\$50,000 of the first payment and \$30,000 of the second payment) of his total termination package. Since his non-ETP taxable income for the year was \$100,000, the \$80,000 of ETP tax offset eligible termination payment represents the amount available to Percival that takes his income up to the \$180,000 whole-of-income cap.

5.21 The existing ETP cap (\$175,000 in 2012-13, indexed) will still apply in conjunction with the \$180,000 whole-of-income cap. This means that a taxable component of an ETP cannot receive an ETP tax offset for that part of the payment that exceeds the 'ETP cap amount' in section 82-160. [*Schedule 5, item 1, subsection 82-10(8)*]

### **Example 5.2**

Shen retires on 1 July 2012 and receives a termination payment of \$200,000. Because of some negatively geared investments, Shen has a tax loss of \$20,000 in 2012-13 and a taxable income of nil (disregarding his ETP). Under the whole-of-income cap provision in paragraph 82-10(4)(c), Shen reduces \$180,000 by his non-ETP taxable income for the year — tax losses are disregarded. Therefore, \$180,000 of taxable ETP could fall within the whole-of-income cap. However, as the amount eligible for the ETP offset is the *smallest* of the amounts worked out under the whole-of-income cap and the ETP cap, Shen is only eligible for the ETP offset on \$175,000 of his ETP (as worked out under paragraphs (a) and (b) of subsection 82-10(4)).

5.22 People who:

- receive a genuine redundancy payment or early retirement scheme payment (or who receive payments that would have been genuine redundancy or early retirement scheme payments but for existing age or retirement restrictions);
- lose their job due to invalidity (regardless of how close to retirement); or
- receive an ETP which is paid principally to compensate a person for a genuine dispute arising out of personal injury, unfair dismissal, harassment or discrimination;

are explicitly excluded from the whole-of-income cap arrangements and are unaffected by the measure. These payments are *excluded payments* and are listed in subsection 82-10(6). [*Schedule 5, item 4, subsection 82-10(6)*]

**Example 5.3**

Hania is a 66 year old executive who has been working for her employer for five years. In 2012-13, the company she works for is taken over by a larger company and Hania's position is no longer needed. No other appropriate position is offered to Hania, so she accepts a redundancy and is immediately paid \$190,000, of which \$50,000 could reasonably be expected to be received as a result of Hania voluntarily terminating her employment. Hania's other taxable income for the year 2012-13 is \$200,000.

Although Hania's payment is not a 'genuine redundancy payment' under section 83-175 of the ITAA 1997 because she is aged over 65 (and therefore does not contain a tax free component), her position is still genuinely redundant because her employer no longer requires her position.

Because Hania is made genuinely redundant, the genuine portion of her redundancy payment is carved out from the whole-of-income cap (it is an 'excluded payment'). The existing \$175,000 ETP cap amount continues to apply to this portion of Hania's payment. As all of the \$140,000 of Hania's genuine redundancy portion of her ETP falls within the ETP cap amount, this whole amount is eligible for the ETP tax offset. The whole-of-income cap would operate to deny the ETP tax offset to any of the \$50,000 portion of Hania's payment (which she could have received upon voluntarily terminating her employment). This is because Hania's other taxable income of \$200,000 already exceeds the whole-of-income threshold.

**Example 5.4**

Maureen suffered an injury outside her workplace and is medically certified as being unable to be gainfully employed in the capacity for which she is trained and has experience. As a result, Maureen's employer terminates Maureen's employment and pays Maureen \$100,000. Maureen is 60 when she receives her payment. Maureen's other income for the year is \$180,000.

Part of Maureen's payment is tax free as an 'invalidity segment'. The invalidity segment of Maureen's payment is calculated based on the number of days she has until retirement and her total days working for her employer. Using the formula in subsection 82-150(2), \$30,000 of Maureen's payment is an invalidity segment. The remainder of Maureen's payment is a taxable ETP. However, subsection 82-10(6) ensures that ETPs that include an invalidity segment are not subject to the new whole-of-income cap. This means that the taxable component of Maureen's payment will receive the ETP tax offset regardless of her income. As Maureen is 60 years old (over preservation age), the maximum tax payable on the taxable component of her payment, which is \$70,000, is 15 per cent (excluding the Medicare levy).

5.23 Payments that are made principally to compensate a person for a genuine dispute arising out of personal injury, unfair dismissal, harassment, discrimination or any other matter prescribed by the regulations will be excluded from the operation of the whole-of-income cap. *[Schedule 5, item 1, paragraph 82-10(6)(d)]*

- A payment does not need to be made as a consequence of proceedings before a court in order to be compensation.

5.24 Where a person receives multiple termination payments at different points in time, where some of the termination payments are excluded payments (for example genuine redundancy payments) and some are not-excluded payments (for example gratuities), the ETP cap amount will be applied separately to the excluded payments and not-excluded payments. *[Schedule 5, item 1, paragraphs 82-10(4)(a) and 82-10(4)(b)]*

- This ensures that a person who receives a non-excluded payment earlier in the year and who is affected by the whole-of-income cap does not exhaust their ETP cap on the non-excluded payment (which may not be eligible for an ETP tax offset) at the expense of an excluded payment they may receive later in the year (which will be eligible for an ETP tax offset).

5.25 Excluded payments will benefit from the ETP tax offset in the first instance, as the ETP cap amount will be reduced only by prior excluded payments received. *[Schedule 5, item 1, subparagraphs 82-10(4)(a)(i) and 82-10(4)(b)(i)]*

5.26 Not-excluded payments will benefit from the ETP tax offset in the second instance, as the ETP cap amount will be reduced by any prior life benefit termination payments received, whether or not they are excluded or not-excluded payments. *[Schedule 5, item 1, subparagraphs 82-10(4)(a)(ii) and 82-10(4)(b)(ii)]*

5.27 The total amount of termination payment, whether excluded or not, that can receive the ETP offset is limited to the amount of all termination payments that fall under either the ETP cap amount or the

whole-of-income cap, and which in aggregate do not exceed the ETP cap amount. [Schedule 5, item 1, subsection 82-10(8)]

### Example 5.5

Barry is made genuinely redundant in May 2013 and immediately receives a termination gratuity of \$50,000, which is a set amount that Barry is due to receive under his contract when he leaves his job for any reason (including resigning voluntarily).

In July 2013, Barry receives a further amount of \$150,000 which represents the genuine redundancy portion of Barry's total termination package.

Barry's income for the 2012-13 income year is \$140,000. In considering Barry's first termination payment, \$40,000 falls beneath the whole-of-income cap (\$180,000 whole-of-income cap *minus* \$140,000 taxable income *leaves* \$40,000). Therefore, only \$40,000 of the \$50,000 payment receives the ETP tax offset.

In considering the second payment, which is entirely an 'excluded payment', the whole \$150,000 amount will fall beneath the ETP cap amount tests in subparagraphs 82-10(4)(a)(i) and 82-10(4)(b)(i), as Barry has not received any other excluded amounts as part of termination payments received either earlier in the same income year, or in earlier income years in relation to the same termination.

However, under subsection 82-10(8) Barry is not entitled to have the ETP tax offset apply to total termination payment amounts exceeding the ETP cap amount. Barry has already received the ETP tax offset on \$40,000 of the first termination payment and if the ETP cap amount for 2013-14 is \$185,000, only a further \$145,000 can receive the ETP tax offset. Of the second payment \$5,000 will be taxed at marginal rates as this amount exceeds the ETP cap amount.

In this way Barry can still access the full benefit of the ETP tax offset on termination payments received up to the ETP cap amount (as he would in the absence of this measure).

5.28 If a person's single termination payment includes both an excluded payment part and a not-excluded payment part (where the two parts of the payment are received at the same time), then the amount of the payment that will be eligible for the ETP tax offset as calculated in subsection 82-10(4) is the amount worked out as if the part of the payment that is an excluded payment was received first. [Schedule 5, item 1, subsection 82-10(7)]

- For example, a person who receives a compensation ETP is only excluded from the whole-of-income cap to the extent that that payment is in excess of what the person would have been eligible for had they voluntarily terminated their employment, such as through retirement or resignation. The component of the payment they would have been eligible for upon voluntary termination of their employment is not an

‘excluded payment’, while the amount in excess of this is an ‘excluded payment’. [*Schedule 5, item 1, subparagraph 82-10(6)(d)(iii)*]

### **Example 5.6**

Under Dennis’s employment contract, he is entitled to a gratuity of \$160,000 upon termination. However, upon termination, Dennis receives nothing from his employer. Dennis also believes that his employer unfairly terminated his employment. Dennis launches a court action against his employer claiming unfair dismissal. The court finds in favour of Dennis and orders he be paid an amount of \$200,000 in compensation, of which \$160,000 is for his unpaid entitlement under his employment contract and \$40,000 is compensation for unfair dismissal. Dennis’s other taxable income is \$150,000.

Of the \$200,000 Dennis received, \$160,000 could reasonably be expected to be received by Dennis if he had terminated his employment voluntarily and \$40,000 represents compensation for unfair dismissal.

The compensation Dennis received was paid in consequence of the termination of his employment, and so the full \$200,000 is an ETP.

The \$160,000 that Dennis was entitled to under his contract is a taxable ETP that is not expressly excluded from the whole-of-income cap (it is not an ‘excluded payment’). The \$160,000 payment is therefore subject to both the ETP cap amount and the whole-of-income cap.

The \$40,000 compensation amount is a taxable ETP that is expressly excluded from the whole-of-income cap (it is an ‘excluded payment’). The \$40,000 will therefore not be counted towards the whole-of-income cap, but it will count towards the ETP cap amount.

In applying amounts towards the ETP cap amount, those amounts carved out from the whole-of-income cap are applied first. As such, the \$40,000 in compensation falls within the ETP cap amount and is eligible for the ETP tax offset.

When considering the not-excluded portion of Dennis’ compensation payment, because Dennis has other taxable income of \$150,000 only \$30,000 of the \$160,000 that Dennis receives is eligible for the ETP offset. The remaining \$130,000 is taxed at marginal rates.

### **Example 5.7**

Zema receives a single termination payment of \$200,000 in 2012-13. This includes two components — a \$50,000 gratuity and \$150,000 as compensation for unfair dismissal. Zema has no other taxable income.

Under her employment contract, if Zema had resigned voluntarily, she would not have been eligible for any payment.

Zema’s payment is made up of a part that is subject to the whole-of-income cap (being the gratuity) and a part that is excluded from the whole-of-income cap (being the compensation). Even though

the two components were part of the one payment, the amount under subsection 82-10(4) is worked out as though Zema received the compensation payment first. Zema is eligible for the ETP tax offset on the whole \$150,000 of her compensation payment as this is within the ETP cap (and is exempted from the whole-of-income cap provision).

In considering the gratuity, subsection 82-10(7)(a) requires that you treat this payment as the second of two payments received. Therefore, in applying the whole-of-income cap \$180,000 would be reduced by the \$150,000 compensation payment (which would be treated as a prior payment and which is taxed at a concessional rate through the application of the ETP offset). This leaves \$30,000 of ETP that can fall within the whole-of-income cap.

However, subsection 82-10(4) ensures that the amount of Zema's gratuity that is eligible for the ETP offset is the smallest of the amount worked out under the whole of income cap or the ETP cap. Under the ETP cap test in subparagraph 82-10(4)(a)(ii), Zema only has \$25,000 remaining (\$175,000 ETP cap *less* \$150,000 compensation payment), so the amount worked out under subsection 82-10(4) for Zema's gratuity is \$25,000.

In total Zema is eligible for the ETP tax offset on \$175,000 of her \$200,000 termination payment (\$150,000 of her \$150,000 compensation payment and \$25,000 of her \$50,000 gratuity).

## **Application and transitional provisions**

5.29 These amendments apply to employment termination payments received on or after 1 July 2012. [*Schedule 5, item 2*]

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

### **Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

#### **Better targeting of the employment termination payment tax offset**

5.30 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

5.31 This Schedule amends the ITAA 1997 so that access to the ETP tax offset and the amount of offset received takes into account an individual's taxable ETP as well as any other taxable income in the year

they receive the ETP. From 1 July 2012, any taxable component of an ETP that takes a person's total taxable income in a year above \$180,000 will be taxed at marginal rates.

**Human rights implications**

5.32 This Schedule does not engage any of the applicable rights or freedoms.

**Conclusion**

5.33 This Schedule is compatible with human rights as it does not raise any human rights issues.

**Assistant Treasurer, the Hon David Bradbury**





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## ***Aligning the non-resident tax rates***

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### **Outline of chapter**

6.1 The Tax Laws Amendment (Income Tax Rates) Bill 2012 amends the *Income Tax Rates Act 1986* (Rates Act) to better align the personal income tax rates for non-residents more closely with those applying to resident taxpayers.

### **Context of amendments**

6.2 Clause 1 of Part II of Schedule 7 of the Rates Act currently requires that taxpayers who are non-residents for tax purposes in Australia pay tax on their ordinary taxable income according to the following schedule of rates and thresholds:

**Table 6.1**

<i>Tax rates for non-resident taxpayers</i>		
<i>Item</i>	<i>For the part of the ordinary taxable income of the taxpayer that:</i>	<i>The rate is:</i>
1	does not exceed \$37,000	29%
2	exceeds \$37,000 but does not exceed \$80,000	30%
3	exceeds \$80,000 but does not exceed \$180,000	37%
4	exceeds \$180,000	45%

6.3 The tax rates for non-residents are currently aligned with the tax rates and thresholds for resident taxpayers, which are given in Clause 1 of Part I of Schedule 7 of the Rates Act, from the second marginal tax rate of 30 per cent and above.

6.4 The *Clean Energy (Income Tax Rates Amendments) Act 2011* amended the personal income tax rates and thresholds for resident taxpayers as part of the Government's Clean Energy Future Plan, which included raising the statutory tax-free threshold and increasing the second marginal tax rate for residents (item 2 in Table 6.1) to 32.5 per cent from 1 July 2012, and again to 33 per cent from 1 July 2015.

## Summary of new law

6.5 The amendments contained in this Bill will ensure that the marginal tax rates for resident and non-resident taxpayers continue to align from 1 July 2012 by merging the first two personal marginal tax rate thresholds for non-residents into a single threshold, and aligning the rate for this new threshold to the second marginal tax rate for residents. This is shown in Table 6.2:

**Table 6.2**

<i>Tax rates for non-resident taxpayers</i>				
<i>Item</i>	<i>For the part of the ordinary taxable income of the taxpayer that:</i>	<i>The rate is:</i>		
		<i>2011-12</i>	<i>2012-13</i>	<i>2015-16</i>
1	does not exceed \$37,000	29.0%		
2	exceeds \$37,000 but does not exceed \$80,000	30.0%	<b>32.5%</b>	<b>33.0%</b>
3	exceeds \$80,000 but does not exceed \$180,000	37.0%	37.0%	37.0%
4	exceeds \$180,000	45.0%	45.0%	45.0%

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>The first two personal marginal tax rate thresholds for non-residents are merged into a single threshold.</p> <ul style="list-style-type: none"> <li>From 1 July 2012, non-residents are taxed at the second marginal rate for residents — that is, 32.5 per cent on the part of their ordinary taxable income that does not exceed \$80,000, increasing to 33 per cent from 1 July 2015.</li> </ul> <p>Ordinary taxable income that exceeds this threshold is taxed according to the same rates and thresholds that resident taxpayers face.</p>	<p>Non-residents are taxed at 29 per cent on the part of their ordinary taxable that does not exceed \$37,000.</p> <p>From the second marginal rate and threshold and above, ordinary taxable income for non-residents is taxed according to the same rates and thresholds that resident taxpayers face.</p>

## Detailed explanation of new law

6.6 The Bill inserts a definition for ‘second resident personal tax rate’ into subsection 3(1) of the Rates Act, where the definition directly

references the second marginal tax rate in the schedule of rates and thresholds that apply to resident taxpayers. *[Item 1]*

6.7 The Bill uses this definition in Clause 1 of Part II of Schedule 7 of the Rates Act in order to explicitly align the first rate for non-residents with the second rate for residents. *[Item 6]*

6.8 The practical effect of this amendment is shown in Table 6.2.

6.9 The Bill amends subsection 15(2) and subsection 15(4) of the Rates Act so that the income tax rates for taxpayers who are non-resident minors are consistent with the amendments to the non-resident rates in Clause 1 of Part II of Schedule 7 of the Rates Act. *[Items 2 to 5]*

6.10 The practical effect of these amendments will be:

- that where the taxable income of a non-resident minor does not exceed \$416, the amount of tax payable in respect of that income shall not exceed:
  - 32.5 per cent of that eligible taxable income in the 2012-13, 2013-14 and 2014-15 income years; and
  - 33 per cent of that eligible taxable income in the 2015-16 and later income years; and
- that where the taxable income of a non-resident minor exceeds \$416 but does not exceed \$732, the amount of tax payable in respect of that income shall not exceed:
  - the sum of 32.5 per cent of \$416 and 66 per cent of the amount by which that eligible taxable income exceeds \$416 in the 2012-13, 2013-14 and 2014-15 income years; and
  - the sum of 33 per cent of \$416 and 66 per cent of the amount by which that eligible taxable income exceeds \$416 in the 2015-16 and later income years.

6.11 The Bill amends the note in Clause 1A of Part II of Schedule 7 of the Rates Act to clarify that for the 2011-12 income year, ‘Pacific Seasonal Workers’ will be taxed at 15 per cent on that part of their ordinary taxable income that does not exceed \$37,000, rather than at 29 per cent as for all other non-resident taxpayers. *[Item 7]*

## **Application and transitional provisions**

6.12 The amendments apply to assessments for the 2012–13 income year and later income years. *[Item 8]*

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

### **Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

#### **Aligning the non-resident tax rates**

6.13 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

6.14 This Bill amends the Rates Act to more closely align the personal income tax rates for non-residents for Australian tax purposes with the personal income tax rates for Australian resident taxpayers.

#### **Human rights implications**

6.15 This Bill does not engage any of the applicable rights or freedoms.

#### **Conclusion**

6.16 This Bill is compatible with human rights as it does not raise any human rights issues.

**Assistant Treasurer, the Hon David Bradbury**

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