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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (2010 MEASURES No. 5) BILL 2010

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***
BAS	business activity statement
CGT	capital gains tax
Commissioner	Commissioner of Taxation
GST	goods and services tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
IT(TP) Act 1997	*Income Tax (Transitional Provisions) Act 1997*
ITAA 1997	*Income Tax Assessment Act 1997*
PAYG	pay as you go
RBA	Reserve Bank of Australia
RSA provider	retirement savings account provider
SIS Regulations	*Superannuation Industry (Supervision) Regulations 1994*
TAA 1953	*Taxation Administration Act 1953*
TMC	terminal medical condition

General outline and financial impact

Film tax offsets

Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* to make two changes to the eligibility criteria for accessing the film tax offsets. The minimum qualifying expenditure threshold for the post, digital and visual effects offset is reduced from $5 million to $500,000. The requirement for films with qualifying Australian production expenditure of less than $50 million to have at least 70 per cent of the total of all the company's production expenditure on the film as qualifying Australian production expenditure, in order to qualify for the location offset, is removed.

Date of effect: These amendments apply retrospectively from 1 July 2010. As the changes broaden access to the offsets, this retrospectivity is beneficial for affected taxpayers.

Proposal announced: This measure was announced in the 2010-11 Budget and in the then Assistant Treasurer's and the then Minister for Environment Protection, Heritage and the Arts' joint Media Release No. 089 of 11 May 2010.

Financial impact: This measure is estimated to increase expenditure on the film tax offsets by $6.9 million over the forward estimates.

2010-11	***2011-12***	***2012-13***	***2013-14***
$0.7m	$1.1m	$2.2m	$2.9m

Compliance cost impact: This measure is expected to reduce compliance costs for affected taxpayers.

Amendments to the capital protected borrowings provisions

Schedule 2 to this Bill amends Division 247 of the *Income Tax Assessment Act 1997* and Division 247 of the *Income Tax (Transitional Provisions) Act 1997* to adjust the benchmark interest rate used to determine the cost of capital protection on a capital protected borrowing from the Reserve Bank of Australia's (RBA's) Indicator Lending Rate for Personal Unsecured Loans to the RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points.

Date of effect: The new benchmark interest rate for determining the cost of capital protection on a capital protected borrowing applies to capital protected borrowings entered into or extended after 7.30 pm on 13 May 2008, and applies to capital protected borrowings entered into or extended at or before 7:30 pm on 13 May 2008 from 1 July 2013.

Changes to the benchmark interest rate to the RBA's Indicator Lending Rate for Standard Variable Housing Loans were originally announced on 13 May 2008. Implementation of the announced changes was delayed to address industry concerns that the announced rate did not appropriately reflect the credit risks borne by lenders in capital protected borrowings.

As a result of subsequent consultation with industry, the Government announced in the 2010-11 Budget that the benchmark rate would be revised upwards by 100 basis points to take into account the additional credit risk borne by lenders for the cost of capital protection that is paid on a deferred basis and that the transitional arrangements would be extended to 30 June 2013.

These amendments apply retrospectively to capital protected borrowing entered into, amended or extended after the 2008 Budget time, but they are beneficial to affected taxpayers compared to the benchmark interest rate announced on 13 May 2008.

Proposal announced: These amendments were announced as part of the 2010-11 Budget in the then Assistant Treasurer's Media Release No. 094 of 11 May 2010.

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

2010-11	***2011-12***	***2012-13***	***2013-14***
\$30m	\$40m	\$50m	\$50m

Compliance cost impact: These amendments are expected to have a low transitional compliance cost for issuers of capital protected borrowings but no increase in ongoing compliance costs.

Extend the main residence capital gains tax exemption to compulsory acquisitions of part of a main residence

Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* to extend the main residence capital gains tax (CGT) exemption to a CGT event that is a compulsory acquisition (or similar arrangement) of part of the adjacent land or structure of a main residence, without the compulsory acquisition applying to the dwelling.

Date of effect: This measure applies to CGT events happening on or after the day this Bill receives Royal Assent. However, taxpayers may choose to apply the measure to CGT events relating to them that happen in the period that starts with the 2004-05 income year and ends immediately before this Bill receives Royal Assent.

Proposal announced: This measure was announced in the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs' Media Release No. 019 of 19 March 2009.

Financial impact: This measure will have an unquantifiable (but small) cost to revenue.

Compliance cost impact: These amendments are expected to have a low overall compliance cost impact. This comprises a low implementation impact and no expected change in ongoing compliance costs relative to the affected group.

Deductions in relation to benefits for terminal medical conditions

Schedule 4 to this Bill extends the benefits in section 295-460 of the *Income Tax Assessment Act 1997* to include terminal medical condition benefits. The benefits in section 295-460 are benefits in relation to which complying superannuation funds and retirement savings account providers can claim a deduction.

Date of effect: This measure applies from 16 February 2008. This measure does not adversely affect taxpayers as it provides a tax deduction for certain taxpayers from the application date.

Proposal announced: This measure was announced in the 2010-11 Budget.

Financial impact: This measure will have an ongoing cost to revenue.

2009-10	***2010-11***	***2011-12***	***2012-13***	***2013-14***
–	–$1.5m	–$2m	–$2m	–$2m

Compliance cost impact: Low.

Non-profit sub-entities

Schedule 5 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to allow non-profit sub-entities to access the goods and services tax concessions available to their parent entity, including the higher registration turnover threshold available for non-profit bodies.

Date of effect: This measure applies from the start of the first tax period after Royal Assent.

Proposal announced: This measure was announced in the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs' Media Release No. 042 of 12 May 2009.

Financial impact: Nil.

Compliance cost impact: Low.

Running balance accounts

Schedule 6 to this Bill amends the *Taxation Administration Act 1953* to provide that it will not be mandatory for the Commissioner of Taxation to apply a payment, credit or running balance account surplus against a tax debt that is a business activity statement amount unless that amount is due and payable.

Date of effect: This measure applies on and from 1 July 2011.

Proposal announced: This measure was announced in the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs' Media Release No. 042 of 12 May 2009.

Financial impact: Unquantifiable.

Compliance cost impact: Low.

Education expenses tax offset (uniforms)

Schedule 7 to this Bill amends the *Income Tax Assessment Act 1997* to include school uniforms in the range of eligible expenses for the education expenses tax offset from 1 July 2011.

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

Proposal announced: This measure was announced in the Prime Minister's Media Release of 13 July 2010.

Financial impact: This measure will have these expense impacts:

2010-11	***2011-12***	***2012-13***	***2013-14***
–	$110m	$110m	$120m

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

Chapter 1
Film tax offsets

Outline of chapter

1.1 Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to relax certain eligibility requirements for the film tax offsets, with the aim of enabling more companies to benefit from these offsets.

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

Context of amendments

1.3 Companies may be entitled to one of three refundable tax offsets in relation to qualifying Australian production expenditure they incurred in making films.

1.4 The relevant provisions are contained in Division 376 of the ITAA 1997.

1.5 The three tax offsets are:

- the producer offset, which is available for Australian expenditure incurred in making an Australian film;
- the location offset, which is available for Australian expenditure incurred in making a film; and
- the post, digital and visual effects offset, which is available for Australian expenditure incurred on post, digital and visual effects production for a film.

1.6 The rate of the location and post, digital and visual effects offsets is 15 per cent of qualifying Australian production expenditure. The rate of the producer offset is 40 per cent of qualifying Australian production expenditure for feature films or 20 per cent of qualifying Australian production expenditure otherwise.

1.7 Division 376 of the ITAA 1997 sets out the minimum expenditure thresholds which apply for the offsets and for different types of films. A company's qualifying Australian production expenditure on a film must be at least as much as the relevant threshold for the film to be eligible for a film tax offset.

Post, digital and visual effects offset

1.8 The minimum expenditure threshold for the post, digital and visual effects offset is $5 million (paragraph 376-45(5)(a)).

1.9 The Government has decided to reduce this threshold to $500,000.

Location offset

1.10 The minimum expenditure threshold for the location offset is $15 million (paragraph 376-20(5)(a)).

1.11 An additional requirement applies if the company's qualifying Australian production expenditure on the film is less than $50 million (paragraph 376-20(5)(b)). For such films to be eligible for the location offset, the total of the company's qualifying Australian production expenditure on the film must be at least 70 per cent of the total of all the company's production expenditure on the film.

1.12 No such condition applies to films where the company's qualifying Australian production expenditure is at least $50 million.

1.13 The Government has decided to remove the 70 per cent requirement which applies to films with qualifying Australian production expenditure between $15 million and $50 million. The result will be a single minimum expenditure threshold for the location offset of $15 million.

1.14 For further information refer to the joint Media Release No. 089 of 11 May 2010 from the then Assistant Treasurer and the then Minister for Environment Protection, Heritage and the Arts.

Summary of new law

1.15 A company can be eligible for the post, digital and visual effects offset for a film if it incurs at least $500,000 qualifying Australian production expenditure on that film.

1.16 A company can be eligible for the location offset for a film if it incurs at least $15 million qualifying Australian production expenditure on that film.

Comparison of key features of new law and current law

New law	***Current law***
A company can be eligible for the post, digital and visual effects offset once it has incurred at least $500,000 qualifying Australian production expenditure on post, digital and visual effects work on a film.	A company must incur at least $5 million of qualifying Australian production expenditure on post, digital and visual effects work on a film before it can be eligible for the post, digital and visual effects offset.
A company must incur at least $15 million of qualifying Australian production expenditure to be eligible for the location offset.	A company must incur at least $15 million of qualifying Australian production expenditure to be eligible for the location offset. If the qualifying Australian production expenditure incurred is less than $50 million, then the company must also demonstrate that the amount of qualifying Australian production expenditure represents at least 70 per cent of the total of the company's production expenditure on the film.

Detailed explanation of new law

Post, digital and visual effects offset

1.17 The minimum expenditure threshold for the post, digital and visual effects offset is reduced from $5 million of qualifying Australian production expenditure to $500,000 of qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for the film. ***[Schedule 1, item 7, paragraph 376-45(5)(a)]***

Example 1.1: Company benefits from the lower post, digital and visual effects threshold

Alpha Film is a small visual effects company based in Australia.

In April 2011, Alpha Film performs some 3D animation work for a popular feature film, and incurs $3 million of qualifying Australian production expenditure.

Because Alpha Film's qualifying Australian production expenditure on this film is not less than $500,000, it is eligible for the post, digital and visual effects offset for its work. The amount of the offset available is $450,000 (15 per cent of $3 million).

If the minimum threshold had instead remained at $5 million of qualifying Australian production expenditure, Alpha Film would not have been eligible for the post, digital and visual effects offset.

Location offset

1.18 The minimum expenditure threshold for the location offset is $15 million of qualifying Australian production expenditure. No additional requirements apply regarding the ratio of a company's qualifying Australian production expenditure to all of its production expenditure on the film. The additional requirement which can apply under the existing law is repealed. ***[Schedule 1, item 3]***

1.19 To be eligible for the location offset, a company must have either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film. It is not necessary for the company to be responsible for the entire production. This condition applies to all films and not just to those with at least $50 million of qualifying Australian production expenditure as under the existing law. ***[Schedule 1, item 4, paragraph 376-20(5)(c)]***

1.20 The notes to subsection 376-20(5) and section 376-130 are amended to reflect that the total amount of all production expenditure is no longer relevant to a company's eligibility for the location offset. For the same reason, the note to section 376-140 is deleted. ***[Schedule 1, items 5, 8 and 9]***

1.21 Similarly, paragraph 376-180(1)(d) is amended to reflect the deletion of paragraph 376-20(5)(b). ***[Schedule 1, item 10, paragraph 376-180(1)(d)]***

Example 1.2: Company benefits from removal of the 70 per cent test in the location offset

Omega Film is a company established in Australia to carry out the Australian component of a feature film, *Sigma Sun*. This film is shot in 2011 in both Australia and New Zealand, taking account of the scenery requirements of the script.

Omega Film incurs $80 million of expenditure in making the film, comprising $40 million of qualifying Australian production expenditure and $40 million of other production expenditure.

Because the amount of qualifying Australian production expenditure is at least $15 million, Omega Film is eligible for the location offset for this film. The amount of the offset is $6 million (15 per cent of $40 million).

If the 70 per cent test had continued to apply, Omega Film would not have been eligible for the location offset. This is because its qualifying Australian production expenditure is less than $50 million and the ratio of its qualifying Australian production expenditure to the total of all its production expenditure on the film is less than 70 per cent ($40m / $80m = 50%). Further, because Omega Film is responsible only for the Australian component of the film and not for the entire production, it would have been unable to benefit from the location offset.

1.22 As discussed in paragraph 1.18, there are no longer any requirements relating to the ratio of a company's qualifying Australian production expenditure to the total of its production expenditure on the film. Accordingly, the provision for a company to nominate one individual whose remuneration is to be disregarded for the location offset (that is, their remuneration is not included in either the numerator or the denominator of the fraction used to determine whether the film satisfies the 70 per cent rule) is now redundant, and therefore is repealed. ***[Schedule 1, item 6, section 376-25]***

1.23 The removal of the 70 per cent test also means it is no longer necessary to require that all of a company's production expenditure on a film (including production expenditure incurred outside of Australia) be completed before it can be eligible for the location offset. ***[Schedule 1, items 1, 2 and 11]***

1.24 However, it remains the case that, under paragraph 376-10(1)(b) and subsection 376-230(1), a condition of a company being entitled to the location offset for a film for an income year is that the company's qualifying Australian production expenditure on the film ceased being incurred in that income year.

Example 1.3: A company receives the location offset before the film is completed

Building on Example 1.2, Omega Film finishes shooting the Australian component of *Sigma Sun* in November 2011. That is, Omega Film ceases to incur qualifying Australian production expenditure on the film in the 2011-12 income year. Post-production work on the film is undertaken outside of Australia and is finalised in August 2012. That is, Omega Film ceases to incur production expenditure on the film in the 2012-13 income year.

Omega Film is eligible to receive the location offset in the year it ceases to incur qualifying Australian production expenditure on the film, 2011-12.

Prior to the amendments in this Schedule, Omega Film could only receive the location offset once it had ceased to incur all production expenditure on the film. In this example, this would mean that Omega Film could not receive the offset until the 2012-13 income year.

Application and transitional provisions

1.25 The amendment which relates to the post, digital and visual effects offset applies to films which commence post, digital and visual effects production in Australia on or after 1 July 2010. ***[Schedule 1, subitem 12(2)]***

1.26 The amendments which relate to the location offset apply to films which commence principal photography or production of the animated image in Australia on or after 1 July 2010. ***[Schedule 1, subitem 12(1)]***

1.27 As the changes broaden access to the offsets, this retrospectivity is beneficial for affected taxpayers.

1.28 No transitional provisions are required.

Chapter 2
Amendments to the capital protected borrowings provisions

Outline of chapter

2.1 Schedule 2 to this Bill amends Division 247 of the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) Act 1997) to adjust the benchmark interest rate used to determine, for income tax purposes, the cost of capital protection on a capital protected borrowing.

Context of amendments

2.2 A typical capital protected borrowing product is an arrangement that involves a limited recourse borrowing to fund the purchase of securities. Under the arrangement, the borrower is able to transfer the securities to the lender, in full satisfaction of the obligation to repay the loan principal, if the value of the securities falls below the amount borrowed. This ensures that the borrower's capital is protected against a fall in value of the securities.

2.3 Division 247 of the ITAA 1997 ensures that the part of the expense of a capital protected borrowing attributable to the cost of capital protection is:

- for income tax purposes, treated as separate to and distinct from the amount attributable to interest payable on a borrowing without capital protection; and
- not deductible where this cost is capital in nature.

2.4 Division 247 provides a basis for apportionment — between interest on a borrowing without capital protection and the cost of capital protection — that is relatively simple to use and easy to access, to cover a wide range of capital protected borrowings. The Division uses two methodologies to determine the cost of capital protection for income tax purposes, depending on when the capital protected borrowing arrangement is entered into:

- an interim methodology; and
- an ongoing (pre 2008-09 Budget) methodology.

2.5 Under the interim methodology, the cost of capital protection is the higher of the amount calculated under the Indicator Method and the Percentage Method. The Indicator Method is the total amount (for capital protection and interest) in excess of an amount worked out by applying the relevant indicator lending rate, namely the Reserve Bank of Australia's (RBA's) Indicator Lending Rate for Personal Unsecured Loans — Variable Rate, to the borrowing under the capital protected borrowing. The Percentage Method uses the total amount times a set percentage, depending on the term of the capital protected borrowing. The interim methodology applies to capital protected borrowings entered into or extended at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.

2.6 Under the ongoing (pre 2008-09 Budget) methodology, the cost of capital protection is the amount in excess of the amount worked out by applying the applicable benchmark interest rate (the RBA's Indicator Lending Rate for Personal Unsecured Loans — Variable Rate) to the borrowing under the capital protected borrowing. This methodology applies to capital protected borrowings entered into or extended on or after 1 July 2007 but no later than 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (and not extended or changed after that time).

2.7 Both methodologies use a benchmark interest rate to apportion the expense in a capital protected borrowing between interest on a borrowing that does not embed the cost of capital protection and the cost of capital protection.

2.8 The indicator interest rates are the indicator lending rates published monthly by the RBA in the *RBA Statistical Bulletin* Table F5. They may be accessed via the RBA's website http://www.rba.gov.au.

Summary of new law

2.9 Schedule 2 amends Division 247 of the ITAA 1997 and Division 247 of the IT(TP) Act 1997 so that the applicable RBA's Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points is used as the interest rate to calculate the amount attributable to the cost of capital protection on a capital protected borrowing entered into, extended or amended after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the 2008 Budget time). The cost of capital protection for capital protected borrowings entered into, extended, or amended after the 2008 Budget time is the amount in excess of the amount worked out by applying the applicable RBA's Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points to the borrowing under the capital protected borrowing (this is referred to as the post 2008-09 methodology).

2.10 The RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points is considered to more appropriately reflect the credit risk borne by lenders in capital protected borrowings.

2.11 For the purpose of determining the applicable apportionment methodology, this Bill provides for a transitional arrangement that:

- allows capital protected borrowings entered into or extended *on or after 1 July 2007 and at or before the 2008 Budget time*, and still in existence at the 2008 Budget time, to continue to use the applicable RBA's Indicator Lending Rate(s) for Personal Unsecured Loans — Variable Rate, until 30 June 2013 or the end of the life of the arrangement (provided it is not extended or amended after the 2008 Budget time), whichever is earlier; and

- allows capital protected borrowings entered into or extended *before 1 July 2007 and still in existence at the 2008 Budget time*, to continue to apply the interim methodology until 30 June 2013 or the end of the life of the arrangement (provided it is not extended or amended on or after 1 July 2007), whichever is earlier.

Comparison of key features of new law and current law

New law	*Current law*
For capital protected borrowings entered into or extended after the 2008 Budget time, amounts incurred by the borrower in respect of a capital protected borrowing in excess of the amount worked out by applying the applicable RBA's Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points to the borrowing under the capital protected borrowing, are attributed to the cost of capital protection and are not deductible to the borrower where this cost is capital in nature. For capital protected borrowings entered into or extended on or after 1 July 2007 and at or before the 2008 Budget time, the applicable RBA's Indicator Lending Rate for Personal Unsecured Loans — Variable Rate continues to apply until 30 June 2013 or the end of the life of the arrangement (provided it is not extended or amended after the 2008 Budget time), whichever is earlier. If these capital protected borrowings are still in existence after 30 June 2013, the applicable RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points will apply.	For capital protected borrowings entered into on or after 1 July 2007, amounts incurred by the borrower in respect of a capital protected borrowing in excess of the amount worked out by applying the applicable RBA's Indicator Lending Rate for Personal Unsecured Loans — Variable Rate to a borrowing of the same amount as under the capital protected borrowing — is attributed to the cost of capital protection and is not deductible to the borrower where this cost is on capital account.
For capital protected borrowings entered into or extended at or after 16 April 2003 and before 1 July 2007 the interim methodology applies until 30 June 2013 or the end of the life of the arrangement (providing it is not extended or amended on or after 1 July 2007), whichever is earlier. If these capital protected borrowings are still in existence after 30 June 2013, the applicable RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points will apply.	For capital protected borrowings entered into or extended between 16 April 2003 and 1 July 2007 the interim methodology applies.

Detailed explanation of new law

'Adjusted loan rate'

2.12 Schedule 2 amends Division 247 of the ITAA 1997 so that the applicable RBA's Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points (the ***adjusted loan rate***) is used to calculate the amount attributed to the cost of capital protection on a capital protected borrowing entered into, amended or extended after the 2008 Budget time. ***[Schedule 2, items 1, 4, 7 and 12, section 247-20 of the ITAA 1997 and section 247-85 of the IT(TP) Act 1997]***

2.13 The 'adjusted loan rate' achieves a better allocation of the cost of capital protection and the interest expense of a capital protected borrowing borrower as it better reflects both the credit risk (including credit risks for the cost of capital protection that is paid on a deferred basis) and the administration costs of the issuer of a capital protected borrowing.

2.14 The credit risk borne by the issuer of capital protected borrowings is considered to be more aligned with housing loans rather than personal unsecured loans. The addition of 100 basis points is to reflect the typically relatively small additional credit risk of the issuer for the cost of capital protection that is paid on a deferred basis.

How the 'adjusted loan rate' is used

2.15 The 'adjusted loan rate' is used to determine how much of the interest expense incurred by the borrower under a capital protected borrowing is attributable to the borrowing without the capital protection and therefore may qualify for deduction under general deductibility rules in the income tax law. The rest of the interest expense, that is, the amount in excess of that worked out by applying the 'adjusted loan rate' to the borrowing is taken to be reasonably attributable to the cost of protecting the capital and taken to be a put option premium. ***[Schedule 2, item 7, subsections 247-20(4), (5) and (5A) of the ITAA 1997]***

Capital protected borrowing is at a fixed rate for all or part of the term

2.16 Where a capital protected borrowing is at a fixed rate for the full term of the capital protected borrowing, the applicable 'adjusted loan rate' is the RBA's Indicator Lending Rate for Standard Variable Housing Loans at the time of the first amount incurred by the borrower under the capital protected borrowing during the term of the capital protected borrowing, plus 100 basis points. ***[Schedule 2, item 7, subsections 247-20(4) and (5) of the ITAA 1997]***

2.17 Where a capital protected borrowing is at a fixed rate for part of the term of the capital protected borrowing and the fixed rate is applicable to the capital protected borrowing for all or part of the income year, the applicable 'adjusted loan rate' is the RBA's Indicator Lending Rate for Standard Variable Housing Loans at the time of the first amount incurred by the borrower under the capital protected borrowing during that part of the term of the capital protected borrowing (which may be before the start of the income year), plus 100 basis points.

Capital protected borrowing is at a variable rate for all or part of the term

2.18 Where a capital protected borrowing is at a variable rate for all or part of the term of the capital protected borrowing and a variable rate is applicable to the capital protected borrowing for all or part of the income year, the applicable 'adjusted loan rate' is the average of the RBA's Indicator Lending Rates for Standard Variable Housing Loans published during the parts of the income year when the capital protected borrowing is at a variable rate, plus 100 basis points. ***[Schedule 2, item 7, subsections 247-20(5) and (5A) of the ITAA 1997]***

Example 2.1: Capital protected borrowing entered into after 13 May 2008

David enters into a variable rate capital protected borrowing on 1 July 2008 under which he borrows $100,000 to buy shares. The capital protected borrowing has a term of one year, with no option to extend the loan. The applicable 'adjusted loan rate' for the capital protected borrowing for the 2008-09 income year is the average of the monthly RBA's Indicator Lending Rates for Standard Variable Housing Loans plus 100 basis points from 1 July 2008 to 30 June 2009. The 'adjusted loan rate' for the relevant period is 8.279 per cent.

As the capital protected borrowing is at a variable rate for the term of the capital protected borrowing, David applies the average 'adjusted loan rate' to determine the amount of interest expense attributable to capital protection.

Time period	***RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points (adjusted loan rate)***
July 2008	10.60%
August 2008	10.60%
September 2008	10.35%
October 2008	9.35%

Time period	***RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points (adjusted loan rate)***
November 2008	8.75%
December 2008	7.85%
January 2009	7.85%
February 2009	6.85%
March 2009	6.85%
April 2009	6.75%
May 2009	6.75%
June 2009	6.80%
Average	**8.279%**

Transitional provisions

Capital protected borrowings entered into or extended on or after 16 April 2003 and before 1 July 2007

2.19 Capital protected borrowings entered into or extended at or after 9.30 am on 16 April 2003 and before 1 July 2007 (the interim period) that have been subject to the interim methodology contained in the IT(TP) Act 1997 continue to be subject to the interim methodology until 30 June 2013 or the end of the life of the arrangement (provided it is not extended or amended on or after 1 July 2007), whichever is earlier. ***[Schedule 2, item 12, sections 247-80 and 247-85 of the IT(TP) Act 1997]***

2.20 Such capital protected borrowings still in existence on 1 July 2013 will become subject to the post 2008-09 Budget methodology using the applicable 'adjusted loan rate' rather than the interim methodology, from 1 July 2013. ***[Schedule 2, item 12, section 247-80 of the IT(TP) Act 1997]***

Capital protected borrowings entered into or extended on or after 1 July 2007 and at or before the 2008 Budget time

2.21 Capital protected borrowings entered into or extended on or after 1 July 2007 and at or before the 2008 Budget time continue to be subject to the ongoing (pre 2008-09 Budget) methodology applying the applicable RBA's Indicator Lending Rate(s) for Personal Unsecured Loans — Variable Rate to attribute the cost of capital protection, until 30 June 2013 or the end of the life of the arrangement (provided it is not extended or amended after the 2008 Budget time), whichever is earlier. ***[Schedule 2, item 12, sections 247-75 to 247-85 of the IT(TP) Act 1997]***

2.22 Such capital protected borrowings still in existence on 1 July 2013 will apply the applicable ‘adjusted loan rate’ to attribute the cost of capital protection rather than the RBA’s Indicator Lending Rate for Personal Unsecured Loans — Variable Rate, from 1 July 2013. ***[Schedule 2, item 12, section 247-80 of the IT(TP) Act 1997]***

2.23 The applicable RBA’s Indicator Lending Rate(s) for Personal Unsecured Loans — Variable Rate continues to apply to capital protected borrowings (or arrangements in respect of unlisted securities) entered into during the interim period that are extended after 1 July 2007 but at or before the 2008 Budget time (to the extent of such an extension).

2.24 However, if these capital protected borrowings are still in existence after 30 June 2013 the applicable ‘adjusted loan rate’ will apply after 30 June 2013. ***[Schedule 2, item 12, section 247-80 of the IT(TP) Act 1997]***

Example 2.2: Capital protected borrowings entered into on or after 1 July 2007 and at or before the 2008 Budget time, and in existence on 1 July 2013

> Alissa enters into a capital protected borrowing on 1 July 2007. The capital protected borrowing has a term of eight years. The capital protected borrowing has not been amended or extended.
>
> Alissa applies the applicable RBA’s Indicator Lending Rate for Personal Unsecured Loans — Variable Rate to determine the amount of interest expense attributable to capital protection up to 30 June 2013. From 1 July 2013 to the end of the capital protected borrowing on 30 June 2015, the applicable ‘adjusted loan rate’ will be applied to attribute the cost of capital protection.

Capital protected borrowings entered into at or before the 2008 Budget time, but extended or amended after the 2008 Budget time

2.25 Capital protected borrowings entered into at or before the 2008 Budget time (either during the interim period or on or after 1 July 2007), but amended or extended after the 2008 Budget time are subject to the post 2008-09 Budget methodology applying the applicable ‘adjusted loan rate’ to attribute the cost of capital protection, from the time of the extension or amendment or the start of 1 July 2013, whichever is earlier. ***[Schedule 2, item 12, section 247-85 of the IT(TP) Act 1997]***

2.26 Where a capital protected borrowing is at a fixed rate when a post 2008 Budget time amendment or extension occurs, from the time the amendment or extension took effect or 1 July 2013 (whichever is earlier), use the monthly RBA's Indicator Lending Rate for Standard Variable Housing Loans published at the first time an amount incurred by the borrower under the capital protected borrowing while the capital protected borrowing is at that fixed rate, plus 100 basis points. ***[Schedule 2, item 12, subsection 247-85(3) of the IT(TP) Act 1997]***

2.27 Where a capital protected borrowing is at a variable rate when a post 2008 Budget time amendment or extension occurs, from the time the amendment or extension took effect or 1 July 2013 (whichever is earlier), use the average of the monthly RBA's indicator Lending Rates for Standard Variable Housing Loans (as published) during those parts of the income year when the capital protected borrowing is at a variable rate, plus 100 basis points. ***[Schedule 2, item 12, subsection 247-85(4) of the IT(TP) Act 1997]***

Example 2.3: Capital protected borrowings entered into on or after 1 July 2007 and at or before the 2008 Budget time, and extended after the 2008 Budget time

James entered into a capital protected borrowing on 1 August 2007. The capital protected borrowing has a term of one year, with an option to extend for another six months which may be exercised at any time during the term of the capital protected borrowing. James exercised the option to extend on 30 May 2008. The extension took effect on 1 August 2008.

James applies the applicable RBA's Indicator Interest Rate for Personal Unsecured Loans — Variable Rate to determine the amount of interest expense attributable to capital protection from 1 August 2007 to 30 June 2008 for the 2007-08 income year. For the 2008-09 income year, James applies the applicable RBA's Indicator Interest Rate for Personal Unsecured Loans — Variable Rate from 1 July 2008 to 31 July 2008 and the applicable 'adjusted loan rate' from 1 August 2008 to 30 January 2009.

If the capital protected borrowing is a fixed rate borrowing for the term of the borrowing, from 1 August 2008, the applicable 'adjusted loan rate' is the monthly RBA's Indicator Lending Rate for Standard Housing Loans as at August 2007 plus 100 basis points.

If the capital protected borrowing is a variable rate borrowing for the term of the borrowing, from 1 August 2008, the applicable 'adjusted loan rate' is the average of the monthly RBA's Indicator lending Rates for Standard Housing Loans from July 2008 to January 2009, plus 100 basis points.

2.28 The transitional arrangements discussed above are set out in broad terms in tabular form below.

Table 2.1: Original capital protected borrowing entered into between 16 April 2003 and 30 June 2007

Time period	***Applicable interest rate***
Original capital protected borrowing	Interim methodology
Amendment/extension made between 16 April 2003 and 30 June 2007	Interim methodology
Amendment/extension made between 1 July 2007 and the 2008 Budget time	Applicable RBA’s Indicator Lending Rate(s) for Personal Unsecured Loans — Variable Rate
Amendment/extension made on or after the 2008 Budget time	Applicable RBA’s Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points
Post 30 June 2013	Applicable RBA’s Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points

Table 2.2: Original capital protected borrowing entered into between 1 July 2007 and the 2008 Budget time

Time period	***Applicable interest rate***
Original capital protected borrowing	Applicable RBA’s Indicator Lending Rate(s) for Personal Unsecured Loans — Variable Rate
Amendment/extension made between 1 July 2007 and the 2008 Budget time	Applicable RBA’s Indicator Lending Rate(s) for Personal Unsecured Loans — Variable Rate
Amendment/extension made after the 2008 Budget time	Applicable RBA’s Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points
Post 30 June 2013	Applicable RBA’s Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points

Table 2.3: Original capital protected borrowing entered into post the 2008 Budget time

Time period	***Applicable interest rate***
Original capital protected borrowing, and subsequent amendments/extensions	Applicable RBA’s Indicator Lending Rate(s) for Standard Variable Housing Loans plus 100 basis points

Consequential amendments

2.29 Given that the amendments contained in this Schedule generally apply from the 2008 Budget time, a consequential amendment is inserted to provide a period of two years from the date this Bill receives Royal Assent for the Commissioner of Taxation to amend an assessment that is issued before the date of Royal Assent to give effect to the amendments contained in this Schedule. ***[Schedule 2, subclause 4(1)]***

2.30 Changes to the benchmark interest rate to the RBA's Indicator Lending Rate for Standard Variable Housing Loans were originally announced on 13 May 2008. Implementation of the announced changes was delayed to address industry concerns that the announced rate did not appropriately reflect the credit risks borne by lenders in capital protected borrowings.

2.31 As a result of subsequent consultation with industry, the Government announced in the 2010-11 Budget that the benchmark rate would be revised upwards by 100 basis points to take into account the additional credit risk borne by lenders for the cost of capital protection that is paid on a deferred basis and that the transitional arrangements would be extended to 30 June 2013.

2.32 These amendments apply retrospectively to capital protected borrowing entered into, amended or extended after the 2008 Budget time, but they are beneficial to affected taxpayers compared to the benchmark interest rate announced on 13 May 2008.

2.33 Other consequential amendments are made to ensure appropriate referencing and asterisking. ***[Schedule 2, items 2, 3, 5, 6 and 8, section 247-20 of the ITAA 1997; Schedule 2, items 9 to 11, Division 247 and section 247-5 of the IT(TP) Act 1997]***

Chapter 3
Extend the main residence capital gains tax exemption to compulsory acquisitions of part of a main residence

Outline of chapter

3.1 Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to extend the main residence capital gains tax (CGT) exemption to a CGT event that is a compulsory acquisition or other involuntary realisation (similar arrangement). The extended exemption will apply where part of a main residence, the part being some or all of its adjacent land or structure, is compulsorily acquired (or subject to a similar arrangement) without the dwelling itself also being compulsorily acquired (or subject to the similar arrangement).

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

Context of amendments

Compulsory acquisition CGT roll-over

3.3 The compulsory acquisition CGT roll-over allows a taxpayer to reduce or disregard a capital gain made as a result of a compulsory acquisition (or a negotiated sale made 'in the shadow' of a compulsory acquisition). The conditions and consequences of the compulsory acquisition CGT roll-over are set out in Subdivision 124-B.

3.4 If the taxpayer receives monetary compensation, the roll-over requires the taxpayer to purchase a replacement asset and use that asset for the same or a similar purpose as the taxpayer used the original asset (subsection 124-75(4)).

3.5 Although this requirement may be reasonable when an entire asset is compulsorily acquired, it is impractical for the compulsory acquisition of part of a main residence, the part being some or all of its adjacent land or structure. In many circumstances, a realistic replacement asset may be impossible or difficult to find.

CGT main residence exemption

3.6 The CGT main residence exemption disregards any capital gain or capital loss that arises from the disposal or other realisation of a taxpayer's dwelling and adjacent land up to a total of two hectares, provided the adjacent land is used primarily for private or domestic purposes.

3.7 The exemption does not apply to capital gains or losses made from adjacent land or structures (such as a garage) where the relevant CGT event does not also happen to the dwelling. For example, if a taxpayer chooses to subdivide their property and sell the vacant lot, the CGT main residence exemption will not apply to that disposal.

3.8 While this treatment is appropriate for voluntary disposals of part of a taxpayer's main residence, it is inappropriate when the taxpayer has no choice over the disposal or other realisation. Given that capital gains made on a taxpayer's main residence are CGT exempt, capital gains made on compulsory acquisitions of part of a taxpayer's main residence should also be CGT exempt.

3.9 Other involuntary events such as the compulsory ending of some of the ownership rights relating to the adjacent land or structure of a main residence or the compulsory creation of rights over the adjacent land or structure of a main residence should also be CGT exempt.

Summary of new law

3.10 These amendments will allow a taxpayer to exempt any capital gain or loss made in relation to a compulsory acquisition (or similar arrangement) of part of the taxpayer's main residence, the part being its adjacent land or structure, without the dwelling itself also being compulsorily acquired (or subject to the similar arrangement).

3.11 A partial CGT exemption will apply where the dwelling was:

- not used as a main residence during all of the relevant ownership period; or
- used for income-producing purposes.

3.12 Subdivision 124-B, which provides an optional CGT roll-over for certain compulsory acquisitions, may also apply to a particular arrangement to which the new compulsory acquisition exemption applies.

Subdivision 124-B may apply to that arrangement to the extent that the new compulsory acquisition exemption provisions do not apply.

Comparison of key features of new law and current law

New law	*Current law*
A taxpayer will be able to disregard a capital gain or capital loss where there is a compulsory acquisition, or similar arrangement, of part (being adjacent land or structure) of the taxpayer's main residence without the dwelling itself also being compulsorily acquired or subject to the similar arrangement. A taxpayer may be able to exempt only part of a capital gain or capital loss where there is such a compulsory acquisition if the dwelling was not always used as a main residence or was used for income-producing purposes.	A taxpayer may not access the main residence CGT exemption where there is a compulsory acquisition, or similar arrangement, of part of the taxpayer's main residence, the part being its adjacent land or structure, without the dwelling itself also being compulsorily acquired or subject to the similar arrangement.

Detailed explanation of new law

3.13 Schedule 3 inserts new provisions to extend the CGT main residence exemption to a compulsory acquisition (or similar arrangement) of part of a taxpayer's main residence, the part being some or all of its adjacent land or structure, without the dwelling itself being compulsorily acquired (or subject to the similar arrangement).

3.14 The new provisions provide that a taxpayer can disregard a capital gain or capital loss from the CGT event resulting from a compulsory acquisition (or similar arrangement) that happens only to adjacent land or an adjacent structure where the relevant dwelling is the taxpayer's main residence. The guide to the main residence exemption provisions is amended to include appropriate references to the new provisions and a note is inserted in subsection 118-110(1) and section 118-165 pointing out that there is a separate rule for a CGT event that is a compulsory acquisition (or similar arrangement) happening to a dwelling's adjacent land but not to the dwelling itself. ***[Schedule 3, items 1 to 3 and 5, sections 118-100 and 118-105, subsection 118-110(1) and note, and section 118-165 and note]***

Adjacent land and adjacent structures redefined

3.15 These amendments repeal section 118-120, which extends the basic main residence exemption to adjacent land and structures, such as a garage or storeroom, that are associated with the dwelling. ***[Schedule 3, item 4, section 118-120]***

3.16 These amendments substitute a new definition of 'adjacent land' and a new definition of 'adjacent structure', which extend the basic main residence exemption to adjacent land and adjacent structures respectively. The new definitions retain the characteristics of the old definitions but present them in a different way allowing 'adjacent land' and 'adjacent structure' to be defined terms. ***[Schedule 3, item 4, subsections 118-120(1), (2), (5) and (6), and items 7 and 8, definition of 'adjacent land' and 'adjacent structure' in subsection 995-1(1)]***

3.17 The maximum exempt area of adjacent land that the existing main residence exemption can apply to is still two hectares less the area of land immediately under the dwelling. ***[Schedule 3, item 4, subsection 118-120(3)]***

3.18 However, a new provision is inserted to deal with situations where a taxpayer disposes of, or otherwise realises, their main residence and the taxpayer has previously disregarded a capital gain or capital loss for a compulsory acquisition (or similar arrangement) of adjacent land under the new exemption. This new provision applies only in particular circumstances but, where it does apply, the maximum area of adjacent land covered by the main residence exemption for the later realisation of the main residence is reduced (paragraphs 3.20 and 3.21 identify the particular circumstances). The reduced area is called the 'maximum exempt area', a defined term (see paragraphs 3.30 to 3.33 for how to calculate this area). ***[Schedule 3, item 4, subsection 118-120(4), and item 9, definition of 'maximum exempt area' in subsection 995-1(1)]***

Compulsory acquisitions of adjacent land only

3.19 Guide material is inserted to provide a sketch of the new provisions that allow a taxpayer to disregard a capital gain or capital loss for a compulsory acquisition of adjacent land without a compulsory acquisition of the relevant dwelling. ***[Schedule 3, item 6, section 118-240 and note]***

3.20 These amendments specify the conditions that must exist if a taxpayer is able to disregard a capital gain or capital loss from a CGT event in relation to land ('the exempt land') or their ownership interest in it. The conditions largely mirror those for the broader main residence exemption, but with some additional features to cover compulsory acquisitions or similar arrangements. The conditions are:

- the taxpayer is an individual;
- the exempt land is all or part of a dwelling's adjacent land at the time of the CGT event;
- the CGT event does not happen in relation to the dwelling or the taxpayer's ownership interest in the dwelling;
- one of the following applies:
  - the dwelling was the taxpayer's main residence during some or all of the period they owned it;
  - the taxpayer's ownership interest in the dwelling passed to them as a beneficiary in a deceased estate; or
  - the taxpayer owns the ownership interest in the dwelling as the trustee of a deceased estate;
- the new section dealing with compulsory acquisitions of adjacent land applies to the CGT event and the exempt land; and
- the sum of the following is two hectares or less:
  - the area of all of the dwelling's adjacent land at the time of the CGT event;
  - the area of land immediately under the dwelling; and
  - for each earlier disregarding of a capital gain or capital loss under this exemption, the area of adjacent land exempted at the time of the earlier CGT event if that involved reducing the area of the dwelling's adjacent land at the time of that earlier CGT event.

[Schedule 3, item 6, subsection 118-245(1)]

3.21 The reference to 'CGT event' ensures that the new exemption can apply to all the relevant CGT events. As with the main residence exemption, because the land has to be 'adjacent land' the exemption applies to the extent that the land was used primarily for private or domestic purposes in association with the dwelling. ***[Schedule 3, item 4, subsection 118-120(2) and item 6, subsection 118-245(1)]***

3.22 Where a taxpayer satisfies all of the conditions in paragraph 3.20, any capital gain or capital loss arising from the compulsory acquisition (or similar arrangement) of adjacent land without the dwelling is automatically disregarded. ***[Schedule 3, item 6, subsection 118-245(1)]***

3.23 The last condition in paragraph 3.20 requires the sum of the following areas to be two hectares or less:

- all of the adjacent land at the time of the current compulsory acquisition (or similar arrangement);
- the land immediately under the dwelling; and
- any land that was subject to the new compulsory acquisition exemption for adjacent land or an adjacent structure for an earlier compulsory acquisition resulting in a reduction in the area of the dwelling's adjacent land.
  - – The formulation of the last component means that taxpayers will not be disadvantaged by double counting of the same area of land where, for example, a compulsory easement is created over land but the taxpayer retains ownership of the land affected by the easement albeit with diminished rights.

[Schedule 3, item 6, paragraph 118-245(1)(f)]

Example 3.1

Assume all of the transactions in this example occur after the legislation receives Royal Assent.

Nadine owns a main residence on two hectares of land, which includes the area of land immediately under the dwelling. The dwelling has always been Nadine's main residence while she owned it and she has never used it for income producing purposes and has always used the adjacent land for private or domestic purposes.

The State government compulsorily acquires 0.2 hectares of the adjacent land but does not acquire the dwelling. This is the only compulsory acquisition (or similar arrangement) that has happened to Nadine's main residence while she has owned it.

Nadine satisfies all of the conditions outlined in paragraph 3.20 and any capital gain or capital loss relating to the compulsory acquisition of the adjacent land is automatically disregarded because the sum of the relevant areas specified in the last condition listed in paragraph 3.20 is not more than two hectares.

3.24 Where a taxpayer satisfies all of the conditions in paragraph 3.20 apart from the last condition (that is, where the sum of the relevant areas of land is more than two hectares), there is no longer an automatic disregarding of any capital gain or capital loss arising from the compulsory acquisition (or similar arrangement). ***[Schedule 3, item 6, subsection 118-245(2)]***

3.25 In these circumstances, the taxpayer can choose to disregard so much of the capital gain or capital loss that relates to an area of adjacent land that is compulsorily acquired (or subject to the similar arrangement) that is not more than the maximum exempt area (see paragraphs 3.28 to 3.33 for a discussion of maximum exempt area). The choice is provided because applying the new exemption reduces the area of a dwelling's adjacent land that could be covered under a later application of the new exemption or the main residence exemption itself.

- The choice is also consistent with a taxpayer being able to choose, under the main residence exemption, the area of adjacent land to which to apply the exemption where the total area of adjacent land exceeds two hectares.

[Schedule 3, item 6, subsection 118-245(2)]

3.26 This choice is provided in a separate provision to the one that contains the conditions outlined in paragraph 3.20. However, all of the conditions in that paragraph apart from the last still have to be satisfied for the taxpayer to be able to make such a choice. This means that, among other things, the exempt land must be land that is adjacent land to the relevant dwelling at the time of the relevant CGT event and the new section listing the types of compulsory acquisitions (or similar arrangements) must apply to the CGT event and the exempt land. ***[Schedule 3, item 6, section 118-245]***

Example 3.2

Assume all of the transactions in this example occur after the legislation receives Royal Assent.

Jamal owns a main residence on 1.8 hectares of land, which includes the area of land immediately under the dwelling. The dwelling has always been Jamal's main residence while he owned it and he has never used the dwelling for income producing purposes and has always used the adjacent land for private or domestic purposes.

The State government compulsorily acquires 0.3 hectares of the adjacent land but does not acquire the dwelling. This is the second such compulsory acquisition that has happened while Jamal has owned the main residence.

On the first occasion, the State government acquired 0.5 hectares of adjacent land but did not acquire the dwelling. Jamal did not satisfy the last condition in paragraph 3.20 in relation to this compulsory acquisition because the sum of the areas specified in that condition was 2.3 hectares so there was no automatic disregarding of the capital gain or capital loss arising from that compulsory acquisition. However, Jamal chose to apply the new exemption to the resultant capital gain or capital loss. Jamal could disregard all of the capital gain or capital loss if the 0.5 hectares is within his maximum exempt area.

For the second compulsory acquisition the sum of the areas specified in paragraph 3.20 is again 2.3 hectares being the sum of the area of the current adjacent land and the area of land immediately under the dwelling (1.8 hectares) and the area of adjacent land at the time of the earlier compulsory acquisition covered by the new exemption (0.5 hectares).

Again there is no automatic disregarding of the capital gain or capital loss. Jamal chooses to apply the new exemption to the capital gain or capital loss. Therefore, Jamal can disregard all of the capital gain or capital loss arising from the second compulsory acquisition if the 0.3 hectares of land is within his maximum exempt area.

3.27 If the sum of the areas of adjacent land, land immediately under the dwelling and any land previously subject to the new exemption for adjacent land at the time of a compulsory acquisition is two hectares or less, the taxpayer is not provided with a choice because they would have less than two hectares of adjacent land that could be covered under a later application of the new exemption or the main residence exemption itself (unless they acquired more adjacent land, which would be rare).

‘Maximum exempt area’

3.28 Paragraph 3.18 introduced the concept of ‘maximum exempt area’ in relation to the main residence exemption. Where ‘maximum exempt area’ applies, the maximum area of adjacent land that can be covered by the main residence exemption is reduced.

3.29 Paragraphs 3.20 and 3.24 outlined the conditions where maximum exempt area applies to a dwelling’s adjacent land that is compulsorily acquired (or subject to a similar arrangement) without the dwelling being compulsorily acquired (or subject to the similar arrangement).

3.30 If maximum exempt area applies, the amount of a dwelling's adjacent land that may be exempted under the new exemption for compulsory acquisitions (or similar arrangements) or under the main residence exemption if the relevant CGT event also applies to the dwelling, and is one of the CGT events listed in subsection 118-110(2), is calculated using a new method statement inserted by these amendments. ***[Schedule 3, item 4, subsection 118-120(4) and item 6, section 118-255]***

3.31 Where the maximum exempt area applies to an application of the new exemption or the main residence exemption, the maximum area of a dwelling's adjacent land that is available to be covered is two hectares less the total of the area of:

- adjacent land at the time of each earlier application of the new exemption that was covered by such earlier applications (that is, the total of the exempt land under each earlier application); and
- land immediately under the dwelling.

[Schedule 3, item 6, section 118-255]

3.32 However, areas of (then) adjacent land covered by the new exemption at the time of each earlier application are included in the total area of land to be subtracted from the two hectares (less the area of land immediately under the dwelling) only where the taxpayer lost rights to the substantial use and enjoyment of that land either completely or for at least 10 years. ***[Schedule 3, item 6, section 118-255]***

3.33 This rule ensures that taxpayers are not disadvantaged by having to reduce their maximum exempt area where they have lost only insubstantial rights to the use and enjoyment of the exempt land. This means that such land could be covered by a later application of the new exemption or the main residence exemption. It also ensures that taxpayers are similarly not disadvantaged where they lose substantial rights to the use and enjoyment of the exempt land but only for a short term such as under a short-term lease. Setting a 10-year limit reduces the opportunity for taxpayers to exploit this aspect of the new exemption by selling land via granting long-term leases rather than selling the land.

- Where taxpayers lose substantial rights to the use and enjoyment of the exempt land for at least 10 years, they have to reduce the maximum exempt area by the amount of adjacent land exempted under the new exemption.

[Schedule 3, item 6, section 118-255]

Example 3.3

Further to Example 1.2.

As noted at the end of Example 1.2, Jamal chooses to apply the new exemption to the capital gain or capital loss arising from the second compulsory acquisition. Jamal can disregard all of the capital gain or capital loss if the 0.3 hectares of land is within his maximum exempt area.

Jamal's maximum exempt area is two hectares *less* the sum of the total area of land that was previously compulsorily acquired and was exempted under the new exemption and the area of land immediately under the dwelling.

Because the first compulsory acquisition involved the permanent acquisition of rights to the substantial use and enjoyment of the relevant land, Jamal has to subtract 0.5 hectares from two hectares to calculate his maximum exempt area for the second compulsory acquisition and then subtract the area of land immediately under the dwelling, which is 0.03 hectares.

Therefore, Jamal's maximum exempt area for the second compulsory acquisition is 1.47 hectares (two hectares *less* 0.5 hectares *less* 0.03 hectares). As 0.3 hectares is not greater than 1.47 hectares, Jamal can disregard all of the capital gain or capital loss in relation to the compulsory acquisition of the 0.3 hectares of adjacent land.

For completeness, Jamal's maximum exempt area for the first compulsory acquisition in Example 1.2 was 1.97 hectares (two hectares *less* 0.03 hectares). As 0.5 hectares is not greater than 1.97 hectares, Jamal could disregard all of the capital gain or loss in relation to the compulsory acquisition of the 0.5 hectares in Example 1.2.

Example 3.4

Assume all of the transactions in this example occur after the legislation receives Royal Assent.

Indira owns a main residence on four hectares of land, which includes the area of land immediately under the dwelling (0.05 hectares). The dwelling has always been Indira's main residence while she owned it and she has never used the dwelling for income producing purposes and has always used the adjacent land for private or domestic purposes.

Indira wants to sell her main residence. Four years earlier the State government compulsorily acquired subsurface land under her main residence. The subsurface land mapped to 0.1 hectares of surface land. However, Indira did not use or enjoy the subsurface land and the compulsory acquisition did not result in Indira losing rights to the substantial use and enjoyment of the surface land.

At the time of the compulsory acquisition of the subsurface land, the sum of the areas specified in paragraph 3.20 was four hectares, being the sum of the area of the then adjacent land and the area of land immediately under the dwelling as there had not been any earlier applications of the new exemption in relation to adjacent land to Indira's main residence.

This means that there was no automatic disregarding of the capital gain Indira made on the adjacent land but Indira chose to apply the new exemption to the capital gain. Indira could disregard all of the capital gain because 0.1 hectares is not greater than her maximum exempt area of 1.95 hectares.

Two years after the first compulsory acquisition, the State government compulsorily acquired 0.2 hectares of land that was adjacent land to her main residence.

At the time of the second compulsory acquisition, the sum of the areas specified in paragraph 3.20 was again four hectares being the sum of the area of the then adjacent land and the area of land immediately under the dwelling as the earlier compulsory acquisition did not result in a reduction of the area of adjacent land.

When Indira calculated her maximum exempt area at the time of the second compulsory acquisition, she did not have to subtract any area from two hectares (other than the area of land immediately under her dwelling of 0.05 hectares) because the first compulsory acquisition did not result in Indira losing rights to the substantial use and enjoyment of her main residence's adjacent land.

So Indira's maximum exempt area for the second compulsory acquisition was 1.95 hectares (two hectares *less* 0.05 hectares). Again Indira chose to apply the new exemption. Because 0.2 hectares is not greater than 1.95 hectares, Indira can disregard all of the capital gain made on the compulsory acquisition of the adjacent land.

When Indira sells her main residence, the sum of the areas specified in paragraph 3.20 will be four hectares being the sum of the area of the current adjacent land (3.75 hectares), the area of land immediately under the dwelling (0.05 hectares) and the area of adjacent land at the time of the second compulsory acquisition covered by the new exemption that resulted in a reduction in Indira's adjacent land (0.2 hectares).

When she sells her main residence Indira has to calculate her maximum exempt area because Indira previously *chose* to disregard the capital gain made on the 0.2 hectares of the then adjacent land under the new exemption. If the capital gain had been automatically disregarded, Indira would not have to calculate her maximum exempt area.

Indira's maximum exempt area at the time she sells her main residence is 1.75 hectares (two hectares *less* 0.2 hectares *less* 0.05 hectares). Therefore, the maximum area of the 3.75 hectares of adjacent land that can be covered by the main residence exemption is 1.75 hectares.

Compulsory acquisition or other event

3.34 A key requirement for a taxpayer to be eligible for the new exemption is that there must be a CGT event involving a compulsory acquisition or similar arrangement happening to a main residence's adjacent land (or adjacent structure) but not to the dwelling itself. The compulsory acquisition or similar arrangement must be by, or result from, action by an Australian government agency (that is, by the Australian, a State or a Territory government or by an authority of the Australian, a State or a Territory government) or non-government entity authorised to do so under a power conferred by an Australian law. ***[Schedule 3, item 6, paragraph 118-245(1)(e) and section 118-250]***

3.35 A compulsory acquisition or similar arrangement also includes an event that occurs in the shadow of a compulsory acquisition (where the acquisition occurs after a notice was served by, or on behalf, of an entity, including an Australian government agency, inviting negotiations with a view to the entity acquiring the adjacent land by agreement). ***[Schedule 3, item 6, paragraphs 118-250(1)(b), (2)(b) and (3)(b) and notes]***

3.36 The notice needs to inform the recipient that if the negotiations are unsuccessful, the adjacent land would be compulsorily acquired, or compulsorily subject to the similar arrangement, by the entity. It is also a requirement that the compulsory acquisition or similar arrangement would have been under a power of compulsory acquisition or ability to enforce a similar arrangement conferred by an Australian law. ***[Schedule 3, item 6, paragraphs 118-250(1)(b), (2)(b) and (3)(b)]***

3.37 'Similar arrangement' for the purpose of these extended rules involves any of the following:

- the taxpayer's ownership interest in the land (the exempt land) being compulsorily cancelled (however described) or varied (however described) by an Australian government agency or an entity empowered to do so under an Australian law;

- the taxpayer's ownership interest in the exempt land being surrendered (however described) or varied (however described) under the shadow of compulsion;

- an interest or right in, or relating to, the taxpayer's exempt land being compulsorily conferred on an Australian government agency or an entity under a power conferred by an Australian law;

- the taxpayer conferring on an entity an interest in or right in or relating to the taxpayer's exempt land under the shadow of compulsion; or

- where the taxpayer's ownership interest in the exempt land was conferred on them by an Australian government agency for a limited, but renewable period of operation, and that ownership interest was not renewed by that agency (for example, a Crown lease).

[Schedule 3, item 6, subsections 118-250(2) to (4)]

3.38 The use of the words in parentheses 'however described' means in the cancellation instance that, if a taxpayer's ownership interest in exempt land is compulsorily terminated or revoked, it will be taken to have the same effect for the amendments in this Schedule as if the interest had been compulsorily cancelled. ***[Schedule 3, item 6, subsection 118-250(2)]***

3.39 A compulsory acquisition may occur where, for example, a specially constituted State or Territory government authority acquires subsurface land in a residential area for constructing an underground road transport tunnel. These activities are governed by the applicable legislation permitting compulsory acquisitions of land or resumptions of land in the various State and Territory jurisdictions, that is, the activities are governed by Australian law. The amendments do not provide an exemption for the compulsory acquisition, or similar arrangement, of adjacent land or a structure where the dwelling to which they relate is outside Australia. ***[Schedule 3, item 6, section 118-250]***

3.40 Examples of a similar arrangement include the compulsory creation of an easement over a dwelling's adjacent land and the compulsory variation of rights owned by the taxpayer in relation to a dwelling's adjacent land. These similar arrangements may also be voluntarily entered into by the owner of the adjacent land if they do so under the shadow of compulsion. ***[Schedule 3, item 6, subsections 118-250(2) and (3)]***

Partial exemption for disposal of adjacent land or structure only

3.41 Where there is a compulsory acquisition (or similar arrangement) of adjacent land without the dwelling being compulsorily acquired (or subject to the similar arrangement), a partial CGT exemption applies to the extent that the dwelling was:

- not always a main residence for the relevant period; or
- used for the purpose of producing assessable income during the relevant period.

[Schedule 3, item 6, subsection 118-260(1)]

3.42 A partial exemption adjustment is required if one or both of the factors listed in the previous paragraph applies to the taxpayer's dwelling. A taxpayer applies a partial exemption in these circumstances by increasing the amount of the capital gain or capital loss the taxpayer would have made before applying the partial exemption rule by an amount that is reasonable having regard to the two factors listed in the previous paragraph.

- The 'amount' of a capital gain or capital loss includes a nil amount due to the general income tax law definition of 'amount' in subsection 995-1(1).

[Schedule 3, item 6, subsection 118-260(1)]

3.43 In determining what is a reasonable increase in the capital gain or capital loss for a partial exemption, the taxpayer should have regard to the principles applying for a partial exemption in Subdivision 118-B, assuming the taxpayer disposed of their main residence. In particular, the rules in sections 118-185, 118-190, 118-192, 118-195, 118-200, 118-205 and 118-210 are useful for working out a partial exemption for a range of situations covering how the taxpayer acquired their interest in the main residence and what they did with it. ***[Schedule 3, item 6, subsection 118-260(2)]***

3.44 Having regard to the principles applying for a partial exemption in Subdivision 118-B assists a taxpayer in working out what is the 'relevant period' in paragraph 3.41. The 'relevant period' is specified in the principles applying for a partial exemption in Subdivision 118-B. A taxpayer's 'relevant period' will depend on their individual circumstances.

- Where a taxpayer owns a dwelling that they did not acquire as a beneficiary, or as a trustee, of a deceased estate and the dwelling has not always been their main residence, the relevant period is the taxpayer's ownership period.
- Where the dwelling is acquired from a deceased estate and section 118-195 does not apply, the relevant period for working out a partial exemption has to take account of

periods where the dwelling was not the main residence of an individual referred to in item 2, column 3 in the table in section 118-195, as specified in section 118-200, which may be modified by section 118-205.

Example 3.5: Partial exemption — main residence for part of the ownership period

On 1 July 1990 Ming bought a house on 1.5 hectares of land, which includes the area of land immediately under the dwelling. The house was rented until Ming moved in on 1 July 2000, and it has been his main residence since then. The land adjacent to the house is landscaped, and has been used as though it were part of the dwelling.

A State government agency compulsorily acquired 0.5 hectares of Ming's land on 30 June 2010, and he made a capital gain of $20,000 as a result.

If Ming had sold his house on 30 June 2010 and made a capital gain, 50 per cent of the capital gain would be disregarded under the main residence exemption. That is, the house would have been his main residence for half of his ownership period from its acquisition until the disposal (using section 118-185, the percentage of non-main residence days to days of ownership is 50 per cent).

All of the conditions outlined in paragraph 3.20 are satisfied in relation to the adjacent land. Therefore, it is reasonable under the new exemption (assuming Ming chooses to apply the amendments in this Schedule — see paragraph 3.47) for there to be an automatic disregarding of an amount of $10,000 (that is, 50 per cent) of the $20,000 capital gain made from the compulsory acquisition of part of Ming's land, leaving a capital gain of $10,000. There is an automatic disregarding because the sum of the relevant areas specified in the last condition of paragraph 3.20 is not more than two hectares.

Example 3.6: Partial exemption — use of dwelling for producing assessable income

On 1 July 1990 Nan bought a house on 1.5 hectares of land, which includes the area of land immediately under the dwelling. She moved into the house immediately after settlement, and it has been her main residence since then. The land adjacent to the house is landscaped, and Nan has used it as though it were a part of the dwelling.

During all of her ownership period Nan has used 25 per cent of the house for her architectural drafting business, and she has been entitled to claim a deduction for 25 per cent of the interest paid on the money she borrowed to buy the house.

A State government agency compulsorily acquired 0.5 hectares of Nan's land on 30 June 2010, and she made a capital gain of $20,000 as a result.

If Nan had sold her house on 30 June 2010 and made a capital gain, 75 per cent of the capital gain would be disregarded under the main residence exemption (this is a reasonable outcome using section 118-190).

All of the conditions outlined in paragraph 3.20 are satisfied in relation to the adjacent land. Therefore, it is reasonable under the new exemption (assuming Nan chooses to apply the amendments in this Schedule — see paragraph 3.47) for there to be an automatic disregarding of an amount of $15,000 (that is, 75 per cent) of the $20,000 capital gain made from the compulsory acquisition of part of Nan's land, leaving a capital gain of $5,000. There is an automatic disregarding because the sum of the relevant areas specified in the last condition of paragraph 3.20 is not more than two hectares.

Example 3.7: Partial exemption — combination

On 1 July 1990 David bought a house on 1.5 hectares of land, which includes the area of land immediately under the dwelling. The house was rented until David moved in on 1 July 2000, and it has been his main residence since then. The land adjacent to the house is landscaped, and David has used it as though it were a part of the dwelling.

After he moved in, David used 25 per cent of the house for his information technology business, and he has been entitled to claim a deduction for 25 per cent of the interest paid on the money he borrowed to buy the house.

A State government agency compulsorily acquired 0.5 hectares of David's land on 30 June 2010, and he made a capital gain of $20,000 as a result.

If David had sold his house on 30 June 2010 and made a capital gain, under section 118-185 of the main residence exemption he would disregard 50 per cent of the gain (representing the period that the house was his main residence).

Under section 118-190 of the main residence exemption, it would be reasonable to increase the residual capital gain after the application of section 118-185 to the hypothetical sale of David's house by 25 per cent of the disregarded capital gain to account for the proportion of his house that was used for producing assessable income.

This would result in 62.5 per cent (that is, $0.5 + (0.5 \times 0.25)$) of the capital gain made on the hypothetical sale of David's house being taxable. Equivalently, David could disregard 37.5 per cent of the capital gain made on the hypothetical sale of his house.

All of the conditions outlined in paragraph 3.20 are satisfied in relation to the adjacent land. Therefore, it is reasonable under the new exemption (assuming David chooses to apply the amendments in this Schedule — see paragraph 3.47) for there to be an automatic disregarding of an amount of $7,500 (that is, 37.5 per cent) of the $20,000 capital gain made from the compulsory acquisition of part of David's land, leaving a capital gain of $12,500. There is an automatic disregarding because the sum of the relevant areas specified in the last condition of paragraph 3.20 is not more than two hectares.

Calculation (based on sections 118-185 and 118-190)

The house was David's main residence for 10 of the 20 years of his ownership period to the date of the compulsory acquisition of part of his land. Therefore, on that basis $10,000 (that is, 50 per cent) of the $20,000 capital gain made from the compulsory acquisition of part of his land would be automatically disregarded, leaving a residual capital gain of $10,000.

During the period that the dwelling was his main residence, David used 25 per cent of the dwelling for producing assessable income. Therefore, on that basis it would be reasonable to increase the residual capital gain of $10,000 by an amount of $2,500 (that is, 25 per cent) of the $10,000 disregarded capital gain derived from the proportion of the time the dwelling was David's main residence while he owned it.

Therefore, David's capital gain made from the compulsory acquisition of part of his land is $12,500 (that is, $10,000 + $2,500).

Example 3.8: Deceased estate — scenario 1

On 1 July 2000 Manuel bought a house on 1.5 hectares of land, which includes the area of land immediately under the dwelling. He moved into the house immediately after settlement, and it was always his main residence. The land adjacent to the house is landscaped, and has been used as though it were a part of the dwelling.

Manuel died on 30 June 2005, and ownership of the house passed to his son Pedro. The property was left vacant for one year and it has been rented out since 1 July 2006. Pedro has never occupied the house.

A State government agency compulsorily acquired 0.5 hectares of Pedro's land on 30 June 2010, and he made a capital gain of $20,000 as a result.

If Pedro had sold his house on 30 June 2010, under the main residence exemption he would disregard 50 per cent of the resultant capital gain.

All of the conditions outlined in paragraph 3.20 are satisfied in relation to the adjacent land. Therefore, it is reasonable under the new exemption (assuming Pedro chooses to apply the amendments in this Schedule — see paragraph 3.47) for there to be an automatic disregarding of an amount of $10,000 (that is, 50 per cent) of the $20,000 capital gain made from the compulsory acquisition of part of Pedro's land, leaving a capital gain of $10,000. There is an automatic disregarding because the sum of the relevant areas specified in the last condition of paragraph 3.20 is not more than two hectares.

Calculation (based on section 118-200):

$$\text{Capital gain} \times \frac{\text{non-main residence days}}{\text{total days}}$$

$$= \$20{,}000 \times \frac{1825}{3650}$$

$$= \$10{,}000$$

Example 3.9: Deceased estate — scenario 2

On 1 July 2000 Kazuko bought a house on 1.5 hectares of land, which includes the area of land immediately under the dwelling. She moved into the house immediately after settlement, and it was always her main residence. The land adjacent to the house is landscaped, and has been used as though it were a part of the dwelling.

Kazuko died on 30 June 2005, and ownership of the house passed to her daughter Kumiko. The property was left vacant for a year before Kumiko moved in on 1 July 2006. It has been Kumiko's main residence since then, and she used 25 per cent of the house for her dental practice. If Kumiko had borrowed money to buy the house, she would have been entitled to claim a deduction for 25 per cent of the interest payable on the notional loan.

A State government agency compulsorily acquired 0.5 hectares of Kumiko's land on 30 June 2010, and she made a capital gain of $20,000 as a result.

Assume Kumiko had sold her house on 30 June 2010 and made a capital gain.

To work out, under section 118-190 of the main residence exemption, what would be a reasonable increase in the capital gain made on the sale of Kumiko's house as a result of her using 25 per cent of it for her dental practice, it is necessary to apply section 118-200 separately to decompose the disregarded proportion of the capital gain into two components: one for Kazuko's period of ownership; and one for Kumiko's period of ownership.

Under section 118-200 of the main residence exemption, Kumiko would firstly disregard 50 per cent of the capital gain from the sale of her house. This 50 per cent represents the period that the house was Kazuko's main residence (that is, five out of 10 years). Kumiko would also disregard 80 per cent of the remaining 50 per cent of the capital gain, which computes to another 40 per cent of the capital gain being disregarded. This 40 per cent represents the period that the house was her main residence (that is, four out of five years). Overall, this results in 90 per cent of the capital gain from the sale of the house by Kumiko being disregarded and 10 per cent being taxable.

Under section 118-190 of the main residence exemption, it would be reasonable to increase the residual taxable capital gain after the application of section 118-200 to the hypothetical sale of Kumiko's house by 25 per cent of the component of the capital gain that is disregarded due to the house being Kumiko's main residence. This translates to an increase in the capital gain of 25 per cent of 40 per cent, which computes to 10 per cent.

This results in 20 per cent of the capital gain made on the hypothetical sale of Kumiko's house being taxable. Equivalently, Kumiko could disregard 80 per cent of the capital gain made on the hypothetical sale of her house.

All of the conditions outlined in paragraph 3.20 are satisfied in relation to the adjacent land. Therefore, it is reasonable for there to be an automatic disregarding under the new exemption (assuming Kumiko chooses to apply the amendments in this Schedule — see paragraph 3.47) of an amount of $16,000 (that is, 80 per cent) of the $20,000 capital gain made from the compulsory acquisition of part of Kumiko's land, leaving a capital gain of $4,000. There is an automatic disregarding because the sum of the relevant areas specified in the last condition of paragraph 3.20 is not more than two hectares.

Extension to adjacent structures

3.45 The new exemption applies to an adjacent structure (for example, a garage or a storeroom) of a flat or home unit in a corresponding way to the way it applies to a dwelling's adjacent land. For an adjacent structure, the relevant provisions of the new exemption need to be read with appropriate modifications so that adjacent structures are accommodated within the new provisions. ***[Schedule 3, item 6, section 118-265]***

Example 3.10

Juan owns a home unit and the total area of his adjacent land, his share of the land immediately under the home unit and his share of the land immediately under a storeroom is 0.4 hectares. The home unit has always been Juan's main residence while he owned it and he has never used the dwelling for income producing purposes and has always used the adjacent land and structure for private or domestic purposes.

A State government agency compulsorily acquired the storeroom and Juan's share of the land immediately under the storeroom on 30 June 2010, and he made a capital gain of $5,000 as a result. This is the only compulsory acquisition (or similar arrangement) that has happened to Juan's main residence while he has owned it.

All of the conditions (modified as necessary to accommodate an adjacent structure) outlined in paragraph 3.20 are satisfied in relation to the adjacent structure and the $5,000 capital gain made from the compulsory acquisition of the storeroom is automatically disregarded under the new exemption (assuming Juan chooses to apply the amendments in this Schedule — see paragraph 3.47).

Application and transitional provisions

3.46 The amendments made by this Schedule apply in relation to CGT events happening on or after the day on which this Bill receives Royal Assent (the commencement day). ***[Schedule 3, subitem 10(1)]***

3.47 However, taxpayers are provided with a transitional choice to apply the amendments to CGT events relating to them that happen during the period:

- starting at the start of the 2004-05 income year; and
- ending immediately before the commencement day.

This allows taxpayers who have had adjacent land or an adjacent structure compulsorily acquired without the relevant dwelling being acquired in this period to qualify for the relief. Providing taxpayers with a choice to apply the amendments retrospectively ensures that they will do so only if it is to their advantage. ***[Schedule 3, subitem 10(2)]***

3.48 A taxpayer who makes a choice as described in paragraph 3.47 must do so:

- by the day they lodge their income tax return for the income year that includes the commencement day; or
- within further time allowed by the Commissioner of Taxation (Commissioner).

[Schedule 3, subitem 10(3)]

3.49 The way a taxpayer prepares their income tax return for the applicable income year is sufficient evidence of them making a choice as described in paragraph 3.47. ***[Schedule 3, subitem 10(4)]***

3.50 However, this does not preclude a taxpayer from making a choice or providing evidence of a choice in a way other than the way they prepare their income tax return for the applicable income year.

- For example, a taxpayer lodging an objection to an assessment in the relevant period would also be sufficient evidence of them making a choice if the basis of the objection were to apply the amendments to CGT events happening in the period identified in paragraph 3.47.

3.51 Taxpayers must keep records of every act, transaction, event or circumstance that can be reasonably expected to be relevant to working out whether they have made a capital gain or capital loss from each CGT event even if the capital gain or capital loss was disregarded as a result of an exemption.

3.52 The operation of section 170 of the *Income Tax Assessment Act 1936* is modified to extend the amendment period in cases where a taxpayer wishes to amend their assessment, but their amendment period has expired, to take advantage of the amendments introduced by this Schedule where:

- the assessment was made before the commencement day;
- the amendment is made within the period ending two years after the start of the commencement day; and
- the amendment is made for the purpose of giving effect to this Schedule.

[Schedule 3, subitems 10(2) and (3) and subclause 4(2)]

3.53 This means that if a compulsory acquisition occurs in the period described in subitem 10(2) and the taxpayer's amendment period has expired for the income year in which the relevant compulsory acquisition occurred, there is a two-year time limit from Royal Assent in which the taxpayer can seek an amended assessment as a result of making a choice under subitem 10(2).

3.54 The Commissioner may amend an assessment for the purpose of giving effect to the amendments introduced by this Schedule after the end of the two-year period where the taxpayer has requested the amendment before the end of the two-year period. ***[Schedule 3, subclause 4(3)***

Chapter 4
Deductions in relation to benefits for terminal medical conditions

Outline of chapter

4.1 Schedule 4 to this Bill extends the benefits in section 295-460 of the *Income Tax Assessment Act 1997* (ITAA 1997) to include terminal medical condition (TMC) benefits. The benefits in section 295-460 are benefits in relation to which complying superannuation funds and retirement savings account (RSA) providers can claim a deduction.

4.2 This measure will have effect from 16 February 2008.

4.3 This Schedule also makes minor amendments to the ITAA 1997.

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

Context of amendments

The 'terminal medical condition' condition of release

4.5 In February 2008, the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) were amended to allow for the release of benefits to a member in the event of a TMC. This provision became effective from 16 February 2008.

4.6 A ***terminal medical condition*** is defined in the SIS Regulations as existing in relation to a person at a particular time if the following circumstances exist:

- two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the certification period) that ends not more than 12 months after the date of the certification;
- at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person; and

- for each of the certificates, the certification period has not ended.

4.7 Identical definitions of 'terminal medical condition' are contained in the *Income Tax Assessment Regulations 1997*, which applies to the ITAA 1997, and the *Retirement Savings Accounts Regulations 1997*.

Insurance provided through superannuation funds

4.8 Superannuation funds commonly take out death and disability insurance policies to insure their risk for a liability they may incur to their members.

4.9 Superannuation funds obtaining insurance for this purpose is consistent with the key objective of superannuation. That is, to provide benefits to members in retirement or, in the event of the member's death, to the member's beneficiaries.

4.10 Currently, a complying fund which provides certain death, disability superannuation benefits (in the case of a member's permanent incapacity) and temporary incapacity benefits can claim a deduction related to the cost of providing these benefits. The quantum of the deduction can be calculated based on either a premiums basis or by using a formula based on actual costs. An RSA provider can claim a deduction relating to the provision of these benefits on a premiums basis.

4.11 There are no associated deductions available in respect of TMC benefits.

Budget announcement

4.12 The Treasurer announced in the 2010 Budget that amendments would be made to extend the range of benefits that are deductible by complying superannuation funds and RSA providers to include TMC benefits.

Summary of new law

4.13 Schedule 4 amends the ITAA 1997 to allow complying superannuation funds and RSA providers to deduct the cost of providing TMC benefits to members.

4.14 This Schedule also makes minor amendments to the ITAA 1997.

Comparison of key features of new law and current law

New law	*Current law*
Complying superannuation funds and RSA providers are able to claim deductions for insurance policies or some of the cost of providing benefits relating to the death, permanent incapacity, temporary incapacity, and TMC conditions of release.	Complying superannuation funds and RSA providers are able to claim deductions for insurance policies or some of the cost of providing benefits relating to the death, permanent incapacity and temporary incapacity conditions of release, but not those relating to the TMC condition of release.
The term 'an individual' is used to refer to a human being.	The term 'a person' is used to refer to a human being.

Detailed explanation of new law

4.15 Currently, deductions are allowable for insurance policies to cover liabilities to pay benefits relating to the death, permanent incapacity and temporary incapacity conditions of release, but not those relating to the TMC condition of release. These amendments to the ITAA 1997 allow complying superannuation funds and RSA providers to claim a deduction for the cost of providing TMC benefits.

4.16 A new paragraph is inserted into section 295-460 of the ITAA 1997 to include a benefit payable to a person because they have a terminal medical condition. ***[Schedule 4, item 1, paragraph 295-460(aa)]***

4.17 The term 'terminal medical condition' is defined in section 995-1 of the ITAA 1997 and has the same meaning in this section as in Regulation 303-10.01 of the *Income Tax Assessment Regulations 1997*. This definition is the same as the definition in the SIS Regulations and the *Retirement Savings Accounts Regulations 1997*. (For more information please refer back to paragraphs 4.5 to 4.7.) ***[Schedule 4, item 1, paragraph 295-460(aa), section 303-10, Regulation 303-10.01 of the Income Tax Assessment Regulations 1997]***

4.18 The inclusion of TMC benefits in section 295-460 of the ITAA 1997, in effect, allows complying superannuation funds and RSA providers a deduction for the cost of providing these benefits to members. This section interacts with sections 295-465, 295-470 and 295-475 which specify how this deduction operates. ***[Schedule 4, item 1, paragraph 295-460(aa)]***

Operation

4.19 Section 295-460 of the ITAA 1997 lists the benefits for which a deduction is available under several other sections.

4.20 Subsection 295-465(1) allows deductions relating to premiums paid for insurance policies by complying superannuation funds for a liability to provide benefits referred to in section 295-460.

4.21 Under item 5 in the table in subsection 295-465(1), funds can deduct specified amounts that are part of a premium that is wholly for the liability to provide benefits referred to in section 295-460. Under item 6, funds can deduct so much of premiums that are attributable to the liability to provide section 295-460 benefits. An actuary's certificate is required in order to apportion premiums under item 6.

Example 4.1

> Maths Super Fund takes out insurance in relation to its members in June 2008 for death cover and terminal illness cover. In its trust deed, Maths Super Fund specifically provides a liability on the trustee to pay a TMC benefit to members.
>
> The premium paid by Maths Super Fund would be fully deductible under item 5 of subsection 295-465(1) of the ITAA 1997. The premium applies fully to a period after 16 February 2008 and any liability to provide benefits insured for would be after that date. The premium relates fully to benefits listed in section 295-460 for which deductions are available; it relates partly to a liability of the fund to provide TMC benefits to members (paragraph 295-460(aa)), and partly to a liability to provide death benefits (paragraph 295-460(a)).

4.22 Subsection 295-465(2) allows a complying fund to claim a deduction for an amount it could reasonably be expected to pay in an arm's length transaction to obtain an insurance policy. The policy must be to cover that part of its current or contingent liabilities to provide benefits referred to in section 295-460 for which the complying fund does not have insurance coverage.

4.23 Section 295-470 allows a complying superannuation fund to choose to deduct an amount for a future liability to pay benefits referred to in section 295-460, using a formula based on the actual cost of providing the benefits which arise each year.

4.24 A fund can deduct amounts under either section 295-465 or section 295-470 but not both.

4.25 Section 295-475 allows an RSA provider to deduct premiums for insurance policies that are wholly for its liability to provide benefits referred to in section 295-460.

Consequential amendments

4.26 In order to ensure that a deduction for a TMC benefit can be claimed under subparagraph 295-470(1)(b)(i), this section is amended to include a reference to the new paragraph 295-460(aa). ***[Schedule 4, item 3, paragraph 295-460(aa) and subparagraph 295-470(1)(b)(i)]***

Minor amendments

4.27 Paragraph 295-460(c), and subsection 995-1(1) are amended to reflect the drafting convention that the term 'individual' should be used when referring to a human being (as opposed to the term 'person' which is a reference to any legal entity). ***[Schedule 4, item 2, paragraph 295-460(c) and item 4, subsection 995-1(1) (paragraph (a) of the definition of 'disability superannuation benefit') and item 5, subsection 995-1(1) (paragraph (b) of the definition of 'disability superannuation benefit')]***

Application and transitional provisions

4.28 These amendments apply in relation to a current or contingent liability of a complying superannuation fund to provide TMC benefits on or after 16 February 2008. This is appropriate as the TMC condition of release was introduced on this date meaning that no such benefit would have been provided prior to this. This measure does not adversely affect taxpayers as it provides a tax deduction for certain taxpayers from the application date. ***[Schedule 4, items 3 and 6]***

4.29 In some cases superannuation funds may require an actuary to determine what part of the premium is deductible under item 6 in the table in subsection 295-465(1). However, subsection 295-465(3) requires an actuary's certificate be obtained before the date of lodgement of a fund's income tax return. This may be problematic for superannuation funds which did not obtain an actuary's certificate or obtained one which excluded TMC benefits when they made their lodgement. Accordingly, a transitional provision modifies the application of subsection 295-465(3) for superannuation funds in such a position that apply for an amendment of their assessment so that the fund may obtain an actuary's certificate prior to the request for reassessment. ***[Schedule 4, items 6 and 7]***

Example 4.2

Canary Super Fund takes out insurance in relation to its members in January 2009 for trauma cover and terminal illness cover. The policy expires in January 2010.

Canary Super Fund did not obtain an actuary's certificate prior to lodging its returns and a deduction was not claimed for any part of the premium.

The part of the premium attributable to the terminal illness cover is unspecified. Following these amendments, the fund may obtain an actuary's certificate to determine what part of the premium is attributable to a liability of the fund to provide TMC benefits, pursuant to paragraph 295-460(aa). This portion of the premium for the policy will be deductible under item 6 in the table in subsection 295-465(1) of the ITAA 1997. The amendments to modify subsection 295-465(3) will allow the fund to obtain an actuary's certificate prior to the request for reassessment.

Chapter 5
Non-profit sub-entities

Outline of chapter

5.1 Schedule 5 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to allow non-profit sub-entities to access the goods and services tax (GST) concessions available to their parent entity.

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

Context of amendments

5.3 This Schedule implements Recommendation 43 of the Board of Taxation's *Review of the Legal Framework for the Administration of the Goods and Services Tax*, which stated that the GST law should be amended to ensure that non-profit sub-entities are able to access the same GST concessions as their parent entity.

5.4 Under the GST Act, non-profit bodies are eligible for several concessions, including a higher registration turnover threshold of $150,000 compared with $75,000 for other entities, and the ability to treat supplies of food at school tuckshops and canteens as input-taxed.

5.5 In order to avoid unfair competition, the activities of charities are generally treated the same as other entities under the GST Act.

5.6 However, the non-commercial activities of endorsed charitable institutions and certain other entities — endorsed trustees of charitable funds, gift-deductible entities and government schools — are GST-free. Additionally, these endorsed charitable institutions and other entities can access a number of other GST concessions:

- GST-free raffles and bingo;
- input taxed fund-raising events;
- accounting on a cash basis;

- input tax credits for reimbursement of volunteer expenses; and
- GST-free supplies of donated second-hand goods.

5.7 In addition, the making of a gift to a non-profit body is not the provision of consideration and providers of gifts to certain non-profit bodies are not required to make adjustments in relation to those gifts.

5.8 Division 63 of the GST Act describes how the GST law operates for non-profit sub-entities. Under Division 63, registered entities that are charitable institutions, trustees of charitable funds, government schools, gift-deductible entities that are non-profit bodies, or non-profit bodies that are exempt from income tax under certain parts of Division 50 of the *Income Tax Assessment Act 1997* (ITAA 1997), may be entitled to split some of their separately identifiable operations into separate independent units called 'non-profit sub-entities' for GST purposes. These non-profit sub-entities are then considered separate entities for GST purposes, as long as the parent entity remains registered for GST.

5.9 One of the benefits of splitting the operations into separate independent units for GST purposes is that the non-profit sub-entity will only need to register for GST if the GST turnover of that non-profit sub-entity exceeds the registration threshold for non-profit bodies.

5.10 The GST concessions that apply to charitable institutions and trustees of charitable funds only apply to institutions or trustees that are endorsed under Division 176 of the GST Act. Division 176 requires that the Commissioner of Taxation (Commissioner) endorse charitable institutions and trustees of charitable funds that are entitled to be, and have applied to be, endorsed in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

5.11 As a non-profit sub-entity is only an entity for GST purposes and is not entitled to be separately endorsed under Division 426 of the TAA 1953, there have been questions about whether a non-profit sub-entity of an entity endorsed under Division 176 of the GST Act can access the same GST concessions as the endorsed entity. To date, the Commissioner has interpreted the law to allow them to access these concessions.

5.12 This Schedule will provide clarity to taxpayers by inserting into the GST law provisions that allow non-profit sub-entities to access the GST concessions available to their parent entity.

Summary of new law

5.13 These amendments to the GST Act allow non-profit sub-entities to access the GST concessions available to their parent entity.

Comparison of key features of new law and current law

New law	***Current law***
Non-profit sub-entities will be able to access the GST concessions available to their parent entity. The higher registration turnover threshold will also apply to non-profit sub-entities.	The law does not specify whether non-profit sub-entities can access the same GST concessions as their parent entity. The Commissioner has interpreted the law to allow non-profit sub-entities to access these concessions.

Detailed explanation of new law

5.14 This Schedule allows non-profit sub-entities to access the GST concessions available to their parent entity.

5.15 All non-profit sub-entities will be able to access the higher registration turnover threshold that applies to non-profit bodies. ***[Schedule 5, item 1, subsection 63-25(1)]***

5.16 A non-profit sub-entity of a parent entity will, if the parent entity is a body of the type listed in subsection 63-27(1), be able to apply the provisions mentioned in subsection 63-27(2) as though it were a body of that type.

5.17 A non-profit sub-entity will be taken to be a body of the type of its parent if the parent entity is one of the following types:

- a non-profit body ***[Schedule 5, item 3, paragraph 63-27(1)(a)]***;
- charitable institutions, trustees of a charitable funds or gift-deductible entities ***[Schedule 5, item 3, paragraph 63-27(1)(b)]***;
- government schools ***[Schedule 5, item 3, paragraph 63-27(1)(c)]***;
- endorsed charitable institutions or endorsed trustees of charitable funds; ***[Schedule 5, item 3, paragraph 63-27(1)(d)]***;

- gift-deductible entities endorsed as deductible gift recipients under section 30-120 of the ITAA 1997 ***[Schedule 5, item 3, paragraph 63-27(1)(e)]***; and

- funds, authorities or institutions of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997 ***[Schedule 5, item 3, paragraph 63-27(1)(f)]***.

5.18 Additionally, a non-profit sub-entity will, if its parent entity is a particular school, operates a particular retirement village or has a particular gift-deductible purpose, be taken (for the purposes of the provisions listed in subsection 63-27(2)) to be that particular school, operate that particular retirement village or have that particular gift-deductible purpose.

5.19 Among other things, this will ensure that a supply made by a non-profit sub-entity to a resident of a particular retirement village may, if that retirement village is operated by its parent entity, qualify as GST-free (supplies of retirement village accommodation). This is despite the fact that, strictly speaking, the supplier (the non-profit sub-entity) would not itself operate a retirement village. ***[Schedule 5, item 3, paragraph 63-27(1)(h)]***

5.20 The provisions (for which the non-profit sub-entity will be treated as being a body of the same type as the parent entity) are in relation to:

- gifts to non-profit bodies not for consideration ***[Schedule 5, item 3, paragraph 63-27(2)(a)]***;

- a supply covered by Subdivision 38-G ('Activities of charitable institutions etc.') ***[Schedule 5, item 3, paragraph 63-27(2)(b)]***;

- school tuckshops and canteens ***[Schedule 5, item 3, paragraph 63-27(2)(c)]***;

- fund-raising events conducted by charitable institutions ***[Schedule 5, item 3, paragraph 63-27(2)(d)]***;

- reimbursements of volunteers' expenses ***[Schedule 5, item 3, paragraph 63-27(2)(e)]***;

- gifts made to gift deductible entities ***[Schedule 5, item 3, paragraph 63-27(2)(f)]***; and

- the accounting basis of charitable institutions ***[Schedule 5, item 3, paragraph 63-27(2)(g)]***.

5.21 The non-profit sub-entity of the parent entity can choose to access provisions, even if the parent entity has not chosen to apply those provisions to its own activities.

Example 5.1: Fund-raising events conducted by charitable institutions

The Moonshine Kids Foundation is an endorsed charitable institution that is registered for GST and runs a number of fund-raising events such as sausage sizzles, fetes, concerts and morning teas to raise funds for sick and disadvantaged children. Its total turnover is $200,000 per year. Under Subdivision 40-F, Moonshine is entitled to and chooses to have all supplies it makes in connection with each event treated as input taxed.

The Moonshine Kids Foundation sets up a non-profit sub-entity, Sunnyside, to organise a charity concert. The accounts for Sunnyside are kept separate to those of Moonshine. Section 63-27 will allow Sunnyside to access all the GST concessions that are available to endorsed charitable institutions, providing it satisfies any requirements of those concessions. In the case of Subdivision 40-F, these requirements include the fact that the supplier must have chosen to have all of the supplies it makes in connection with the fund-raising event (the concert) input taxed. To satisfy this requirement, Sunnyside (as the supplier) must itself make the choice. It does not matter whether or not the Moonshine Kids Foundation has chosen to apply Subdivision 40-F to its fund-raising activities.

Application and transitional provisions

5.22 This measure will apply from the start of the first tax period after Royal Assent.

Chapter 6
Running balance accounts

Outline of chapter

6.1 Schedule 6 to this Bill amends the *Taxation Administration Act 1953* (TAA 1953) to ensure that it will not be mandatory for the Commissioner of Taxation (Commissioner) to apply a payment, credit or running balance account surplus against a tax debt that is a business activity statement (BAS) amount unless that amount is due and payable.

Context of amendments

6.2 This Schedule implements Recommendation 39 of the Board of Taxation's *Review of the Legal Framework for the Administration of the Goods and Services Tax.*

6.3 Under the current law, entities are required to notify a number of their business tax liabilities (for example, goods and services tax (GST), wine equalisation tax, luxury car tax and fuel tax credits) to the Commissioner by lodging a BAS. Those debts and any credit entitlements and payments made are usually all recorded on one running balance account. Currently, it is mandatory to apply payments, credits or running balance account surpluses against a tax debt that is a BAS amount even if it is due but not yet payable.

6.4 These application rules, in their current form, produce inappropriate outcomes in some circumstances and can give rise to compliance costs for entities in determining how the Commissioner has treated their refund. For example, where an entity has made a payment in respect of a tax debt that is a BAS amount, unaware that their income tax refund has been applied against the BAS amount, the overpaid amount will have to be refunded.

6.5 Additionally, in cases where there is use of a GST joint venture, a GST joint venture operator, in accounting for the activities of the GST joint venture, may have credits applied against any tax debts in the GST joint venture operator's own running balance account. Although the activities of each GST joint venture that a GST joint venture operator undertakes can be treated separately for running balance account purposes, applying any credits or refunds against any tax debts in the GST joint venture operator's own running balance account unnecessarily increases complexity.

6.6 The purpose of this amendment is to reduce compliance costs and unnecessary complexity for taxpayers.

Summary of new law

6.7 This Schedule ensures that it will not be mandatory for the Commissioner to apply a payment, credit or running balance account surplus against a tax debt that is a BAS amount unless that amount is due and payable.

Comparison of key features of the new law and current law

New law	*Current law*
It will not be mandatory for the Commissioner to apply a payment, credit or running balance account surplus against a tax debt that is a BAS amount unless that amount is due and payable.	It is mandatory for the Commissioner to apply payments, credits or running balance account surpluses against a tax debt which is a BAS amount even if it is due but not yet payable.

Explanation of new law

6.8 This Schedule allows the Commissioner to decide not to apply a payment or credit against a tax debt that is due but not payable, including a tax debt that is a BAS amount. ***[Schedule 6, item 1, paragraph 8AAZL(3)(a)]***

Example 1.1: Discretion to apply amounts on the running balance account

Cameron lodges a BAS for the September 2010 quarter on 4 October 2010, notifying an entitlement to a GST refund and a liability to pay as you go (PAYG) instalments. The amount of the GST refund is smaller than the liability to PAYG instalments.

In this circumstance the Commissioner's normal practice will be to apply the GST refund against the PAYG instalments. However, the Commissioner will have, where it is appropriate to do so, the ability to not apply these amounts before the due and payable date.

6.9 A GST joint venture operator may have more than one running balance account in relation to its GST obligations. One running balance account may record its GST obligations in relation to its own activities and another running balance account may record its GST obligations in relation to the activities of the GST joint venture. If there is a credit on the running balance account recording the joint venture activities and a tax debt on the running balance account recording the joint venture operator's own activities, then the Commissioner may choose not to automatically have the credit on one running balance account apply against tax debts on the other running balance account where those tax debts are due but not yet payable.

Example 1.2: Discretion not to apply amounts on the running balance account

Oliver is registered for GST and notifies his GST obligations in relation to two activities, one in relation to his own activities and the other as an operator for a GST joint venture's activities. The Commissioner maintains separate running balance accounts for these activities under Oliver's Australian Business Number. One running balance account will record Oliver's BAS obligations (including GST) in relation to his own activities. The other running balance account will record Oliver's GST obligations in relation to the GST joint venture's activities.

As Oliver is going on holidays in January 2011, he decides to account for his GST obligations relating to his own activities and the GST joint venture by lodging early BASs. This is done in the December 2010 quarter. The BAS for the joint venture contains a credit arising from the acquisitions or supplies Oliver has made on behalf of the joint venture participants. The BAS for Oliver's own activities contains a fringe benefits tax debt. The joint venture credit will not be applied automatically against the tax debt on Oliver's own running balance account because the Commissioner decides not to apply it as the debt is due, but not yet payable, until 28 February 2011.

Application provisions

6.10 This measure will apply in applying amounts on the running balance account on or after 1 July 2011.

Chapter 7
Education expenses tax offset (uniforms)

Outline of chapter

7.1 Schedule 7 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to include school uniforms in the range of eligible expenses for the education expenses tax offset from 1 July 2011.

Context of amendments

7.2 The education expenses tax offset provides eligible individuals with an offset against their income tax liability of up to 50 per cent on certain education expenses up to an indexed threshold.

7.3 Eligible expenses for the education expenses tax offset are defined in section 61-640 of the ITAA 1997.

Summary of new law

7.4 This Schedule provides an increase in the range of eligible expenses for the education expenses tax offset to include school uniforms.

7.5 School uniforms of primary and secondary school students who meet the schooling requirements set out in section 61-630 of the ITAA 1997 would be an eligible expense.

7.6 For clothing to be considered a school uniform it needs to be distinctive to, approved or recognised by the school. Whether an item is distinctive will depend on the item's design and colour, as well as the presence of other items which could identify the child as a part of the school.

7.7 Items that carry a school crest or emblem would generally meet these criteria, although the presence of an emblem or badge is *not* necessary for clothing to be part of a school uniform. Similarly, items that comply with a colour code determined by the school would generally meet the criteria.

Example 7.1

A public school has a policy which states that students should wear yellow shirts, blue hats, grey shorts or skirts and black leather shoes to identify the students as attending the school. However, while wearing these colours is strongly encouraged, it is not compulsory. An eligible individual whose child attends the school buys items which fit within this policy from a store unaffiliated with the school. None of the clothing items contain the name of the school or school crest.

As the items, including shoes, are approved or recognised as part of a distinctive school outfit and fall under the policy, they would be eligible expenses. This applies irrespective of where the clothing was purchased or the fact the uniform was not mandatory.

Example 7.2

A school has a dress code where students are required to be dressed in a neat and presentable fashion, but which does not indicate a more specific colour or style that the clothing should take. An eligible individual whose child attends the school buys clothes which they intend to wear to school.

The items would *not* be eligible expenses. While the clothing meets the school's dress code, they lack the sufficiently distinctive quality of a uniform, and could not identify the child as a student at the school.

7.8 Depending on the requirements of the school, a school uniform will typically be comprised of items such as summer and winter dresses or tunics, long and short sleeved shirts, and shorts or pants. Further items such as hats, jumpers, school blazers and coats, sock, shoes and other footwear would also be able to be claimed, where the items are distinctive, and approved or recognised by the school.

7.9 The inclusion of school uniforms as an eligible expense for the education expenses tax offset takes effect on 1 July 2011 for the 2011-12 and later income years.

Detailed explanation of new law

7.10 Item 1 adds school uniforms to the table of eligible expenses for the education expenses tax offset where the expense is incurred through a direct payment or hire, hire-purchase arrangement. ***[Schedule 7, item 1]***

Application and transitional provisions

7.11 Item 2 provides for expenses on eligible uniforms incurred on or after 1 July 2011 to be eligible for the education expenses tax offset. ***[Schedule 7, item 2]***

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