Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013

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The Bills Digest at a glance

Purpose

• The purpose of the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013 (the Bill) is to amend various taxation and superannuation laws to implement a number of budget-related announcements.

Structure

• The eight separate measures to be implemented by the Bill are set out in separate Schedules to the Bill. Each Schedule is stand alone and is examined separately in this Bills Digest.

Key issues

• A number of the measures included in the Bill relate to budget announcements that apply to the 2012–13 financial year.
  – In total, the financial impact of the measures included in the Bill on the budget bottom line in accrual terms is over $1.1 billion. Most of this is attributed to Schedule 6, which reduces the benefits available under the superannuation co-contribution scheme.
  – Taxpayers may be exposed to a degree of uncertainty over their tax affairs if they try to reconcile their tax liabilities for the 2012–13 financial year without this Bill having passed the Parliament. The impact on the budget may also not result if the tax law does not change as expected for the 2012–13 financial year.
Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013

Date introduced: 20 March 2013

House: House of Representatives

Portfolio: Treasury

Commencement: Various dates set out in the table in section 2 of the Bill.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013 (the Bill) is to amend various taxation and superannuation laws to implement a range of unrelated measures.

Structure of the Bill

The Bill consists of eight Schedules:

- Schedule 1 amends the Income Tax Assessment Act 1997 (ITAA 1997)\(^1\) to insert a definition of documentary
- Schedule 3 amends the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)\(^4\) to allow certain entities to continue to pay their GST by instalments
- Schedule 4 amends the ITAA 1997 to update the list of deductible gift recipients

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• Schedule 5 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act)\(^5\) to expand the duties of trustees of particular superannuation funds to establish and implement procedures to consolidate accounts.

• Schedule 6 amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Government Co-contribution Act)\(^6\) to make changes to the superannuation co-contribution.

• Schedule 7 amends the ITAA 1997 and the *Income Tax Assessment Act 1936* (ITAA 1936)\(^7\) to consolidate the dependency tax offsets and

• Schedule 8 amends the ITAA 1997 and the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* (TOFA Act)\(^8\) to clarify the operation of certain aspects of the Taxation of Financial Arrangements (TOFA) regime.\(^9\)

### Committee consideration

#### Standing Committee for Economics

The Bill was referred to the House of Representatives Standing Committee on Economics for inquiry.\(^10\) The Committee’s report was tabled in the House of Representatives on 14 May 2013 and recommended that the Bill be passed, except for Schedule 5.\(^11\) The Committee noted that:

> In relation to Schedule 5, the Australian Government should consult with industry groups to ensure that undue liability is not being inadvertently placed on trustees who are working in good faith for the benefit of their members.\(^12\)

The Coalition members of the Committee, in making their additional comments in the report, noted that there had been cuts to the superannuation co-contribution scheme of almost $3.4 billion (including the measures that are part of Schedule 6 of this Bill) since 2008.\(^13\)

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12. Ibid.

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Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills noted a number of provisions in the Bill that were of concern to the Committee including:

- legislation by press release (Schedule 1 item 3)
- strict liability (Schedule 5, item 4) and
- retrospective commencement (Schedules 6, 7 and 8).14

Parliamentary Joint Committee on Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.15 The Government considers that the Bill is compatible.

The Parliamentary Joint Committee on Human Rights considered that Schedules 3, 4 and 8 are unlikely to raise any human rights concerns. Of the remaining Schedules, the Committee sought clarification from the Government on a number of matters including:

- whether the differential treatment of New Zealand non-protected special category visa holders in Schedule 2 of the Bill is justifiable and consistent with the rights to equality and non-discrimination
- why the model proposed in Schedule 5 of the Bill to consolidate multiple superannuation accounts is not predicated on the consent of the member (beneficial owner) of the accounts; and whether trustees will be subject to the Privacy Act 198816
- whether the amendments in Schedule 6 of the Bill to reduce the government’s superannuation co-contribution rate are consistent with the rights to social security and an adequate standard of living and

13. Ibid., pp. 43–46.
15. The Statement of Compatibility with Human Rights can be found at pages 20, 26, 33, 38, 48, 55, 71, 113 of the Explanatory Memorandum to the Bill: Explanatory Memorandum, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, viewed 3 June 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5013_ems_586d5bdc-1d04-4d0a-aa0e-c5d46f4618ce%22
whether the amendments in Schedule 6 of the Bill to consolidate dependency tax offsets involve a reduction in the assistance provided via tax offsets for individuals to support their dependants and if so, what impact this might have on families and children; and why particular taxpayers will be quarantined from these changes.17

Schedule 1—Changing the definition of documentary

Schedule 1 of the Bill amends the ITAA 1997 to introduce a definition of documentary for the purpose of determining eligibility for tax offsets that apply to certain Australian expenditure in making films.

Background

Film tax offsets are designed to support and develop the Australian screen media industry by providing concessional tax treatment for Australian expenditure.18

Legislation covering film tax offsets was inserted into the ITAA 1997 in 2002, introducing a refundable tax offset of 12.5 per cent for qualifying film expenditure in Australia.19 The original division of the ITAA 1997 was repealed and replaced with the current division in 2007.20 There are currently three different tax offsets for certain Australian expenditures on making a film being:

• the Producer Offset—a 40 per cent rebate on the qualifying spend of qualifying Australian feature films and a 20 per cent rebate for other qualifying media
• the Location Offset—formerly known as the Refundable Film Tax Offset (RFTO)—a 16.5 per cent rebate on Australian spend of large-budget productions that do not satisfy the significant Australian content test for the Producer Offset and
• the PDV Offset—a 30 per cent rebate on the Australian spend on post, digital and visual effects production (PDV) work on large budget productions, including those not necessarily shot in Australia.21

The location offset and PDV offset are not available for documentaries if they are feature films, telemovies or miniseries.

Treasury estimates the cost of these tax concessions to be around $62 million in 2013–14. This is the highest level for a number of years, rising from $38 million in 2008–09.

Broadcasters account for the largest share of documentary production finance (figure 1). The Producer Offset has contributed an average of around 13 per cent of annual finance since 2007–08 but its share has increased in recent years.

**Figure 1  Sources of finance for documentary production, 2007–08 to 2011–12**


**Defining a documentary**

The term *documentary* is not currently defined in the ITAA 1997. Recent court action by a producer who had been denied access to the Producer Offset by the regulator (Screen Australia), was successful in overturning the assessment arrangements that were in place, in the absence of such a definition.\(^2^4\)


\(\text{23. }\) Ibid.


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The decision related to the production ‘Lush House’, which has been described as a ‘cleaning show’. The TV channel that broadcasts that program notes that the show ‘will enable viewers to discover everything they ever wanted to know about remedying domestic disasters and deliver valuable take-away tips that will SAVE time, money and the planet’. Short videos of the production can be viewed online.

The Administrative Appeals Tribunal decision (which was upheld by the Full Court of the Federal Court) found the program, Lush House, to be a documentary for the purposes of eligibility for the Producer Offset. The Tribunal noted that:

... Lush House possesses many of the necessary components of a documentary. It records real events in real households. The extent to which these events were influenced by the producers of the film is not sufficient to displace that conclusion. Indeed, it enhances the creative aspects of the program. Nor is the conclusion qualified by the fact that the program contains advice. This further enhances the creative aspect, as well as the informative or educational aspect, of the program. That a program which is nothing but advice might warrant the label “how to program” and not be a documentary, is irrelevant.

Lush House accordingly records facts. It does so creatively. Its purpose is to inform or educate, both with respect to the ordering of a household and household cleaning, and, more importantly, by giving advice about chemicals and showing how to remove stains, marks and smells. The program is light hearted. It contains some humour. It is a long way from the serious end of the scale. It is, however, more serious than frivolous and seems to us to be sufficiently towards the serious end of the scale to warrant the description “documentary”. Lush House accordingly is qualified for a producer offset certificate as a documentary.

In making decisions about eligibility for the Producer Offset and the calculation about eligible expenditure, Screen Australia relies on guidance provided by the Explanatory Memorandum that accompanied the changes to film tax offsets in 2007 and the Documentary Guidelines as used by the Australian Communications and Media Authority (ACMA) to assess Australian content rules. The Explanatory Memorandum to the 2007 amendments noted that:

A documentary will take its ordinary meaning. It is intended that it will mean a creative interpretation of actuality, other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment programme.

A reality television programme is not a documentary. It is intended that the term ‘reality programme’ be applied to programmes in which contestants or participants are usually placed in contrived situations,

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29. EME Productions No. 1 Pty Ltd and Screen Australia, op. cit., at 23 and 24.

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where the primary purpose is to provide a vehicle within which their characters can be observed and assessed by the viewer. The primary purpose of such a reality programme would not be to explore and interpret an idea. Where there is a competitive element in the programme between participants it is intended the programme would generally be considered a reality programme.

By contrast, a programme is more likely to be classed as a documentary when, even though it may be based around a contrived situation, the contrivance will serve to explore a creative idea, concept or theme. Observations about the character of a participant will tend to illustrate the idea, rather than serve as the primary purpose. Such programmes may contain a strong information component within which the idea is explored. There will often be critical commentary which interprets or provides context for the activity depicted.31

The ACMA guidelines, which are drawn from the Australian Content Standards, provide the following summary:

**Documentary program means a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program.** 32

### Policy development

The proposed measure was announced by the Government as part of the 2012–13 Budget, where it was described as an ‘integrity’ measure, to apply to films where principal photography commences on or after 1 July 2012.33

On 5 July 2012, the Government provided further information about implementing the proposed measure, noting that ‘[i]nserting a definition of the term 'documentary’ will give producers greater confidence about the eligibility of their production and will support the success of the Producer Offset as a funding mechanism’.34

Draft legislation for the measure was released on 14 December 2012, with submissions due by 30 January 2013.35 In its summary of submissions, Treasury noted that a number of submissions from industry groups raised some concerns about the clarity of the proposed definition and how it

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31. Revised Explanatory Memorandum, Tax Laws Amendment (2007 Measures No. 5) Bill 2007, para 10.57 to 10.59, viewed 20 May 2013, [http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr2872_ems_fddce50-ac5d-4081-81b4-0efda899a9f3%22](http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr2872_ems_fddce50-ac5d-4081-81b4-0efda899a9f3%22)


34. D Bradbury (Assistant Treasurer) and S Crean (Minister for the Arts), *Clarity for producer offset documentaries*, joint media release, 5 July 2012, viewed 24 April 2013, [http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1758406%22](http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1758406%22)

would be implemented by Screen Australia in practice. However, no changes were made to the draft legislation prior to its introduction into the parliament.36

Policy position of non-government parties/independents

The Coalition does not oppose the proposed amendment. However, in making additional comments in the report of the House of Representatives Economics Committee on the Bill, Coalition members of the Committee noted that:

The principle source of concern stems from the industry’s surprise at this change, especially given evidence provided made it clear there had been next to no industry consultation previously regarding this proposal.37

The Coalition’s 2010 election policies to support the Australian film industry included establishing a $60 million temporary film production fund to provide matching loans to distributors of eligible Australian films with production budgets between $7 million and $30 million.38 Another part of the policy was to support cash flow for production by allowing interim assessments and applying the offset before the end of the financial year.39

Position of major interest groups

The film industry generally does not support the need to clarify the meaning of documentary. This view is largely based on the need to retain flexibility over time in applying a fixed definition to changing market demands. In addition some industry groups consider that the revised arrangements do not provide certainty as to what types of productions fall under the proposed definition of a documentary.40

38. Liberal Party of Australia, 2010 Election Policy: the Coalition’s plan for real action for the Arts, Coalition policy document, Election 2010, p. 4, viewed 20 May 2013, 
   http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fpartypol%2FRIOX6%22
39. Ibid., p. 5.
40. See for example, Screen Producers Association of Australia, Submission to the House of Representatives Standing Committee on Economics, Inquiry into the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 1–2, viewed 20 May 2013, 
Financial implications

The Explanatory Memorandum notes that the financial impact of Schedule 1 is ‘nil’.41

Key issues and provisions

Definition of documentary

**Item 3 of Schedule 1** inserts the definition of *documentary* into the ITAA 1997. The definition incorporates a positive condition that must be met—that the film is a ‘creative treatment of actuality’—but makes such a consideration dependent on several subjective assessments including consideration of ‘any other relevant matters’. The definition also states what a *documentary* is not, limiting the breadth of subjectivity based on definitions of ‘infotainment’ or ‘lifestyle program’ in the *Broadcasting Services Act 1992* and how the film is structured in terms of subjects or story line.42

The Screen Producers Association of Australia considers that the proposed definition is inflexible and did not meet the intentions of the tax offset scheme:

> Creative approaches by filmmakers that combined information and education with entertainment have ensured the ongoing prosperity of the documentary form. This balance must be a guiding principle that is adhered to when considering approaches to industry assistance.

> ... The stated intention of the Producer Offset when introduced was to provide a real opportunity for producers to retain substantial equity, build stable and sustainable companies, increase private investment and act as a genuine incentive for productions with wide audience appeal.

> To ensure that its intentions are met, the Producer Offset was crafted in a certain way to permit the policy outcomes to keep pace with change, both in regards to the documentary form and the tastes of contemporary audiences. To not allow for the industry support mechanism to be able to adapt, by calcifying definitions in legislation, is incredibly damaging to a sector.43

These views were generally supported by other film industry groups in submissions to the House of Representatives Economics Committee. In general, the industry would prefer that the existing

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42. The *Broadcasting Services Act 1992* defines an infotainment or lifestyle program as ‘a program the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment’ (Schedule 6, clause 2). The text of the *Broadcasting Services Act 1992* can be viewed at http://www.comlaw.gov.au/Details/C2013C00005
definition of documentary, as found by the Administrative Appeals Tribunal in the *Lush House* decision, be used.\(^4\)

**Exclusion of game shows**

*Items 2, 5 and 6 of Schedule 1* of the Bill substitute the term ‘quiz program’ with the term ‘quiz program, game show’ in subparagraphs 376-20(2)(c)(iii), 376-45(2)(c)(iii) and 376-65(2)(d)(ii) so as to clarify that a game show is explicitly excluded from eligibility for the film tax offsets.

**Application**

*Item 12* provides that the provisions excluding games shows from eligibility for the tax offsets apply to films commencing principal photography from Royal Assent. The remaining provisions that relate to the definition of a documentary apply in relation to films commencing principal photography on or after 1 July 2012. In supporting retrospective application, the Explanatory Memorandum notes that:

> Although this means that those amendments will have a retrospective operation, that operation restores the understanding of the provisions that was generally held in the context of government regulation of, and support for, documentaries before the recent Lush House decision. The amendments were also announced as part of the 2012-13 Budget and Screen Australia adopted the practice from July 2012 of advising applicants for the producer offset whether their film was a documentary under both the meaning adopted by the AAT and the meaning set out in the ACMA Guidelines. It follows that film makers would have embarked on making their films fully aware of the amendments that were proposed and of the consequences of those amendments for their film.

These amendments do not apply to films if their principal photography commenced before 1 July 2012. That ensures that they do not affect films on which significant expenditure had occurred by that date.\(^5\)

The film industry has raised concerns about the retrospective application of the definition of *documentary* to films that commence principal photography on or after 1 July 2012.\(^6\) The issue of retrospective application was also noted by the Senate Standing Committee for the Scrutiny of Bills.\(^7\)

**Schedule 2—Ex-gratia payments for natural disasters**

Schedule 2 of the Bill amends the ITAA 1997 to exempt from income tax, Disaster Income Recovery Subsidy (DIRS) payments for people who have lost income as a result of ex-Tropical Cyclone Oswald.

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44. M Deaner (Screen Producers Association of Australia), ‘Tax and Superannuation (2013 Measures No. 2) Bill 2013’, *Official Committee Hansard*, House of Representatives Standing Committee on Economics, Canberra, 18 April 2013, p. 12, viewed 20 May 2013, [http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22committees%2Fcomrep%2Fd0631300-9bd2-4e02-89f-0247071de9a1%2F0002%22](http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22committees%2Fcomrep%2Fd0631300-9bd2-4e02-89f-0247071de9a1%2F0002%22)


47. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 5 of 2013*, op. cit., p. 94.
and related flooding in Queensland. The amendments in Schedule 2 also exempt from income tax certain disaster-related payments made to New Zealand holders of special category visas during the 2011–12 and 2012–13 financial years.

**Background**

The Australian Government provides a range of programs and payments to persons or businesses affected by natural disasters. This has included direct support payments to individuals as well as exemptions from certain taxes.

Two such direct payments are the Australian Government Disaster Recovery Payment (AGDRP) and the (DIRS). 48

**AGDRP and ex-gratia payments for New Zealanders**

The AGDRP is a one-off payment to assist people who have been adversely affected by natural disasters in specified Local Government Areas. 49 The AGDRP provides payments of $1000 per eligible adult and $400 per eligible child (subject to certain conditions), to those persons who had experienced certain adverse situations in specified local government areas. 50

Some New Zealanders who have been affected by natural disasters, but may be ineligible for the AGDRP, have been paid ‘ex-gratia’ payments 51 with the rate of payment the same as those paid to other recipients. 52 These New Zealanders, holders of what are known as ‘non protected’ Special Category Visas (SCVs) (subclass 444), are those who have come to Australia on SCVs since 26 February 2001. Those New Zealanders who are pre-2001 SCV holders (referred to as ‘protected’) are entitled to similar benefits as Australian permanent residents under social security law.

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48. Another Bill currently before the Parliament, the Social Security Legislation Amendment (Disaster Recovery Allowance) Bill 2013, proposes to formalise the payment of ongoing assistance following major disasters which has, until now, been by way of ex-gratia payments. The relevant Bill homepage which includes the originating Bill, Explanatory Memorandum and Bills Digest can be viewed at: http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fbillhome%2Fbill%2F5005%2F500550550
50. Ibid.
51. The decision to make ex-gratia payments is made by the Prime Minister and/or Cabinet with the basis of their authority to do so emanating from the Government’s executive powers under section 61 of the Constitution. The Government can call upon the ex gratia power to deliver financial relief quickly at short notice. For this reason, it is the most appropriate response for groups of people affected by a common set of circumstances and for unexpected events. Source: Department of Finance and Deregulation, Senate review of government compensation, 11 June 2010, viewed 6 May 2013, http://www.finance.gov.au/financial-framework/discretionary-compensation/finance-submission.html
In 2011–12, around 202 ‘non protected’ SCV holders were granted lump sum payments following disasters, worth approximately $232 000 in total.53

Disaster Income Recovery Subsidy

The DIRS is a form of longer-term support and is activated when there have been a large number of people who have lost their income as a result of a disaster. For the purposes of assessing eligibility, claimants have had to demonstrate a reduction in their total income which can include: wages, similar kinds of income payments, or profits from a business (if self-employed).54 Although conditions for the subsidy have varied for different disaster events, the payment has, in many cases, been income tested so that a person does not qualify if their income at the time they receive the payment is higher than the standard income test cut-off points for Newstart Allowance.55 Currently this is $853.84 per fortnight for each member of a couple; $935.67 per fortnight for a single person; or $1429.25 per fortnight for a single principal carer with dependent children.56

Unlike normal income support payments payable by the Department of Human Services, the DIRS has been paid to all Australian residents and foreign nationals living or working in Australia. Foreign nationals who are not permanent residents in Australia are usually ineligible for welfare payments as they do not satisfy the residency requirements under the Social Security Act 1991.57 Most migrants have to wait for two years before they are eligible for payments such as Newstart Allowance. The DIRS has been payable to foreign nationals living or working in Australia at the time of the disaster without any requirement that the person satisfies a residency waiting period.58

Tax-free disaster payments

The Government has previously made certain disaster payments exempt from income tax. This has required specific legislative action to the same provisions of the ITAA 1997 as those proposed to be amended by Schedule 2 of the Bill as follows:

55. The cut-off is the maximum amount a person can have in income and still receive some level of Newstart Allowance.
58. See, for example, the eligibility conditions for the Disaster Income Recovery Subsidy payable in respect of the ‘Queensland tropical cyclone Oswald and associated flooding (January 2013)’, Disaster Assist website, viewed 17 April 2013, http://www.disasterassist.gov.au/Currentdisasters/StateandTerritories/Pages/QLD/QueenslandTropicalCycloneOswaldJanuary2013.aspx

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• in 2009, the Tax Laws Amendment (2008 Measures No. 6) Act 2009 provided that ‘Income Recovery Subsidy’ disaster payments were tax exempt for the Victorian bushfires and North Queensland floods of January and February 2009

• in 2011, the Tax Laws Amendment Act (2011 Measures No. 1) Act 2011 provided that the DIRS payments in respect of the floods that occurred in Australia during the period starting on 29 November 2010 or Cyclone Yasi, and ex-gratia disaster payments to New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010—11, would be tax exempt and

• in 2012, the Tax Laws Amendment (2012 Measures No. 1) Act 2012 provided that ex-gratia disaster payments to New Zealand holders of non-protected special category visas for the floods that occurred in New South Wales and Queensland in January, February and March 2012 would be tax exempt.

Policy position of non-government parties/independents

The previous measures to make certain disaster payments tax exempt as noted above were not opposed in either the House of Representatives or the Senate. In speaking to the changes proposed in 2009 to provide for tax exempt payments for those affected by the Victorian bushfires and North Queensland floods of January and February of that year—which were introduced as a Government amendment to an existing Bill at short notice—a Coalition member of the House of Representatives noted that:

I am aware that there will be a fifth schedule through an amendment that the Assistant Treasurer will move. I have been consulted on the substance of that and the Assistant Treasurer made a public announcement last night. In essence, as he will outline in the summing up of this debate, those


amendments will clarify and ensure that donations for the Victorian bushfires in all the forms that they are being made do not attract tax, which is very sensible.

From time to time the rules relating to tax deductibility mean that there have to be flexibility and announcements by governments of all persuasions in this regard. It is quite obviously fitting that he has made that announcement so that there is no uncertainty whatsoever. It is appropriate, given that this tax law amendment bill is before us this day, that at the earliest opportunity he moves the required amendment to be able to achieve that in a legislative sense. I know that will of course also have the unanimous support of the House. 63

Financial implications

The Explanatory Memorandum notes that the financial impact of Schedule 2 of the Bill is ‘nil’. 64

Key issues and provisions

Division 51 of the ITAA 1997 contains a number of tables that set out classes of income that are exempt from income tax. In particular, the table in section 51-30 of the ITAA 1997 sets out those welfare payments that are exempt from income tax.

Item 2 contains the substantive elements of the amendments in Schedule 2 of the Bill to the ITAA 1997, which commence on Royal Assent. Item 2 repeals existing table item 5.1C in section 51-30 of the ITAA 1997 which relates to certain ex-gratia payments from the Commonwealth to New Zealand holders of non-protected special category visa in respect of the floods that occurred in New South Wales and Queensland in January, February and March 2012.

In its place, new table items are inserted in section 51–30 that have the effect of:

- making tax exempt certain ex-gratia disaster payments to New Zealand holders of special category visas for a disaster that occurred in Australia during the 2011–12 and 2012–13 financial years that the ‘Emergency Management Minister’ (see below) has declared to be a major disaster for the purposes of the AGDRP subject to specific dates for claiming such a payment (proposed table items 5.2 and 5.3) and
- making tax exempt the DIRS payments for the floods that occurred in Queensland during the period starting on 21 January 2013 subject to specific dates for claiming such a payment (proposed table item 5.4).

The definition of the term Emergency Management Minister is inserted into subsection 995-1(1) of the ITAA 1997 by item 3 of Schedule 2 of the Bill. The term means the Minister who administers the

64. Explanatory Memorandum, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, op. cit., p. 3.

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Social Security Act 1991 in so far as it relates to the ADGRP. Under current administrative arrangements, this responsibility rests with the Attorney-General.65

Item 6 of Schedule 2 operates so that the proposed table item 5.2 is repealed on 1 July 2016. Similarly, items 8 and 9 operate so that proposed table items 5.3 and 5.4 as well as the definition of Emergency Management Minister are repealed on 1 July 2017. By the time these provisions are repealed, these table items will no longer be operative as the time for claiming the relevant payments will have ended.

Schedule 3—GST instalment system

Schedule 3 of the Bill amends the GST Act so that certain small business taxpayers, who are currently precluded from paying GST by instalments, will be able to do so. Under the existing GST law, certain small business taxpayers cease to be able to use the instalment option once they move into a ‘net refund position’. That is so even though the taxpayer’s net refund position might be expected to prevail for only a short time.

Background

Policy basis

In the 2011–12 Budget the Government announced that it would allow access to the GST instalment system for small businesses that are in a net refund position.66

Background—relevant GST concepts

Broadly speaking, GST is a tax levied on most goods and services consumed in Australia. Where GST applies, the supplier must include GST in the price of those goods or services. However, where GST is included in the price of any inputs acquired for use in a business, the business can claim an input tax credit.67 A taxpayer’s input tax credits are offset against the amount of GST collected from sales with the difference being remitted to the ATO.68

Net refund position

Generally, GST collected will exceed input tax credits, creating a GST liability. However, in some circumstances, input tax credits may exceed the GST collected by the taxpayer. For instance, a large one-off acquisition for use in a business, would usually generate a large input tax credit without necessarily generating an immediate corresponding increase in GST recovered from sales. In such cases the taxpayer could fall into a net refund position.


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Payment of GST by instalments

Most businesses can choose how they report and remit GST. One option is for the business to calculate, report in detail and pay GST quarterly. Another option is to report less information quarterly but still calculate and pay quarterly with adjustments made after lodgement of a comprehensive annual GST information report. A third option is to pay quarterly GST instalments based on estimate—by the ATO or the taxpayer—of what the annual GST amount will be and to reconcile the estimated amounts and actual liability after lodgement of an annual GST return.

This amendment concerns the third option. The option to pay by instalments is available only to businesses or enterprises with annual turnover below $2 million and that meet certain other criteria. One limitation under the current law is that instalment payments are not available to a taxpayer in a net refund position. The current position is that, upon going into a net refund position a taxpayer that is paying by instalments would cease to have that option.

Under the amendment, instalment amounts would be set at zero if the estimate would otherwise be less than zero.

The proposal

These amendments will allow eligible taxpayers that are using the instalment option to continue to pay by instalments even after they fall into a net refund position. Taxpayers that are not already using the instalment option are not eligible if they fall into a net refund position.

Position of major interest groups

At the time that the Government announced this measure in 2011, it released a consultation paper seeking views about the design and implementation of the proposed change.

The Pharmacy Guild of Australia (the Guild) made the only submission. The Guild says it ‘does not oppose the 2011-12 Budget decision to extend the current GST instalment system to allow access to

72. Treasury, Allowing small businesses in a net refund position to access the GST instalment system, Consultation paper, Canberra, 7 June 2011, viewed 7 May 2013, http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/2011/Allowing%20small%20businesses%20in%20a%20net%20refund%20position%20to%20access%20the%20GST%20instalment%20system/Key%20Documents/PDF/cp_GST_instalments.ashx
small business that are in a net refund position. However, it is important to point out that this measure does nothing to resolve the problem that exists for community pharmacies.\(^74\)

The problem raised by the Guild is that, it says, many drugs and medical preparations are GST-free when supplied to an individual but are taxable when supplied to the pharmacy. The Guild says that, 'as a result, unlike other small businesses, pharmacies are always in a negative cash flow situation with regard to GST' which leads them to 'lodge monthly Business Activity Statements (BASs) in order to retrieve the money paid out as soon as possible'.\(^75\) Other small businesses that are in a net refund position, it says, can choose to lodge only one BAS each year.

**Financial implications**

The Explanatory Memorandum notes that the financial impact of the measure is 'unquantifiable but is expected to be minimal'.\(^76\)

**Key issues and provisions**

As currently drafted, subsection 162-30(1) of the GST Act sets out the circumstances in which a taxpayer's election to pay by instalments comes to an end. Paragraph 162-30(1)(d) lists as such a circumstance the taxpayer being in a 'net refund position' in the first tax period applicable in a financial year.

**Item 1 of Schedule 3** of the Bill repeals paragraph 162-30(1)(d).

**Item 6 of Schedule 3** inserts proposed subsection 162-140(6) which provides that, if the estimation of the quarterly instalment amount under existing provisions, is less than zero, the instalment amount will be set at zero.

The changes made by Schedule 3 will reduce the administrative burden on small businesses which will be able to continue to avail themselves of the instalment payment option if they temporarily fall into a net refund position. These amendments are uncontroversial.

**Schedule 4—Deductible gift recipients**

Schedule 4 of the Bill adds six entities to the list of deductible gift recipients.

**Background**

A deductible gift recipient (DGR) is an organisation that is entitled to receive income tax deductible gifts and deductible contributions. There are two methods of gaining DGR status:

- by applying to the Commissioner of Taxation for endorsement as a DGR and

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74. Ibid., p. 2.
75. Ibid., p. 1.
by having the organisation listed by name in Division 30 of the ITAA 1997 or in the Income Tax Regulations 1997.\textsuperscript{77}

Taxpayers who make gifts of $2 or more to an organisation which is a DGR are able to deduct these amounts from their taxable income. Treasury estimates the annual cost to the budget of tax deductibility for gifts to DGRs at around $1.3 billion in 2012–13.\textsuperscript{78}

As at 10 April 2013, there were 27,945 entities with active DGR status, of whom 185 were specifically named in the ITAA 1997.\textsuperscript{79} In 2010–11, 38 per cent of individuals claimed a gift or contribution to a DGR as a deduction in their income tax return. In that year, claims for deductions were made in respect of a total of 4.8 million gifts valued at over $2.2 billion.\textsuperscript{80}

What is the benefit of obtaining deductible gift recipient status?

While charities that have DGR status may be advantaged in attracting donations compared to those without DGR status, the evidence is mixed as to whether tax incentives for donations actually increases giving more generally. In its 2010 report on the contribution of the not-for-profit sector, the Productivity Commission noted:

[\textit{A report} Giving Australia (FACS 2005) suggests that the main reasons for giving by Australians are very similar to those identified in the international literature — altruism, values and awareness of need. That said, by lowering the price of giving, tax incentives can potentially increase the amount donated and the number of individuals donating. Indeed, for wealthy individuals in particular, it appears that tax incentives are an important factor in influencing the amount given.]

... With no evidence of a crowding out effect in Australia and anecdotal evidence on tax inducement, the presumption must be that tax deductibility encourages philanthropic giving, especially by high income taxpayers. However, this conclusion is tentative and more analysis of giving behaviour in Australia is needed.\textsuperscript{81}

Arrangements for tax deductibility for gifts to DGRs and other charities are currently the subject of a review by the Not-for-profit (NFP) Sector Tax Concession Working Group (the Working Group), which is to examine the range of tax concessions and ‘whether there are fairer, simpler and more effective

\begin{itemize}
\item Income Tax Assessment Act 1997, sections 30.17 and 30.120.
\end{itemize}
ways of delivering the current envelope of support.\textsuperscript{82} Reform options canvassed by the Working Group included an extension of the DGR regime to all charities, a lift in threshold amount for deductible donations from $2 to $5 (as recommended by the Henry Tax Review) and implementing a tax offset mechanism. The Working Group was to have delivered its report to the Government by March 2013.\textsuperscript{83} At the time of writing the report had not been published.

### Proposed deductible gift recipients

Information about the activities of each of the entities proposed to be a DGR is set out in the Explanatory Memorandum.\textsuperscript{84} This material is summarised in table 1, with links to each of the entities’ website or other relevant information.

The Minister for Veterans’ Affairs, Warren Snowden, noted on 11 December 2012 that the Australian Peacekeeping Memorial Project (APMP) ‘has been granted’ DGR status by the Australian Tax Office.\textsuperscript{85} This statement appears to be premature, with the APMP not yet being listed by the Australian Taxation Office as having DGR status and therefore relying on this Bill to be passed by the Parliament to gain such status, in respect of donations made after 31 December 2012.

Table 1: **Additional Deductible Gift Recipients (DGRs) proposed to be added by Schedule 4 of the Bill**

<table>
<thead>
<tr>
<th>DGR type</th>
<th>DGR name</th>
<th>Conditions</th>
<th>Summary of activities as outlined in the Explanatory Memorandum</th>
<th>Further information about the entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>The Conversation Trust</td>
<td>The gift must be made after 21 November 2012</td>
<td>The Conversation is a charity that publishes analysis and commentary on current affairs from the university and research sector, written by experts and delivered directly to the public through its website, Twitter and Facebook.</td>
<td><a href="http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2029738%22">The Conversation website</a></td>
</tr>
<tr>
<td>Welfare and rights</td>
<td>National Congress of Australia’s First</td>
<td>The gift must be made after</td>
<td>National Congress of Australia’s First Peoples</td>
<td><a href="http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2101334%22">The National Congress of</a></td>
</tr>
</tbody>
</table>

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\textsuperscript{82} D Bradbury (Assistant Treasurer) and M Butler (Minister for Social Inclusion), *Not-for-profit sector tax concession working group discussion paper released*, joint media release, 2 November 2013, viewed 10 April 2013, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2029738%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2029738%22)

\textsuperscript{83} Ibid.

\textsuperscript{84} Explanatory Memorandum, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, op. cit., pp. 35–37.

\textsuperscript{85} W Snowden (Minister for Veterans Affairs), *Supporting a lasting tribute to our peacekeepers*, media release, 11 December 2012, viewed 1 May 2013, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2101334%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2101334%22)

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<table>
<thead>
<tr>
<th>DGR type</th>
<th>DGR name</th>
<th>Conditions</th>
<th>Summary of activities as outlined in the Explanatory Memorandum</th>
<th>Further information about the entity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Peoples Limited</td>
<td>30 June 2013</td>
<td>Limited is a national representative organisation of Aboriginal and Torres Strait Islander peoples. It works for the recognition of Aboriginal and Torres Strait Islander rights, and towards securing a better economic, social, cultural and environmental future for these peoples.</td>
<td>Australia’s First Peoples website</td>
</tr>
<tr>
<td>Defence</td>
<td>Anzac Centenary Public Fund</td>
<td>The gift must be made after 30 November 2012 and before 1 May 2019</td>
<td>Donations collected in the Anzac Centenary Public Fund will be used to fund a range of Anzac Centenary initiatives and projects as agreed by Government, for the commemoration of the Anzac Centenary and Australia’s involvement in World War One (1914 to 1918).</td>
<td>Anzac Centenary Advisory Board Report to Government, 1 March 2013 (pp. 64–65)</td>
</tr>
<tr>
<td></td>
<td>Australian Peacekeeping Memorial Project Incorporated</td>
<td>The gift must be made after 31 December 2012 and before 1 January 2015</td>
<td>The Australian Peacekeeping Memorial Project Incorporated is seeking donations to build a memorial on Anzac Parade in Canberra, ACT to recognise the service of Australians who have served in peacekeeping missions.</td>
<td>Australian Peacekeeping Memorial Project website</td>
</tr>
<tr>
<td></td>
<td>National Boer War Memorial Association Incorporated</td>
<td>The gift must be made after 31 December 2012 and before 1 January 2015</td>
<td>National Boer War Memorial Association Incorporated is seeking donations to commemorate Australian service in the Boer War (1899 to 1902) by constructing a memorial</td>
<td>National Boer War Memorial Association website</td>
</tr>
</tbody>
</table>

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Policy position of non-government parties/independents

Division 30 of the ITAA 1997 sets out the rules for working out deductions for certain gifts or contributions. This Division has been amended over time to add new DGRs or remove those whose status has lapsed. Debate in the parliament about the DGR status of entities has included whether entities that may be ‘political’ in nature should have DGR status.86

The proposed listing of a fund such as the Anzac Centenary Public Fund has been raised in the Senate and at Senate Estimates over the past 12 months, with Coalition Senators examining the role that such a fund plays in funding arrangements for the Anzac Centenary activities and events.87 This issue is discussed in more detail in the ‘Key issues and provisions’ section below.

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Financial implications

The Explanatory Memorandum notes that the addition of the six entities as DGRs is expected to cost $8.6 million over the four years to 2015–16. 88 Most of this is expected to be due to gifts to the Anzac Centenary Public Fund (table 2). 89

Table 2: Financial impact of listing each organisation as a deductible gift recipient ($ million)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Conversation Trust</td>
<td>Nil</td>
<td>−0.3</td>
<td>−0.5</td>
<td>−0.5</td>
<td>−1.3</td>
</tr>
<tr>
<td>National Congress of Australia’s First Peoples Limited</td>
<td>Nil</td>
<td>Nil</td>
<td>..</td>
<td>−0.01</td>
<td>−0.01</td>
</tr>
<tr>
<td>National Boer War Memorial Association Incorporated</td>
<td>Nil</td>
<td>−0.02</td>
<td>−0.05</td>
<td>−0.02</td>
<td>−0.09</td>
</tr>
<tr>
<td>The Anzac Centenary Public Fund</td>
<td>Nil</td>
<td>−1.3</td>
<td>−3.5</td>
<td>−2.3</td>
<td>−7.1</td>
</tr>
<tr>
<td>The Australian Peacekeeping Memorial Project Incorporated</td>
<td>Nil</td>
<td>−0.02</td>
<td>−0.04</td>
<td>−0.02</td>
<td>−0.08</td>
</tr>
<tr>
<td>Philanthropy Australia Inc.</td>
<td>Nil</td>
<td>..</td>
<td>−0.01</td>
<td>−0.01</td>
<td>−0.02</td>
</tr>
<tr>
<td>Total</td>
<td>Nil</td>
<td>−1.64</td>
<td>−4.10</td>
<td>−2.86</td>
<td>−8.60</td>
</tr>
</tbody>
</table>

Note: .. denotes financial impact has been rounded to zero.

Key issues and provisions

Division 30 of the ITAA 1997 sets out the rules for working out deductions for certain gifts or contributions. In particular, subdivision 30-B contains a table of recipients of deductible gifts which is divided into a number of categories.

Items 1–3 and 5 of Schedule 4 of the Bill amend the ITAA 1997 to insert the names of the six new DGRs into the relevant table as follows:

- **item 1** inserts The Conversation Trust into the table in section 30-25 of the ITAA 1997, which relates to education 90
- **item 2** inserts National Congress of Australia’s First Peoples Limited into the table in section 30-45 of the ITAA 1997, which relates to welfare and rights 91

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89. Ibid.
90. Proposed table item 2.2.42. Gifts must be made after 21 November 2012.

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• **item 3** inserts the Anzac Centenary Public Fund\(^92\), the Australian Peacekeeping Memorial Project Incorporated\(^93\) and the National Boer War Memorial Association Incorporated\(^94\) into the table in section 30-50 of the ITAA 1997, which relates to defence and

• **item 5** inserts Philanthropy Australia Inc. into the table in section 30-105 of the ITAA 1997, which relates to other recipients\(^95\) deduction as summarised in table 1 above.

**Item 4** repeals a listing for the Australian Peacekeeping Memorial Project Incorporated that limited deductibility to gifts made after 29 April 2007 and before 1 January 2009.

**Items 6–11** update the index to Division 30 of the ITAA 1997 to reflect the addition of the six new DGRs and the repeal of the outdated listing for the Australian Peacekeeping Memorial Project Incorporated.

**Items 12–15** provide for the sunsetting of DGR listings for the Australian Peacekeeping Memorial Project Incorporated and National Boer War Memorial Association Incorporated by repealing the listings from 1 July 2019. The listing of the Anzac Centenary Public Fund will be repealed on 1 July 2023.\(^96\)

### Anzac Centenary Public Fund

According to the Explanatory Memorandum, the Anzac Centenary Public Fund (the Fund) will be operated by the Department of Veterans’ Affairs.\(^97\)

The Fund is part of overall funding arrangements for the Anzac Centenary activities, whereby government funding is to be supplemented by corporate and other private donations.\(^98\) The establishment of the Fund was a recommendation of the Anzac Centenary Advisory Board, which noted that:

> The establishment of an Anzac Centenary Public Fund to hold corporate and other private donations, and which is listed as a Deductible Gift Recipient fund for tax deduction purposes, will greatly assist in facilitating collection of a pool of private donations. All contributors will be recognised on the Anzac Centenary website. It should be noted that donors to the Public Fund will not be able to use the Anzac Centenary logo in recognition of their donation, as this will be seen as receiving a benefit in return for the donation and impact on the application of tax deductibility.

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91. **Proposed table item 4.2.42.** Gifts must be made after 30 June 2013.
92. **Proposed table item 5.2.31.** Gifts must be made after 30 November 2012 and before 1 May 2019.
93. **Proposed table item 5.2.32.** Gifts must be made after 31 December 2012 and before 1 January 2015.
94. **Proposed table item 5.2.33.** Gifts must be made after 31 December 2012 and before 1 January 2015.
95. **Proposed table item 13.2.19.** Gifts must be made after 27 February 2013.
96. **Item 14 of Schedule 4** of the Bill.

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... funds collected from private sector donations must be kept distinctly separate from government funds. Arrangements need to be transparent and meet the highest levels of probity to ensure community and business confidence in the collection, maintenance and use of private donations.  

The Anzac Centenary Advisory Board also nominated a range of projects that could be funded by these donations. These were largely supported in the Government response to the Board’s report.

Discussions about the possible provision of DGR status to an entity so as to facilitate corporate and private donations to projects and events for the Anzac centenary were being undertaken within government during 2012. In response to a question on notice about the granting of DGR status to the Anzac Centenary Advisory Board in June 2012, the Minister for Veterans’ Affairs noted that the ‘Government is currently considering whether to provide Deductible Gift Recipient (DGR) status to public donations made in support of the Anzac Centenary’, but that ‘DGR status, if granted, would not be linked to the Anzac Centenary Advisory Board but to a specified Anzac Centenary fund in which the donations will be received’.

The decision to list the Fund as a separate DGR was taken after a review of whether the use of alternative entities that have DGR status was appropriate. Proposed government arrangements, as noted by the Department of Veterans’ Affairs in February 2013, were that moneys in the fund would be kept separate from those of the Department through a Special Account under the Financial Management and Accountability Act 1997.

The granting of DGR status may have impacted on the budget of the Department of Veterans’ Affairs. The Department noted in February 2013 that the requirement to offset the increased expenditure relating to granting DGR status to the Fund would be a decision for Government:

Mr Campbell: I might come in there. As you probably are aware, not only has the government agreed to DGR status for the Anzac Centenary fund but also they agreed to DGR status for the Boer War memorial and a peace-keeping memorial. The government decision on the offsets for those will be taken in the budget context. They have not yet been taken.

100. Ibid., pp. xxiv to xxxii.
103. C Spiers (Department of Veterans Affairs), Foreign Affairs, Defence and Trade Legislation Committee, Committee Hansard, Senate, Canberra, 13 February 2013, p. 165, viewed 3 June 2013, http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=id%3A%22committees%2Festimate%2Feccd2b30-4db2-4ff9-a179-4a338f2b4074%2F0005%22

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Mr Campbell: The government situation is, as I said before, DGR status requires offsets. There has been no decision yet on where those offsets have come from. They can come from anywhere, but there has been no decision yet. They will be taken in the current budget context.

Senator RONALDSON: So you are suggesting that it could come from other departments, in theory.

Mr Campbell: I do not know where they will ultimately take them from.

Senator RONALDSON: Will that be reflected in the budget papers?

Mr Campbell: Once the decision has been taken, that is a question that you could put more appropriately to the department of finance because they are the ones who determine budget measures. What you are referring to would actually be listed as a budget measure. That is a decision that is taken by Finance, as we are finalising all the budget papers.105

Schedule 5—Merging multiple accounts in a superannuation entity

Schedule 5 of the Bill amends the SIS Act to place a duty on trustees of certain superannuation entities106 to establish and implement procedures on a periodic basis that will consolidate multiple accounts of an individual member within the fund if the trustee of the fund considers that it would be in the member’s best interests to do so.

Background

Current arrangements governing how a superannuation fund is chosen when an employee commences work with an employer and employment patterns that see individuals move between different employers on a regular basis have contributed to a situation where some individuals can have multiple superannuation accounts either within the same fund or across different funds.

In some cases this is the result of explicit choice by the individual but it may also arise due to a number of other reasons, such as apathy, the rise of casual and part-time employment, low levels of financial literacy, complexity of choices, and transaction costs in consolidation.107

105. I Campbell (Department of Veterans’ Affairs) and M Ronaldson, Foreign Affairs, Defence and Trade Legislation Committee, Official Committee Hansard, Senate, 13 February 2013, p. 166, viewed 1 May 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=id%3A%22committees%2Festimate%2Fecdd2b30-4db2-4ffb-a179-4a338f2b4074%2F0005%22
106. Under section 10 of the Superannuation Industry (Supervision) Act 1993 a superannuation entity is a regulated superannuation fund, an approved deposit fund or a pooled superannuation trust.
The main indicator cited of the incidence of individuals holding multiple superannuation accounts is that the total number of accounts (around 32 million), is significantly higher than the working age population (around 12 million). Moreover, the number of superannuation accounts for each member of the labour force has increased from around 1.8 in June 1996 to around 2.6 in June 2012 (figure 2).

Figure 2  Superannuation member accounts and labour force, June 1997 to June 2012

The holding of multiple superannuation accounts is not new, having emerged in the mid-1990s. Since then, governments have used a number of mechanisms to encourage account consolidation, mainly with the objective of reducing fees for members who hold multiple accounts. Measures used have included:

- member protection of small accounts and facilitation of a ‘transfer protocol’ in 1995 to ensure that small accounts do not get eroded by fees and to make it easier for people to transfer all of their superannuation to the fund used by their current employer.\(^{109}\)
- expansion in the use of Tax File Numbers (TFNs) in 1996 to allow funds to amalgamate multiple contributions on behalf of the same individual.\(^{110}\)
- establishment of the lost members framework with the Australian Taxation Office in 1999\(^ {111}\) and
- establishment of portability arrangements in 2004 to require trustees to transfer funds on request by a member.\(^ {112}\)

Since 2010, the Government has put in place a number of further measures to address this issue. This includes enabling the use of TFNs by funds to locate multiple accounts from 1 July 2011 and changing arrangements for ‘lost’ superannuation accounts in November 2012 so that more superannuation accounts are transferred to the Australian Taxation Office for centralised administration on the lost members register.\(^ {113}\)

The original model of automatic consolidation was based on consolidation within the same fund with the following design features:

- accounts with a balance of less than $1000
- a period of inactivity of two years
- an ability to ‘opt out’ for the account holder and


113. These two measures were implemented by the Tax Laws Amendment (2011 Measures No. 2) Act 2011 and the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012.
• a policy to increase this threshold to $10 000 in late 2014 subject to a review.114

Research conducted by the Financial Services Council (FSC) in mid-2011 found that of the 28 million superannuation accounts, around 6.9 million would be eligible for consolidation under these criteria.115 Research conducted by the Association of Superannuation Funds of Australia (ASFA) found that the overall effect of the auto-consolidation process would be to reduce the number of superannuation accounts by 5–6 million and to save around $250 million per year in fees.116

The consolidation measure proposed by Schedule 5 of the Bill adopts a different model of consolidation for multiple accounts held by an individual in the same fund, which does away with any reference to account balances, inactivity and opt out arrangements. In its place, the fund trustee would be required to consolidate multiple accounts where this is in the ‘best interests’ of the fund member. The evolution of this policy is discussed further below.

Policy development

The model of consolidation proposed by the Bill has undergone significant development since it was first endorsed by the Government in 2011.

Cooper Review

The proposed measure has its origins in the Superannuation System Review (also referred to as the ‘Cooper Review’), which was conducted over the period 2009–2010.117 The review made a number of recommendations in relation to consolidating multiple accounts. These recommendations were based on a view that lost and multiple accounts reduced the efficiency of the superannuation industry as well as increased fees and reduced overall returns to individuals. Some of the key recommendations relating to account consolidation included:

• permit superannuation trustees to exchange the TFN with other trustees to identify accounts in multiple funds held by the same individual, and hence permit the trustee of the fund to which contributions are currently being made to invite the member to initiate consolidation of the accounts (recommendation 9.11)

117. The Cooper Review (also known as the ‘Super System Review’) was chaired by former deputy commissioner of ASIC Jeremy Cooper. The Cooper Review covered a broad range of issues including the performance and governance of the superannuation industry and has formed the basis for a number of recent legislative changes under the Government’s ‘Stronger Super’ package of measures.
• permit the trustee to auto-consolidate accounts without prior reference to the member, where multiple accumulation accounts within a single fund share a common TFN and member surname, and the multiple accounts have not been established due to deliberate elections by the member concerned (recommendation 9.12)

• the ATO should develop electronic means to display all the superannuation funds of which an individual logging on is currently a member. Similarly, the ATO should provide an electronic facility to include all member accounts for which it holds TFN identification (recommendation 9.13) and

• the ATO to facilitate consolidation by establishing procedures with administrators and clearing houses so that when an employer seeks to enrol a new member, the fund administrator (or clearing house if one is used) must validate the TFN provided with the ATO to ensure that it is the number for the individual named. At the same time the ATO should be required to check its data base to see whether it holds unclaimed money for that member (recommendation 9.14). 118

Government response and further consultation

The Government’s initial response to the Cooper Review, announced in December 2010, was to largely support the consolidation measures, but noted that it would consult with the industry on design and implementation issues. 119 In relation to auto-consolidation within the same fund, the Government’s support was qualified to the extent of requiring the member to be notified in advance, including of any impact on insurance cover, and having the right to opt-out. 120

Further consultation on these measures, undertaken by the Stronger Super Peak Consultative Group (Consultative Group) between February 2011 and May 2011, considered design issues relating to a number of recommendations from the Government’s initial response. The outcome of this consultation process was support for consolidation but disagreement on several aspects. The Consultative Group noted in its report that:

The value of these initiatives to counter the problem of many people holding multiple accounts, often with small balances, and seeing their savings eroded through the payment of multiple administration fees and insurance premiums, is widely endorsed. The need to ensure that members clearly understand the impact of a move to consolidate their accounts, including on their insured position, was often emphasised during discussions as was ensuring that there is a genuine ability for a member to opt-out of this process if they determined that it was in their interests to operate multiple accounts.

We were unable to reach a consensus on the appropriate protocols for account consolidation post MySuper. Many supported the view that all inactive accounts, irrespective of size or type, should be part of an ongoing initiative to improve system efficiency through consolidation on an opt-out basis. Others argued


120. Ibid., p. 56.

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that this should be limited to superannuation accounts with small balances. The final position on this will need to be determined by the Government.\(^{121}\)

The timeline suggested by the Consultative Group involved a phased approach for implementation:

- 1 July 2011—funds may use TFNs as the primary locator to find duplicate accounts
- 1 January 2012—funds can, where the member provides consent on an opt-in basis, use TFNs to search SuperSeeker (the ATO’s website for lost accounts) to locate lost accounts and consolidate these with the active account
- 1 July 2012—funds must undertake intra-fund consolidation from this date with the process to be completed by 1 July 2013
- 1 July 2012—the ATO to update SuperSeeker to include active accounts and from December 2012, funds can search SuperSeeker for all accounts with member consent
- 1 July 2013—consolidation of lost and inactive accounts (no contribution or rollover for at least two years) under $1000 commences unless tagged by the member for retention. The Government was encouraged to resource the ATO to support this initiative as soon as practicable and
- July 2014—changes to the enrolment process for new employees through the use of an online combined TFN declaration and superannuation fund nomination form. Where a new employee does not indicate that they wish to direct superannuation contributions to an existing fund, the default position would be that an account would be opened in the default fund of the employer.\(^{122}\)

### Final Government response

Following this consultation with industry, the Government made further announcements in September 2011 about the design aspects of some measures. In making these announcements, the Government retained the $1000 account threshold balance and a requirement that the member be able to ‘opt out’. The response also set out a proposed timeline and design features for the measures that were similar to that suggested by the consultation panel, with the key difference being a six month later commencement (January 2014) of the auto-consolidation measure:

- July 2011—funds can use TFNs as primary locator to find accounts within a fund
- January 2012—funds can use TFNs to search the ATO’s current service for searching for lost accounts — but only with member consent
- July 2012—where a member has multiple accounts within a fund, funds would be required to consolidate these accounts, where possible

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122. Ibid., pp. 16–17

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• July 2012—the ATO will provide a new online facility for members to view their active (but not their inactive) superannuation accounts that are currently reported to the ATO, in addition to their lost accounts and other superannuation monies held by the ATO (for example, unclaimed money). Funds will also be able to search the account information, with member consent

• October 2013—funds will report all inactive accounts, lost accounts as well as active accounts to the ATO

• January 2014 —commencement of auto-consolidation of lost and inactive accounts (two years without contributions or rollover) with a balance of less than $1000 and accounts in eligible rollover funds. The process will be initiated by the ATO and conducted annually and

• July–December 2014—the enrolment process for new employees will be modified so that employees can actively consider account consolidation at this time. If the new employee does not exercise choice, the default option will be to create a new account. Any lost and inactive accounts with a balance of less than $1000 will be transferred into the new account through the auto-consolidation process. In the latter half of 2014 the threshold for auto-consolidation of lost and inactive accounts will be increased to at least $10 000 subject to a review of the threshold by the Treasury, ATO and APRA.123

A Regulation Impact Statement on the Stronger Super measures (including consolidation) was prepared by Treasury and assessed as adequate by the Office of Best Practice Regulation.124 The model of consolidation adopted was based on a maximum account threshold of $1000, an inactivity period of two years and a requirement that the member be able to opt out.125

Draft legislation

Treasury conducted two rounds of consultation on the auto-consolidation measure during March/April 2012 and August/September 2012.126 In each case, the measure was proposed to commence from 1 January 2013.

In the first draft of the Bill, the legislative model to require auto-consolidation within the same superannuation fund was to apply only to account balances of less than $1000, with a two year period of inactivity also a condition of consolidation.\(^{127}\)

The proposed model of consolidation in the second draft Bill (which is largely unchanged in the provisions of Schedule 5 to this Bill) was to incorporate a test based on a trustee’s assessment of the ‘best interests of the member’.\(^{128}\) Industry group the Association of Superannuation Funds of Australia (ASFA) was supportive of this changed approach, noting that ‘the change to a higher level trustee obligation will result in a better administrative process’.\(^{129}\)

**Policy position of non-government parties/independents**

The Coalition has previously expressed support for the consolidation of multiple superannuation accounts in the context of the measure for funds to be able to use TFNs to search for multiple superannuation accounts and then to contact members about the options for consolidation. However, this support was predicated on the basis that ‘any such consolidation would only take place with the consent of the member concerned’.\(^{130}\)

**Position of major interest groups**

Superannuation industry groups, including the ASFA, the Financial Services Council and the Australian Institute of Trustees, support the proposed measure.\(^{131}\)

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Financial implications

The Explanatory Memorandum notes that the financial impact of Schedule 5 of the Bill is ‘nil’.\(^{132}\)

Key issues and provisions

It appears that there is general public support by superannuation fund members for account consolidation. A survey of superannuation fund members in 2011 commissioned by the ASFA noted that more than three-quarters of respondents agreed with the concept of auto-consolidation of superannuation accounts.\(^{133}\) Moreover, support for auto-consolidation was particularly strong in the lower net financial worth households whilst there was still significant support amongst high net worth household (figure 3).

Figure 3  
Attitudes to having an inactive/dormant account to be automatically consolidated into main superannuation account

![Figure 3](http://www.superannuation.asn.au/policy/reports)

Note:
- Mass Market: Net financial worth less than $50,000
- Mass Affluent: Net financial worth $50,000 to $150,000
- Core Affluent: Net financial worth $150,000 to $350,000
- High Net Worth: More than $350,000 in net financial wealth and/or income more than $250,000 per annum

Item 4 of Schedule 5 of the Bill inserts proposed section 108A into the SIS Act to require trustees of a superannuation entity (other than the trustee of a pooled superannuation trust or self managed superannuation fund) to establish rules that:

- create a procedure for identifying members who have multiple superannuation accounts within the superannuation entity: proposed paragraph 108A(1)(a)
- require the trustee to carry out that procedure at least once each financial year: proposed paragraph 108A(1)(b)
- require the trustee to merge the relevant accounts if the trustee ‘reasonably believes that it is in the best interests of the member to do so’: proposed paragraph 108A(1)(c) and
- provide that fees are not payable for the merger of the identified superannuation accounts: proposed paragraph 108A(1)(d).

The meaning of ‘best interests’ is not defined in the SIS Act. However, proposed subsection 108A(4) of the SIS Act provides that in determining whether it is in the best interests of a member to merge his or her superannuation accounts, the trustee must consider the total amount of fees and charges payable by the member in respect of his or her accounts—including any fees and charges payable for insurance provided for those accounts.

Trustees are exempted from the requirement in proposed paragraph 108A(1)(c) to merge superannuation accounts if it is ‘not practicable in the circumstances’ to merge the member’s superannuation accounts or where one or more of the member’s accounts is a defined benefit interest or income stream.134

The Law Council of Australia, while not expressing any view on the policy intent of account consolidation, considered that the drafting of proposed paragraph 108A(1)(c) conferred on the trustee a requirement to make an individual decision about the best interests of the member:

The Bill and the Explanatory Memorandum both misconstrue the general law duty of a trustee to act in the best interests of members, by suggesting that a trustee must make a personalised determination as to whether merging accounts would be in the best interests of the particular member.

This is inconsistent with a trustee’s general law duty (which, in colloquial terms, is a duty to act in the best interests of members on the whole, but not a duty to act in the best interests of each member individually) and is unrealistic and impractical since large funds have hundreds of thousands of members.

In practical terms, the merger process will largely be automated, without any specific consideration of whether or not merging accounts would be beneficial for a particular member.

The Bill should reflect this and fairly straightforward amendments could achieve this, for example, by requiring trustees to act in the best interests of members in preparing their policies for merging accounts

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134. Proposed subsection 108A(2) of the SIS Act.
(which is subtly but significantly different from the proposed approach of requiring a merger where it is in
the best interests of the particular member to merge accounts).135

As an alternative formulation suggested by the Law Council for proposed paragraph 108(1)(c) was
for a requirement to merge accounts in all cases, unless there were reasonable grounds to suspect
that it were not in their interests.136

Notably absent from proposed subsection 108A(4) is any requirement to consider the breadth or
quality of the insurance coverage that might attach to each individual account.

Proposed subsection 108A(5) provides that an offence of strict liability is committed if a trustee
does not establish the account consolidation rules as set out in proposed subsection 108A(1).137 The
penalty for the offence is set at 50 penalty units.138

Item 5 provides that he provisions apply from 1 July 2013, thereby requiring that the first annual
review of multiple account holdings be completed by 1 July 2014.

Insurance and account consolidation

The possible loss of insurance coverage associated with consolidation of superannuation accounts
has been an important issue since it was recommended by the Cooper Review. Insurance within
superannuation can take a number of forms and account consolidation can impact on the quality
and cost of insurance cover. The Law Council of Australia told the House of Representatives
Economics Committee that:

There are differences with insurances. It is not just about saving the insurance premium; there could be
different amounts of insurance cover. Even if the amounts of insurance cover are the same there may be
different scope of coverage. There may be different exclusions and qualification periods under the different
insurance policies. There might be different automatic acceptance limits. If you were to combine the
accounts the external insurer, in order to preserve the same level of insurance coverage, might require a
health test to be done. But maybe the member is quite happy having two different accounts because they

135. Superannuation Committee of the Legal Practice Section of the Law Council of Australia, Submission to the House of
Representatives Standing Committee on Economics, Inquiry into the Tax and Superannuation Laws Amendment (2013
Measures No. 2) Bill 2013, 4 April 2013, p. 3, viewed 30 April 2013,

136. L Barrett, Head of Investment Law and Compliance, UniSuper Management Pty Ltd; and Chair, Legislation and Policy
Sub-Committee of the Law Council of Australia’s Superannuation Committee, Law Council of Australia, House of
Official Committee Hansard, 18 April 2013, p. 18, viewed 8 May 2013,
http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22committees%2FCommrep%2Fd0631
300-98d2-4e02-829f-0247071de6a1%2F0002%22

137. The imposition of strict liability means that a fault element does not need to be satisfied, but the offence will not
criminalise honest errors and a person cannot be held liable if he, or she, had an honest and reasonable belief that
they were complying with relevant obligations.

138. Section 4AA of the Crimes Act 1914 provides that a penalty unit is equivalent to $170. This means the penalty is
$8500. The text of the Crimes Act 1914 can be viewed at:

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are just under the automatic acceptance limit, so they can have two lots of insurance without having to submit to a health check.

In that regard, I might mention in passing that the explanatory memorandum seems to assume that in all cases when a member is paying two insurance premiums they will only be entitled to recoup one insurance payout in the relevant event. While that is true in the case of salary continuity cover that is not necessarily the case in the context of death benefit cover or total and permanent disablement cover, so there may be a reason for having the accounts separate from an insurance perspective.  

The Government’s initial response to the Cooper Review was qualified to require the member to be notified in advance of any consolidation, including of any impact on insurance cover, and having the right to opt-out.  

The proposals in Schedule 5 of the Bill no longer provide for ‘opt-out’ arrangements, although the Explanatory Memorandum notes that ‘if the separate accounts are significant, trustees could consider giving the member notice that the trustee plans to merge the accounts in order to seek their views’.

**Schedule 6—Government co-contribution for low income earners**

Schedule 6 of the Bill amends the Government Co-contribution Act to change the superannuation co-contribution scheme in four ways for income years 2012–13 and beyond:

- reducing the rate at which the payment is made from 100 per cent to 50 per cent
- decreasing the maximum amount payable from $1000 to $500
- extending the freeze on the indexation of the lower income threshold for the 2012–13 income year and
- setting the higher income threshold at $15 000 above the lower income threshold (down from $30 000).

**Background**

Under the Government Co-contribution Act, low income earners who make an additional personal contribution to a superannuation fund are generally eligible for a matching payment by the Government up to a maximum value of $1000. Other arrangements include:

- an upper income threshold set at $30 000 higher than the indexed lower threshold of $31 920.

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142. Ibid., p. 51.
• the rate at which the payment is made is 100 per cent (every dollar of ‘eligible personal superannuation contributions’ by an individual is matched by the Government)\textsuperscript{145} and
• the minimum payment is $20.\textsuperscript{146}

The government co-contribution replaced the tax rebate to which a low income employee may have been entitled before 2003–04 – this was referred to as the ‘low income superannuation rebate’ and was paid to employees with an assessable income of up to $31 000, up to a maximum of $100.\textsuperscript{147}

In the three years to 2010–11, the total value of co-contribution payments to recipients has totalled almost $3.3 billion.\textsuperscript{148} The number of recipients and average benefit paid has varied across these three years (figure 4).
Changes to the superannuation co-contribution scheme

There have been a number of changes to the co-contribution scheme since its inception in 2003, with changes in payment rates and threshold levels (due to indexation or other interventions). During the period of the Howard Government, the major change was to lift the maximum rate to $1500 from 2004–05.\textsuperscript{149} Since 2007 there have been almost annual announcements and changes to the co-contribution scheme:

- in the 2008–09 Budget the Government announced that from 1 July 2009, ‘income’ for superannuation co-contribution purposes included a person’s reportable employer superannuation contributions (which includes ‘salary sacrificed’ contributions).\textsuperscript{150} This change was implemented by the \textit{Tax Laws Amendment (2009 Measures No. 1) Act 2009}\textsuperscript{151}

\begin{itemize}
  \item \textsuperscript{149} \textit{Superannuation Budget Measures Act 2004}. A copy of the Act can be viewed at: \url{http://www.comlaw.gov.au/Details/C2004A01341}
  \item \textsuperscript{151} A copy of the Act can be viewed at: \url{http://www.comlaw.gov.au/Details/C2009A00027}
\end{itemize}

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in the 2009–10 Budget the Government announced that it would temporarily reduce the matching rate and maximum co-contribution that was payable from 1 July 2009. Under the proposed measures:

- for the first three income years (2009–10, 2010–11 and 2011–12), the Government reduced its co-contribution by one-third (from a matching rate of 150 per cent to 100 per cent)
- for the two income years after then (2012–13 and 2013–14), the co-contribution would be higher than in 2009–12 (a matching rate of 125 per cent compared with the matching rate of 100 per cent), but it would still be lower than prior to the amendments (125 per cent compared with 150 per cent) and
- in 2014–15, the matching rate should return to its previous level (150 per cent)

These measures were implemented by the Tax Laws Amendment (2009 Budget Measures No. 1) Act 2009.

in the 2010–11 Budget the Government announced that income thresholds applying for 2009–10 were to continue for a further two years and the government co-contribution rate was to be set permanently at $1 for every $1 of personal contributions made by those receiving an adjusted annual income of less than $31,920. This took into consideration the announcement about the minerals super profit tax-dependent proposal for a low income government superannuation contribution. The co-contribution changes were implemented by the Tax Laws Amendment (2010 Measures No. 3) Act 2010.

another 2010–11 Budget announcement was to pause the indexation of the thresholds for the co-contribution for 2010–11 and 2011–12. These measures were implemented by Schedule 1 to the Tax Laws Amendment (2010 Measures No. 3) Act 2010.

in the 2011–12 Budget, the Government announced that it would continue (for an additional year to 2012–13) the freeze of the indexation applied on the income threshold above which the maximum superannuation co-contribution begins to phase down and

in the November 2011 Mid-Year Economic and Fiscal Outlook, the Government announced that the co-contribution matching rate would be reduced to 50 per cent with a maximum co-contribution of $500.

158. B Shorten (Minister for Financial Services and Superannuation), Superannuation measures as part of the mid-year economic and fiscal outlook, media release, no. 160, 29 November 2011, viewed 6 February 2012.
The following table summarises the payment rates and thresholds applying to the co-contribution since its inception.

Table 3  Summary of key superannuation co-contribution arrangements, 2003–04 to 2012–13 (proposed)

<table>
<thead>
<tr>
<th>Year</th>
<th>Person’s total income for the income year</th>
<th>Maximum amount (assuming a contribution of at least $1000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003–04</td>
<td>$27 500 or less</td>
<td>$1000</td>
</tr>
<tr>
<td></td>
<td>More than $27 500 but less than $40 000</td>
<td>$1000 reduced by eight cents for each dollar of the person’s total income above $27 500</td>
</tr>
<tr>
<td>2004–05 to 2006–07</td>
<td>$28 000 or less</td>
<td>$1500</td>
</tr>
<tr>
<td></td>
<td>More than $28 000 but less than $58 000</td>
<td>$1500 reduced by five cents for each dollar of the person’s total income above $28 000</td>
</tr>
<tr>
<td>2007–08</td>
<td>$28 980 or less</td>
<td>$1500</td>
</tr>
<tr>
<td></td>
<td>More than $28 980 but less than $58 980</td>
<td>$1500 reduced by five cents for each dollar of the person’s total income above $28 980</td>
</tr>
<tr>
<td>2008–09</td>
<td>$30 342 or less</td>
<td>$1500</td>
</tr>
<tr>
<td></td>
<td>More than $30 342 but less than $60 342</td>
<td>$1500 reduced by five cents for each dollar of the person’s total income above $30 342</td>
</tr>
<tr>
<td>2009–10</td>
<td>$31 920 or less</td>
<td>$1000</td>
</tr>
<tr>
<td></td>
<td>More than $31 920 but less than $61 920</td>
<td>$1000 reduced by 3.333 cents for each dollar of the person’s total income above $31 920</td>
</tr>
<tr>
<td>2010–11</td>
<td>$31 920 or less</td>
<td>$1000</td>
</tr>
<tr>
<td></td>
<td>More than $31 920 but less than $61 920</td>
<td>$1000 reduced by 3.333 cents for each dollar of the person’s total income above $31 920</td>
</tr>
<tr>
<td>2011–12</td>
<td>$31 920 or less</td>
<td>$1000</td>
</tr>
<tr>
<td></td>
<td>More than $31 920 but less than $61 920</td>
<td>$1000 reduced by 3.333 cents for each dollar of the person’s total income above $31 920</td>
</tr>
<tr>
<td>2012–13 (Proposed)</td>
<td>$31 920 or less</td>
<td>$500</td>
</tr>
<tr>
<td></td>
<td>More than $31 920 but less than $46 920</td>
<td>$500 reduced by 3.333 cents for each dollar of the person’s total income above $31 920</td>
</tr>
</tbody>
</table>


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Co-contribution recipients

In general, females have accounted for more than 50 per cent of co-contribution recipients in all years since 2004–05 (figure 5). The Australian Taxation office attributed the fall in the number of persons receiving a co-contribution in 2010–11 to a range of factors including the policy changes to the definition of income from 1 July 2009, the reduction in matching rates and entitlement level changes, as well as a general reduction in voluntary contributions in 2009–10.\(^{159}\)

Figure 5  Superannuation co-contribution recipients, by gender, 2004–05 to 2011–12 (‘000)


Importantly, only around 20 per cent of people who are eligible for the co-contribution make an additional personal contribution.\(^{160}\)

Policy development

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The changes proposed by Schedule 6 of the Bill to the superannuation co-contribution scheme were announced as part of the 2011–12 Budget and 2011–12 Mid-Year Fiscal and Economic Outlook.\(^{161}\)

While some commentators have focussed on budget savings provided to the Government by the proposed measures, another relevant factor in reducing support for the co-contribution is the implementation of another superannuation payment for low income earners—the Low Income Superannuation Contribution (LISC)—which will be paid from 1 July 2012 to eligible low income taxpayers.\(^{162}\)

**Low income superannuation contribution**

The LISC is a separate, and additional, superannuation contribution of up to $500 to low income earners by the Government. To be eligible for the LISC, individuals must have an ‘adjusted taxable income’ of less than $37 000 and, similar to eligibility for the superannuation co-contribution, derive 10 per cent or more of their total income from business or employment.\(^{163}\) The maximum contribution of $500 is based on the contributions tax that would be paid (at a rate of 15 per cent) on the Superannuation Guarantee payment for an employee with a taxable income of $37 000.\(^{164}\)

Unlike the co-contribution scheme, low income earners do not need to make a personal contribution to qualify for a payment, with a range of payments made on their behalf, including payments made under the Superannuation Guarantee, qualifying them for the payment.\(^{165}\) Further, there is no requirement for an individual to be proactive in claiming the payment, with the Commissioner of Taxation given the power to determine eligibility based on information available to the Australian Taxation Office.\(^{166}\)

The LISC was first announced by the Government as part of its response to the Henry Tax Review in May 2010.\(^{167}\) The low income superannuation contribution was one of several superannuation-related changes announced at the time, the others including an increase in the rate of the

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162. See for example, M Newnham, Opinion: ‘Labor ploy just a super sneaky way of balancing the budget’, *The Age*, 3 April 2013, p. 35, viewed 1 May 2013, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F2343391%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F2343391%22)
165. *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, section 12D.
166. *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, section 12B.
167. W Swan (Treasurer) and C Bowen (Minister for Financial Services, Superannuation and Corporate Law), *Stronger, fairer, simpler superannuation banking the benefits of the boom*, joint media release, 2 May 2010, viewed 1 May 2013, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FX5LW6%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FX5LW6%22)
Superannuation Guarantee from nine to 12 per cent and increasing the maximum Superannuation Guarantee contribution age from 70 to 75.\footnote{168}

Importantly, the LISC and these related superannuation measures were to be linked to the proposed Resources Profits Super Tax.\footnote{169}

**Policy position of non-government parties/independents**

The Coalition, which developed the superannuation co-contribution scheme when in government in 2003, has generally opposed recent changes to the scheme. In commenting on the Bill to implement the 2009–10 Budget measures, former Coalition Senator Helen Coonan noted that:

> This measure will have a significant impact on the 1½ million Australians who received the superannuation co-contribution in 2007-08. So that is 1½ million low- and medium-income earners who are now going to have superannuation ripped away from them by this government. They are certainly not going to be supported by the government of Australia as they were under the previous coalition government.

> ... The coalition are very proud of the co-contribution scheme that we introduced and in fact enhanced, and the sad fact is that this measure—introduced, they will no doubt say, as a matter of necessity to fill this burgeoning deficit in our finances and in our fiscal position—will reduce the capacity of low-income people to save for their retirement.\footnote{170}

In Government, the Coalition may support a higher level of support through the co-contribution scheme ‘as soon as the budget is in a strong enough position for us to be able to afford it’.\footnote{171}

**Position of major interest groups**

In general, the superannuation industry does not support the proposed reduction in benefits available under the superannuation co-contribution scheme.\footnote{172} However, ASFA recognises that some of this reduction is offset by the benefits of the LISC, noting that ‘although any reduction to the co-contribution measure is less than desirable, this change should not be considered in isolation but in conjunction with the low income superannuation contribution (LISC) measure’.\footnote{173}

\footnotesize{\begin{itemize}
\item \footnote{168} Ibid.
\item \footnote{171} M Cormann, ‘Oppn unimpressed with super changes’, *ABC Radio AM*, 6 April 2013, viewed 7 May 2013, \url{http://www.abc.net.au/am/content/2013/s3731223.htm}
\item \footnote{172} Australian Institute of Superannuation Trustees, Submission to the House of Representatives Economics Committee, *Inquiry into the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013*, op. cit., p. 3.
\end{itemize}}
Financial implications

The Explanatory Memorandum notes that the proposed changes are expected to generate cash savings of $987 million by the 2015–16 income year (table 4).

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>0</td>
<td>325</td>
<td>335</td>
<td>327</td>
<td>987</td>
</tr>
</tbody>
</table>


When the measures proposed by Schedule 6 of the Bill were announced in the 2011–12 Budget and 2011–12 Mid-Year Fiscal and Economic Outlook, the financial impact estimates were presented in accrual terms, with the expectation that the measures would provide savings of almost $1.1 billion (table 5).\(^{174}\)

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2011–12 Budget: extending the pause in indexation to 2012–13</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>75</td>
</tr>
<tr>
<td>2011–12 Mid-Year Fiscal and Economic Outlook: Reduce matching rate from 100 per cent to 50 per cent, reduce maximum payment to $500 and lower maximum income threshold</td>
<td>352</td>
<td>342</td>
<td>329</td>
<td>1023</td>
</tr>
<tr>
<td>Total</td>
<td>377</td>
<td>367</td>
<td>354</td>
<td>1098</td>
</tr>
</tbody>
</table>


It is unclear whether the estimates prepared for the Explanatory Memorandum on a cash basis incorporate updated expectations about the budget impact of these measures, or whether they reflect the impact of cash accounting only.

Key issues and provisions

Items 1 and 2 of Schedule 6 of the Bill amend subsection 9(1) of the Government Co-contribution Act so that the co-contribution rate is 100 per cent of the sum of the eligible personal superannuation contributions for the income years 2009–10, 2010–11 and 2011–12, whilst the rate for 2012–13 and later income years will be 50 per cent.

\(^{174}\) To provide consistency with the financial impact estimated for other Schedules of this Bill, this estimate of $1.098 billion in accrual terms is used to summarise the impact of this measure in the ‘Bills Digest at a glance’ section on page 4 of this Bills Digest.
Section 10 of the Government Co-contribution Act provides that the maximum Government contribution in a financial year is calculated by reference to two amounts—being the *lower income threshold* and the *higher income threshold*. Item 4 of Schedule 6 of the Bill inserts *proposed subsection 10(1C)* into the Government Co-contribution Act to reduce the maximum co-contribution payment from $1000 to $500 for 2012-13 and later income years. The taper rate (the reduction in the co-contribution payment above the minimum income threshold) remains unchanged at 3.333 cents for every dollar by which the person’s income for the income year exceeds the lower income threshold.

Item 8 of Schedule 6 of the Bill inserts *proposed paragraph 10A(3)(d)* into the Government Co-contribution Act to provide for a reduction of the *higher income threshold* from $30 000 above the lower income threshold to $15 000 above that threshold.

Item 9 amends subsection 10A(5A) of the Government Co-contribution Act to specify that the indexation factor for the 2012–13 income year is set to 1, thereby maintaining the lower income threshold at $31 920, where it has remained since 2009–10.

Item 10 provides that the measures apply to the 2012–13 income year and later income years.

One of the key items of debate over the changes to the superannuation co-contribution scheme in recent years is whether the changes have diluted government support for the superannuation system generally and for low income earners specifically.

**Lower, or broader, support for the superannuation of low income earners?**

In announcing changes to the superannuation co-contribution scheme in November 2011, the Government explicitly acknowledged that reduced support of the superannuation co-contribution scheme is offset by the benefit provided by the LISC, which does not require the individual to make a personal superannuation contribution. Minister Shorten noted that:

> The LISC will benefit over three times as many low-income earners as the current co-contribution, and is better targeted in boosting retirement savings.

> This is because low-income earners can only access the co-contribution if they make additional superannuation contributions from their income or savings, whereas all low-income earners who receive compulsory [superannuation guarantee] contributions will automatically benefit from the new initiative. 175

In terms of the specific benefits for low income earners, the difference between the total government contribution with, and without, a LISC depend on the ability to make additional personal contributions and the size of those contributions, income and the likelihood that the individual would have claimed the superannuation co-contribution.

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175. B Shorten (Minister for Financial Services and Superannuation), *Superannuation measures as part of the mid-year economic and fiscal outlook*, op. cit.
A simplified comparison of the co-contribution scheme arrangements for 2008–09 with that proposed by the Bill for 2012–13 shows that individuals who were able to make additional superannuation contributions would be generally worse off under the changed arrangements (figure 6). In general, for almost all income levels that would be eligible for a co-contribution under the 2008–09 co-contribution arrangements, individuals would have received higher payments from the government compared to the proposed 2012–13 arrangements except for those who made no contribution.

**Figure 6** Illustrative comparison between 2008–09 superannuation co-contribution scheme and the 2012–13 LISC and co-contribution arrangements, by varying levels of personal additional superannuation contributions (per cent of annual income)

Note: There are a range of eligibility criteria that need to be satisfied for the superannuation co-contribution and the low income superannuation contribution (LISC), including that the co-contribution thresholds are based on a taxpayer’s ‘total income’ while the LISC uses ‘adjusted taxable income’ as the threshold for payment.

Source: Parliamentary Library estimates based on applicable superannuation co-contribution rates in 2008–09 and proposed co-contribution arrangements for 2012–13 (see table 3) and low income superannuation contribution arrangements.

One important caveat to this analysis is that the conclusion holds only for those who were able to make additional personal superannuation contributions and claimed the matching government payment. Importantly, the co-contribution was only claimed by around 20 per cent of those who were eligible and therefore it is only these taxpayers, who, by and large, are less advantaged by the...
proposed arrangements. The remaining 80 per cent who did not make additional personal contributions, are better off under the proposed arrangements.

Have changes to the scheme reduced confidence in superannuation?

The numerous changes to the co-contribution scheme by the Government have led some commentators to claim that ‘confidence’ in superannuation has been affected, thereby reducing the potential value of superannuation contributions made by individuals and their subsequent retirement incomes.

A survey of attitudes to superannuation in 2012 by Suncorp and ASFA of 1738 Australians aged 25-70 with a superannuation account noted that 49 per cent of respondents lack confidence in superannuation due to the ongoing changes that the Government makes to the rules.

Another survey commissioned by ASFA in 2011 noted that levels of satisfaction with the superannuation industry as a whole are not at a particularly high level, with only 27 per cent of respondents reporting that they were satisfied. This figure is down on the 34 per cent of respondents reporting they were satisfied in 2010. While ASFA noted that at least some of this dissatisfaction comes from recent low and negative investment returns, comments from survey respondents were critical of the amount of changes made to the rules applying to superannuation. For example:

“Stop changing the rules as though it was their own private little goldmine” (Male respondent, 58, VIC, selfmanaged super fund)

“Don’t keep changing the rules” (Male respondent, 47, NSW, industry fund).

“Make the laws surrounding superannuation more stable” (Female respondent, 27, WA, retail fund).

“Ensure financial stability through its policies” (Male respondent, 52, ACT, public sector fund).

“Stop messing with it and adopt a longer term view” (Male respondent, 39, QLD, corporate fund).

176. B Shorten (Minister for Financial Services and Superannuation), Address at the Conference of Major Superannuation Funds, op. cit.
179. Association of Superannuation Funds of Australia, Consumer attitudes to superannuation and super policy issues: results of the survey conducted for the Association of Superannuation Funds of Australia by Coredata, op. cit., p. 5.
180. Ibid., p. 6.
An analysis of personal additional ‘discretionary’ contributions since December 2009 for a given quarter compared to the same quarter of the previous year indicates that discretionary contributions are volatile, displaying no clear pattern (figure 7). While the Financial Services Council attributed the increase for December 2012 to sustained growth in equity markets, strong returns to superannuation funds in 2012 and an absence of negative news out of Europe and the United States, this followed four consecutive quarters of declining contributions. ¹⁸¹

Figure 7  Quarterly personal additional ‘discretionary’ superannuation contributions, change on previous year, December 2009 to December 2012 (per cent)


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Schedule 7—Consolidation of dependency tax offsets

Schedule 7 of the Bill consolidates eight separate tax offsets for dependents into one new tax offset (the ‘dependent (invalid and carer) tax offset’) from 1 July 2012. The eight tax offsets to be consolidated are the:

- carer spouse tax offset
- invalid spouse tax offset
- invalid relative tax offset
- parent/parent-in-law tax offset
- child-housekeeper tax offset
- child-housekeeper (with child) tax offset
- housekeeper tax offset and
- housekeeper (with child) tax offset.

Background

A tax offset provides a fixed reduction in taxable income to eligible taxpayers. Under current arrangements, there are a number of separate tax offsets that are based on the circumstances of a partner or family member. The key income test applied to these offsets is that the taxpayer’s (including any spouse) adjusted taxable income (ATI) must be less than $150 000. These ‘dependency offsets’ cover a range of scenarios and eligibility, and payment rates can vary (table 6).

The 1975–76 Budget legislation implemented changes to the personal income tax system. Included as part of these changes, was the replacement of various tax deductions (the value of which varied depending on a taxpayer’s marginal tax rate) with fixed rebates. In providing for these dependent tax rebates—which at the time covered a spouse, daughter housekeeper, child less than 16 years (not being a student), student, invalid relative or the parent of the taxpayer or of his spouse—the then Treasurer noted that:

> These rebate amounts are far in excess of the tax value of the deductions previously allowable. They mean also that, for all taxpayers, rich and poor alike, the tax value of a dependant is exactly the same, that is, it is not, as under the old system, larger for wealthy people than it is for low-income earners. I want to make this quite clear - Our new tax scheme removes the inequitable system of concessional deductions and replaces it with a fairer system of rebates.

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### Table 6: Dependency tax offsets arrangements, 2011–12

<table>
<thead>
<tr>
<th>Offset</th>
<th>Value of offset 2011–12</th>
<th>Number of claimants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invalid spouse tax offset</td>
<td>$2355 for an invalid or carer spouse</td>
<td>Not available</td>
</tr>
<tr>
<td>Invalid relative tax offset</td>
<td>$864 for each invalid relative</td>
<td>30,442 claimants at a cost of $45 million in 2011–12</td>
</tr>
<tr>
<td>Parent/parent-in-law tax offset</td>
<td>$1726 for each parent</td>
<td></td>
</tr>
<tr>
<td>Child-housekeeper tax offset</td>
<td>$1,919</td>
<td></td>
</tr>
<tr>
<td>Child-housekeeper (with child) tax offset</td>
<td>$2,299</td>
<td></td>
</tr>
<tr>
<td>Housekeeper tax offset</td>
<td>$1,919</td>
<td></td>
</tr>
<tr>
<td>Housekeeper (with child) tax offset</td>
<td>$2,299</td>
<td></td>
</tr>
</tbody>
</table>


### Policy development

#### Henry Tax Review

The Henry Tax Review (also known as the ‘Future tax system review’) noted that concessional tax offsets ‘provide a mechanism for delivering lower net tax rates to taxpayers with particular characteristics’ but that ‘assistance provided in this way is not transparent, timely or well targeted’. In addition to making recommendations relating to other tax offsets, the Henry Tax Review recommended that the existing dependency tax offsets be replaced with a single dependent tax offset where one of the following circumstances applied:

- the dependent is unable to work due to disability or carer responsibilities or
- either the taxpayer, or dependent, has reached Age Pension age (recommendation 6(a)).

The Review also included recommendations relating to two further tax offsets that, while not affected by Schedule 7 of the Bill, are impacted by the proposed consolidation of the dependency tax offsets. These were:

- the zone tax offset—which provides an offset if a taxpayer works for at least half a year in a designated location—should be reviewed and that if it is retained it should be based on contemporary measures of remoteness (recommendation 6(b)) and

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185. Ibid., p. 32.
• the overseas forces tax offset should be replaced by adjusting remuneration to maintain net incomes (recommendation 6(d)).\footnote{186} 

The Government has made no formal itemised response to each of the 138 recommendations in the Henry Tax Review. Rather, the Government’s Tax Reform Road map, published in association with the 2012–13 Budget and then updated for the 2013–14 Budget, lists a summary of ‘tax reform’ measures that had been implemented and, where relevant, noted which measures were ‘consistent with’ recommendations of the Henry Tax Review.\footnote{187} The consolidation of eight dependency tax offsets is noted as one of the recommendations from the Review that had been part of tax reforms in 2012.\footnote{188}

\textbf{2012–13 Budget announcement: Consolidation of dependency tax offsets}

The Government announced that it would consolidate the dependency tax offsets from 1 July 2012 as part of the 2012–13 Budget, which would ‘consolidate eight dependency tax offsets into a single, streamlined and non-refundable offset that is only available to taxpayers who maintain a dependant who is genuinely unable to work due to carer obligation or disability’.\footnote{189} The announcement noted that ‘[t]his reform implements another recommendation of the Australia’s Future Tax System review, and builds on the Government’s growing record of tax reform’.\footnote{190}

\textbf{Draft legislation}

Draft legislation was released by the Treasury on 13 February 2013, with submissions to close by 5 March 2013.\footnote{191} No submissions were received on the draft legislation.\footnote{192}

The substantive elements of Schedule 7 of the Bill, as introduced into the House of Representatives, are the same as the draft legislation.

\textbf{Policy position of non-government parties/independents}

The Coalition’s policy in relation to tax offsets at the 2010 election was to not implement the Henry Tax Review recommendations relating to removing structural and concessional tax offsets.\footnote{193}

\footnotesize
\begin{itemize}
  \item 186. Ibid.
  \item 188. Australian Government, Tax reform road map, May 2013, op. cit., p. 27.
  \item 190. Ibid.
  \item 192. Ibid.
\end{itemize}
Financial implications

The Explanatory Memorandum notes that the net financial impact of Schedule 7 is $66.9 million over the four years to 2015–16. These estimates are the same as those presented as part of the 2012–13 Budget when the measure was announced.

Key issues and provisions

Item 1 of Schedule 7 of the Bill amends the ITAA 1997 to insert proposed subdivision 61-A which includes the substantive provisions for the ‘dependent (invalid and carer) tax offset’ (DICTO). This includes eligibility requirements (proposed section 61-10) and income tests (proposed section 61-20). Also included are provisions that require the tax offset to be reduced in situations of shared care and where the income of the dependent exceeds certain limits (proposed sections 61-35 to 61-45).

Importantly, the eligibility requirements for the DICTO no longer provide for a tax offset in respect of a housekeeper or child housekeeper (unless the taxpayer is eligible for a the zone rebate, the overseas forces rebate or the overseas civilian rebate).

The maximum amount of the tax offset for an income year, as set out in proposed section 61-30, is $2423 which is to be indexed annually. The rate of clawback in relation to the ATI of the person who is dependent on the taxpayer is set out in proposed section 61-45, which provides for a reduction of $1 for every $4 earned above $282.

Items 2 and 5 of Schedule 7 amend the ITAA 1936 so as to preserve the entitlement to the existing categories of dependency tax offsets (including child housekeeper) for those taxpayers who also have an entitlement to the overseas civilian rebate, the zone rebate and the overseas forces rebate.

Item 6 expands the list of dependants for the purposes of determining the amount of net medical expenses tax offset (NMETO) to include the person in respect to which the taxpayer receives an amount of the DICTO.

Item 10 provides that the proposed amendments apply to assessments for the 2012–13 income year and later income years.

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Schedule 8—Taxation of financial arrangements

Schedule 8 of the Bill makes technical adjustments to clarify and refine the operation of the rules dealing with the taxation of ‘financial arrangements’ (TOFA).

Background

The TOFA rules are in Division 230 of the ITAA 1997 and in the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* (TOFA Act).197 ‘Financial arrangements’ include financial instruments like loans, promissory notes, debentures, futures, options, swaps, forward agreements. The Bills Digest for the 2008 Bill (2008 Bills Digest) creating the TOFA rules describes a ‘financial arrangement’ as:

a right to receive or an obligation to provide a benefit that is:

- monetary in nature
- non-monetary in nature and may be settled by money or a money equivalent, or
- in substance and effect monetary in nature.198

According to the Bills Digest:

... these obligations are ‘cash settleable’. Further, it does not matter that the value of the arrangement, or its existence is contingent on some event or other matter occurring. Rather, it is enough for these rights and obligations to exist formally and be capable of execution.199

The Explanatory Memorandum for the 2009 Bill that introduced the TOFA regime described it this way:

This Bill amends the *Income Tax Assessment Act 1997* by inserting Division 230. Division 230 defines ‘financial arrangement’ and sets out the methods under which gains and losses from financial arrangements will be brought to account for tax purposes. These methods - accruals, realisation, fair value, retranslation, hedging and financial reports - determine the tax-timing treatments of all financial arrangements covered by Division 230. This Bill establishes criteria that determine how different financial arrangements are assigned to, and treated under, the different tax-timing methods. The Bill also effectively removes the

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199. Ibid., p. 5. In the context of Division 230 of the ITAA 1997, obligations and rights are cash settleable where they may be settled by money or money equivalent. Basically, money is cash or a unit of Australian currency. A money equivalent typically sounds in money and has a liquidity that is similar to that of cash, for example bonds and loans. **Source:** Explanatory Memorandum, *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008*, p. 28, viewed 27 May 2013, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F4029_ems_e8895467-71c4-4ea7-9e03-fdd89ea74297%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F4029_ems_e8895467-71c4-4ea7-9e03-fdd89ea74297%22)
capital/revenue distinction for most financial arrangements by treating the gains and losses on revenue account, except where specific rules apply. 200

Basis of Policy commitment

The 2008 Bills Digest provides a brief history of the taxation of financial arrangements, noting that ‘government responses to the use of these new financial instruments has been ad hoc and piecemeal in nature and that taxation laws lacks an overarching framework for the tax assessment of these transactions’. 201 The 2008 Bill was an attempt to apply taxation on the basis of the economic substance, rather than legal form, of these transactions, which, previously, had led to the use of some types of financial arrangement being favoured over others, due to more favourable tax treatment. 202

The complexities of some financial arrangements and the recognition of their many forms, led the Government to decide to monitor the implementation of the TOFA regime. The numerous technical amendments in this Schedule are the outcome of that monitoring and follow ‘extensive consultation with industry’. 203 According to the Explanatory Memorandum, the amendments refine and clarify the operation of the TOFA provisions, lower compliance costs and provide additional certainty to affected taxpayers. 204

Comments

As previously noted, the Bill was referred to the House of Representatives Standing Committee on Economics. Schedule 8 did not attract any comment in written submissions nor at the hearing. 205

In its report, the Committee did not identify any issues in relation to Schedule 8 nor did the Committee make any recommendations other than Schedule 8 should be passed by the House of Representatives. 206

Given that Schedule 8 attracted no attention in the Committees and as the amendments are numerous, highly technical and aimed merely at refining and clarifying the operations of existing provisions, no analysis is provided of Schedule 8. Readers are directed to the Explanatory Memorandum which provides exhaustive explanations of the amendments. 207

200. Ibid., p. 3.
202. Ibid.
204. Ibid.
Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.