THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

A NEW TAX SYSTEM (TAX ADMINISTRATION) BILL 1999

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Peter Costello, MP)
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## Glossary

The following abbreviations are used throughout this Explanatory Memorandum.

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<th>Description</th>
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<tbody>
<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
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<tr>
<td>ABN</td>
<td>Australian Business Number</td>
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<td>ABR</td>
<td>Australian Business Register</td>
</tr>
<tr>
<td>ANTS</td>
<td>Government’s Tax Reform Document: Tax Reform: not a new tax, a new tax system</td>
</tr>
<tr>
<td>ATO</td>
<td>Australian Taxation Office</td>
</tr>
<tr>
<td>BAS</td>
<td>business activity statement</td>
</tr>
<tr>
<td>CGT</td>
<td>capital gains tax</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Commissioner of Taxation</td>
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<tr>
<td>DCOIN</td>
<td>deferred company instalments</td>
</tr>
<tr>
<td>DIR</td>
<td>dividend, interest and royalty</td>
</tr>
<tr>
<td>ETP</td>
<td>eligible termination payment</td>
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<tr>
<td>FBT</td>
<td>fringe benefits tax</td>
</tr>
<tr>
<td>FBTAA 1986</td>
<td>Fringe Benefits Tax Assessment Act 1986</td>
</tr>
<tr>
<td>FBTI</td>
<td>fringe benefits tax instalments</td>
</tr>
<tr>
<td>FMD</td>
<td>farm management deposit</td>
</tr>
<tr>
<td>FNP</td>
<td>Failure to Notify Penalty</td>
</tr>
<tr>
<td>FS</td>
<td>Student financial supplement</td>
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<tr>
<td>GDP</td>
<td>gross domestic product</td>
</tr>
<tr>
<td>GIC</td>
<td>general interest charge</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<tr>
<td>GSTA 1999</td>
<td>A New Tax System (Goods and Services Tax) Act 1999</td>
</tr>
<tr>
<td>GSTAA</td>
<td>A New Tax System (Goods and Services Tax Administration) Act 1999</td>
</tr>
<tr>
<td>HECS</td>
<td>Higher Education Contribution Scheme</td>
</tr>
<tr>
<td>ITAA 1936</td>
<td>Income Tax Assessment Act 1936</td>
</tr>
<tr>
<td>ITI</td>
<td>income tax instalments</td>
</tr>
<tr>
<td>ITR 1936</td>
<td>Income Tax Regulations 1936</td>
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<tr>
<td>ITW</td>
<td>income tax withholding</td>
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<tr>
<td>LCT</td>
<td>luxury car tax</td>
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<tr>
<td>MWT</td>
<td>mining withholding tax</td>
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<td>NRP</td>
<td>natural resource payments</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<td>---------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>PAYE</td>
<td>Pay as you earn</td>
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<tr>
<td>PAYG</td>
<td>Pay as you go</td>
</tr>
<tr>
<td>PAYG Bill</td>
<td>A New Tax System (Pay As You Go) Bill 1999(^1)</td>
</tr>
<tr>
<td>PPS</td>
<td>Prescribed Payments System</td>
</tr>
<tr>
<td>PRRT</td>
<td><em>Petroleum Resource Rent Tax Assessment Act 1987</em></td>
</tr>
<tr>
<td>RBA</td>
<td>running balance account</td>
</tr>
<tr>
<td>Registrar</td>
<td>ABN Registrar</td>
</tr>
<tr>
<td>RPS</td>
<td>Reportable Payments System</td>
</tr>
<tr>
<td>SCTAC 1997</td>
<td><em>Superannuation Contributions Tax (Assessment and Collection) Act 1997</em></td>
</tr>
<tr>
<td>SCTM 1997</td>
<td><em>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</em></td>
</tr>
<tr>
<td>SGAA 1992</td>
<td><em>Superannuation Guarantee (Administration) Act 1992</em></td>
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<tr>
<td>SPOR</td>
<td>shorter period of review</td>
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<tr>
<td>STAA 1992</td>
<td><em>Sales Tax Assessment Act 1992</em></td>
</tr>
<tr>
<td>T(IOEP)A 1983</td>
<td><em>Taxation (Interest on Overpayments and Early Payments) Act 1983</em></td>
</tr>
<tr>
<td>TAA 1953</td>
<td><em>Taxation Administration Act 1953</em></td>
</tr>
<tr>
<td>TAR 1953</td>
<td>Taxation Administration Regulations 1953</td>
</tr>
<tr>
<td>taxation law</td>
<td>Acts of which the Commissioner has general administration, or regulations under such an Act</td>
</tr>
<tr>
<td>TCAA 1955</td>
<td><em>Tobacco Charges Assessment Act 1955</em></td>
</tr>
<tr>
<td>TFN</td>
<td>tax file number</td>
</tr>
<tr>
<td>TLAA3 1999</td>
<td><em>Taxation Laws Amendment Act (No. 3) 1999</em></td>
</tr>
<tr>
<td>TLIP</td>
<td>Taxation Law Improvement Project</td>
</tr>
</tbody>
</table>
| top marginal rate | The top marginal tax rate plus the standard Medicare Levy.  
From 1 July 2000 this will be 48.5% |
| TPTAC 1997    | *Termination Payments Tax (Assessment and Collection) Act 1997*             |
| WET           | wine equalisation tax                                                       |
| WTAA          | *Wool Tax (Administration) Act 1964*                                        |

\(^1\) This Bill was introduced as *A New Tax System (Taxation Laws Amendment) Bill (No. 1) 1999*
General outline and financial impact

Pay as you go (PAYG) withholding

Amends the TAA 1953, ITAA 1936 and other Acts to supplement the rules establishing a PAYG withholding system that were contained in the PAYG Bill.

The amendments clarify the scope of the new labour hire withholding arrangements. They also include the rules for PAYG withholding about:

- how much to withhold;
- voluntary declarations of TFNs by those receiving payments;
- registration;
- notifying the Commissioner when a declaration stating a TFN is not given; and
- annual reporting to the Commissioner.

The amendments also include a number of consequential and minor technical amendments relating to PAYG withholding.

Date of effect: The amendments will generally apply from 1 July 2000.

Proposal announced: The PAYG withholding measures were announced in ANTS. There was no separate announcement for these supplementary rules.

Financial impact: The financial impact of the new PAYG withholding system was outlined in the Explanatory Memorandum to the PAYG Bill.

Compliance cost impact: The compliance cost impact of the new PAYG system was outlined in the Regulation Impact Statement to the PAYG Bill.

Collection and recovery rules

Amends the TAA 1953, ITAA 1936 and other Acts to introduce standardised rules which will enable the Commissioner to collect and recover tax-related liabilities which:

- arise under the various taxation laws for which the Commissioner has general administration; and
remain unpaid after they become due and payable.

The amendments also include a number of consequential amendments to enable a smooth transition from the different rules which exist throughout the different taxation laws to the standardised rules.

Date of effect: The amendments will generally apply from 1 July 2000.

Proposal announced: The new rules are part of the Government’s broad commitment announced in ANTS to look at ways of streamlining administrative processes.

Financial impact: The standardised recovery rules are expected to result in a small but unquantifiable revenue gain.

Compliance cost impact: The compliance cost impact of the new recovery rules is outlined in a separate Regulation Impact Statement covering the measures in this Bill.

Binding oral advice on income tax matters

Amends the TAA 1953 to introduce the new oral rulings regime. The introduction of the new regime will provide that an individual can apply to the Commissioner for an oral ruling about a range of matters under an income tax law where they meet the requirements of having simple tax affairs and a simple inquiry.

Amendments to the ITAA 1936 will provide that, where a taxpayer applies for, and is given, an oral ruling and the income tax law applies in a different way which is less favourable to the taxpayer than is the oral ruling, the Commissioner will be bound by the oral ruling. An oral ruling will not be binding on the taxpayer.

Date of effect: The oral rulings regime will apply from 1 July 2000 with effect for the 2000-2001 income year and later income years.

Proposal announced: This measure was announced in ANTS.

Financial impact: The measure will not have a significant impact on the revenue.

Compliance cost impact: Taxpayers who have simple tax affairs will have reduced compliance costs.

Summary of Regulation Impact Statement

A Regulation Impact Statement is not required as the measure does not apply to taxpayers who are in business.
**Payment, ABN and identification verification system**

Amends the TAA 1953 to introduce a reporting, verification and identification system to improve compliance with taxation laws.

The amendments will require additional reporting verification and identification checks in relation to high risk compliance transactions.

**Date of effect:** The new system will operate from 1 July 2000 and will be able to apply to certain payments specified in regulations.

**Proposal announced:** The transaction reporting aspect of the new system was announced in ANTS. There was no separate announcement for the verification and identification aspects of the system.

**Financial impact:** The financial impact of the new system is difficult to quantify but its introduction is expected to result in a gain to the revenue.

**Compliance cost impact:** The compliance cost impact of the new system is outlined in a separate Regulation Impact Statement covering the measures in this Bill.

**Shorter period of review**

This Bill amends the ITAA 1936 and the TAA 1953 to provide for a shorter period of review for taxpayers with simple tax affairs.

This Bill also makes consequential changes to reduce from 4 to 2 years the period within which these taxpayers are generally able to lodge objections to their assessments or private binding rulings or to request amendments to their assessments or to seek private binding rulings.

**Date of effect:** The amendments will apply from the 2000-2001 income year and later years.

**Proposal announced:** This proposal was announced on 13 August 1998 in the Government’s ANTS tax reform package.

**Financial impact:** The measure will not have a significant impact on the revenue.

**Compliance cost impact:** Taxpayers who have simple tax affairs will have reduced compliance costs because they can keep records for a reduced period.

**Summary of Regulation Impact Statement**

The Office of Regulation Review has advised that a Regulation Impact Statement is not required.
Endorsement of deductible gift recipients and tax exempt charities

Schedule 7 requires any entity seeking deductible gift recipient status (other than those entities specifically listed by name in the ITAA 1997 or the ITAR 1997 as eligible to receive deductible gifts) to obtain an ABN and be endorsed by the Commissioner as a deductible gift recipient. The endorsed entity will be registered in the ABR as a deductible gift recipient.

Schedule 8 requires any charity seeking to claim income tax exemption to obtain an ABN and be endorsed by the Commissioner as income tax exempt.

**Date of effect**: Gift recipients and charities will need to be endorsed by 1 July 2000.

**Proposal announced**: Announced by the Government in ANTS.

**Financial impact**: The effect of registration of charities on the revenue cannot be separated from that of the GST and other tax reform measures. However, revenue benefits are anticipated with improved integrity of the taxation system with respect to these tax concessions.

**Compliance cost impact**: The number of tax exempt charities is not known. The number of deductible gift recipients presently recorded by the Commissioner is approximately 30,000. It is expected that there will be in excess of 200,000 endorsement applications.

Deductible gift recipients and tax exempt charities will incur a small, but unquantifiable, cost in applying for endorsement from the Commissioner as part of obtaining their ABN (this mainly involves completing a form with information that should be readily available). Any costs are expected to be offset by reductions in the costs associated with dealing with government and business resulting from obtaining an ABN.

Once charities have registered, the benefit will be ongoing. As ABN holders, charities will be identified by one number for all government purposes and this will allow them to more easily comply with regulatory requirements and receive government assistance and advice. Gift providers will be able to check the ABR to ensure the deductible gift status of the recipient.

The cost to the Government of implementing this measure is expected to be small since there is only a small increase in complexity for this type of ABN registration. The compliance assurance activity is also similar.

The estimated administrative costs are for:

1999-2000 financial year – $2.4 million
General outline and financial impact

2000-2001 financial year – $2.3 million
2001-2002 financial year – $2.3 million.

Summary of Regulation Impact Statement

Impact: Low

Main Points

• Deductible gift recipients that are not specifically listed by name in the ITAA 1997 or the ITAR 1997 will have to seek an ABN and be endorsed by the Commissioner in order to retain their deductible gift recipient status.

• Those charities that are not registered by 1 July 2000 will not be eligible to receive deductible gifts or income tax exemption.

• Specifically listed (by name in the ITAA 1997 or ITAR 1997) deductible gift recipients are exempt from the requirement to seek an ABN and be endorsed for deductible gift recipient status. However, they may apply for an ABN for other purposes, including if they require income tax exempt status.

• This Bill will authorise the AB Registrar to collect relevant information and to indicate on the ABR those ABN holders that have been endorsed by the Commissioner as entitled to receive deductible gifts.

Policy objective

To ensure the integrity of the taxation system in respect of deductible gift recipients and income tax exempt charities.

Administration of BAS obligations

Amends the TAA 1953 and other Acts to further enhance the administration of the aligned business tax obligations of one return and one payment outlined in ANTS. The measures covered by the amendments will:

• require an entity to notify all BAS obligations for a period in the same manner;

• require an entity that either exceeds the GST electronic lodgment threshold or is a large withholder under the PAYG withholding system to pay all tax debts electronically;
enable an entity to be entitled to interest where a refund of an RBA surplus or voluntary payment is not made within 14 days; and

remove the GST and WET refund rules to the extent that they are covered by the new generic refund rules in the TAA 1953.

**Date of effect**: The amendments will generally apply from 1 July 2000.

**Proposal announced**: These measures have not been separately announced but are part of the Government’s broad commitment to streamline the administrative processes for business tax obligations.

**Financial impact**: There is expected to be a small but unquantifiable cost to the revenue from the delayed refund interest provisions. The other measures are not expected to affect the revenue.

**Compliance cost impact**: The compliance cost impact of the BAS administration measures is outlined in the Regulation Impact Statement of this Bill.

**Pay as you go (PAYG) instalments**

The amendments contained in Schedules 10 and 16 comprise the second instalment of the proposed pay as you go income tax instalments (PAYG instalments) system. The first instalment is contained in the PAYG Bill.

The amendments in Schedule 10 consist of:

- new provisions which deal with the way in which quarterly instalment payers who choose to calculate their instalments using GDP-adjusted notional tax may vary the amount of their instalments; and

- make consequential amendments arising from the insertion of those new provisions.

The amendments in Schedule 16 are consequential upon the introduction of the PAYG instalments system.

**Date of effect**: The amendments in both Schedule 10 and 16 will apply to the 2000-2001 and later income years. This is the same date of effect proposed for the provisions contained in the PAYG Bill.

**Proposal announced**: The PAYG instalments system was announced in ANTS.

**Financial impact**: The financial impact of the new PAYG system was outlined in the Explanatory Memorandum to the PAYG Bill.
**Compliance cost impact:** The compliance cost impact of the new PAYG system was outlined in the Regulation Impact Statement to the PAYG Bill.

**Provisional tax – technical correction**

The amendment will make a technical correction to the provisional tax provisions of the ITAA 1936. The correction will ensure that the savings rebate, which was abolished with effect from (and including) the 1999-2000 income year, is not taken into account in the calculation of provisional tax for that income year.

**Date of effect:** The amendment will apply to provisional tax payable for the 1999-2000 income year.

**Proposal announced:** Not previously announced.

**Financial impact:** Nil.

**Compliance cost impact:** Nil.

**Regulation Impact Statement**

The Office of Regulation Review has confirmed that a Regulation Impact Statement is not required.
Chapter 1
Pay as you go (PAYG) withholding

Overview

1.1 Schedules 1, 5, 10, 11 and 14 to this Bill will amend the TAA 1953, ITAA 1936 and other Acts to supplement the rules establishing a PAYG withholding system that were contained in the PAYG Bill. The amendments will:

- replace the current system of employment declarations with a new system of voluntary TFN declarations for certain recipients of payments covered by PAYG withholding;

- require payers of payments covered by PAYG withholding and certain other payments to advise the Commissioner about recipients of those payments who do not give a TFN declaration to the payer;

- set out how to calculate the amount to be withheld from the different types of payments subject to PAYG withholding;

- replace existing rules about payers reporting annually to the Commissioner about various types of income (e.g. salary or wages) subject to withholding with new simpler arrangements;

- make technical amendments to the PAYG withholding provisions in the PAYG Bill, primarily to ensure that a firm will not be required to withhold from a payment to a worker under a labour hire arrangement unless the firm is carrying on a labour hire business;

- require an entity with a PAYG withholding obligation to register with the Commissioner and enable an entity to register a branch for PAYG withholding purposes; and

- make consequential amendments to the ITAA 1936, ITAA 1997 and other Acts so that Commonwealth legislation accurately reflects the terms used in the new PAYG withholding system.

1.2 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum. Unless otherwise stated, legislative references are to provisions in Part 2-5 of Schedule 1 to the TAA 1953.
1.3 The measures are explained in the following sections:

Section 1 Working out how much to withhold
Section 2 Declarations of TFNs and other matters affecting amounts withheld
Section 3 Payer reporting obligations
Section 4 Technical improvements to the PAYG Bill
Section 5 Registration of PAYG withholders
Section 6 Consequential amendments

SECTION 1 WORKING OUT HOW MUCH TO WITHHOLD

Summary of the amendments

Purpose of the amendments

1.4 To prescribe how a payer must work out the amount to withhold from different types of payments covered by the PAYG withholding system.

Date of effect

1.5 The amendments will apply to payments made on or after 1 July 2000. [Item 6 of Schedule 1]

Background

1.6 Under the PAYE legislation, the amount an employer must withhold from payments of salary or wages under subsections 221C(1) and 221C(1A) of the ITAA 1936 is worked out using the method prescribed in Division 2 of Part 7 of the ITR 1936. This method requires employers to work through the complex calculation rules in those regulations.

1.7 In practice, the great majority of employers do not have regard to these complex regulations in working out how much to withhold. Instead, they rely on commercially produced payroll software packages or on the income tax instalment schedules and statements of coefficients published by the Commissioner to assist employers.

1.8 As part of the modernisation and simplification of the withholding law, the PAYG legislation will not continue to prescribe how much to withhold through complex regulations.
Under the PAYG withholding arrangements, a payer will instead be required to work out how much to withhold in one of the following 3 ways:

- under withholding schedules and procedures to be made and published by the Commissioner;
- under the regulations; or
- in the special case of natural resource payments to non-residents, under a notice or certificate issued by the Commissioner as provided in sections 12-325 to 12-335.

These rules will replace proposed section 16-10 as introduced in the PAYG Bill on 30 June 1999. This section had proposed that in all cases an entity making a payment covered by the PAYG withholding system work out how much to withhold under the regulations.

A detailed explanation of the rules about working out how much to withhold is provided below under the Explanation of the amendments.

**Explanation of the amendments**

**Commissioner’s schedules and procedures**

Broadly, Subdivisions 12-B (payments for work or services), 12-C (retirement payments, eligible termination payments and annuities) and 12-D (benefit and compensation payments) provide withholding coverage for those payments subject to withholding under the existing PAYE system.

New subsection 15-10(1) will require payers making payments covered by Subdivisions 12-B, 12-C and 12-D to work out how much to withhold by going directly to schedules and procedures made by the Commissioner under new subsection 15-25(1). This rule will cover an entity making payments subject to withholding under the new voluntary agreement or labour hire arrangements.

This general rule will be subject to the exception that where a regulation prescribes the amount to withhold from a payment covered by one of these 3 Subdivisions, the payer must withhold in accordance with that regulation rather than the Commissioner’s schedules and procedures.

At this stage it is envisaged that a new regulation under the TAA 1953 will provide that where a recipient of a payment covered by Subdivision 12-B, 12-C or 12-D has not given an effective TFN declaration (under Division 3 of Part VA of the ITAA 1936), or is not party to a voluntary agreement under section 12-55 covering the payment, the payer must withhold at the top marginal rate. The existing law has such a rule under the PAYE system where an employee does not quote a TFN. This rule is set out in regulation 81 of the ITR 1936.
1.16 The withholding schedules and procedures will be similar in form and operation to the income tax instalment schedules and statements of coefficients currently published by the Commissioner.

1.17 They will have the advantage of being easier to use than the complex calculation method set out under the ITR 1936. Further, they will also allow the law to better accord with and support the current commercial practice of many businesses.

1.18 At the same time as achieving improvements in the simplicity and relevance of the law, the schedules and procedures will achieve the same result as the calculation rules set out in the ITR 1936. That is, they will set out progressive rates of withholding resulting in sufficient amounts being withheld over the course of a year of income to meet a recipient’s liabilities for:

- income tax;
- the Medicare levy; and
- contributions under HECS,

in respect of income derived during that year from payments covered by Subdivisions 12-B, 12-C and 12-D.

1.19 In applying the schedules a payer will need to take account of any information provided by a recipient in a TFN declaration or a declaration under new section 15-50. [New section 15-1]

1.20 These new declaration arrangements are explained in Section 2 of this Chapter.

1.21 Where relevant, the payer will also need to take account of information required to be provided in a voluntary agreement under section 12-55. The information provided in these declarations or in a voluntary agreement may affect the amount to be withheld.

**How will the schedules and procedures be prepared?**

1.22 *New subsection 15-25(1)* enables the Commissioner to make withholding schedules and procedures. However, the Commissioner’s ability to do so will be closely circumscribed. *New section 15-30* provides that the Commissioner must have regard to the following matters when preparing the schedules and procedures:

- the rates of income tax as specified in the *Income Tax Rates Act 1986*;
- the rates of Medicare levy as specified in the *Medicare Levy Act 1986*;
- the rates of HECS contributions specified in section 106Q of the *Higher Education Funding Act 1988*;
Pay as you go (PAYG) withholding

- any prescribed tax offsets;
- the family tax benefit as established under the A New Tax System (Family Assistance) Act 1999;
- the periods in respect of which payments are made; and
- any other matter specified in the regulations.

1.23 The Commissioner’s ability to make the schedules will also be limited to the purpose of enabling the collection of income tax, the Medicare levy and contributions under the HECS. [New subsection 15-25(1)]

1.24 These limitations are designed to ensure that the schedules and procedures show a clearly discernible, proportionate and direct relationship to the matters listed above at paragraph 1.22. They will ensure that the Commissioner cannot set levels of withholding that are arbitrary or inconsistent with the income tax rates and other matters stipulated by the Parliament.

1.25 It is intended that the schedules and procedures published by the Commissioner will be calculated using the method currently articulated in the ITR 1936.

The schedules must be publicly available

1.26 New subsection 15-25(5) requires the Commissioner to make each withholding schedule publicly available.

The Regulations

1.27 Under new subsection 15-35(1), regulations will be used to prescribe the amount to withhold under the following events:

- dividends, interest or royalties paid to non-residents;
- no TFN/ABN on investment income;
- no ABN on a supply; and
- payments for mining or exploration on Aboriginal land.

These regulations will be made under the TAA 1953.

1.28 For those events which have equivalents under the current withholding arrangements in Part VI of the ITAA 1936, the rate of withholding will remain at its existing level.

1.29 For the new No ABN arrangement, the TAR 1953 will prescribe a rate of withholding equal to the top marginal rate.

1.30 A regulation will also prescribe withholding at the top marginal rate for payments covered by Subdivision 12-B, 12-C or 12-D where the
recipient has not given an effective TFN declaration and the payment is not subject to a voluntary agreement under section 12-55.

1.31 New subsection 15-35(2) makes clear that the regulations prescribing the rate of withholding for these arrangements may prescribe different rates for different kinds of withholding payments, different periods in respect of which those payments are made, and recipients with different circumstances.

**Natural resource payments to non-residents**

1.32 Sections 12-325 to 12-335 contain rules governing how much a payer must withhold from natural resource payments. In essence the Commissioner will continue to advise the payer how much to withhold through a written notice or written certificate. This will be consistent with the existing withholding arrangements for these kinds of payment.

1.33 A payer making a natural resource payment must work out how much to withhold in accordance with the Commissioner’s advice. [New subsection 15-10(2)]

**Summary of withholding amounts**

1.34 The following table summarises the new PAYG withholding payments and the amounts that are intended to be withheld from 1 July 2000.

1.35 Unless stated otherwise, references to regulations are to the ITR 1936.

**Summary table 1.1: How much to withhold**

<table>
<thead>
<tr>
<th>Withholding payment</th>
<th>Section</th>
<th>How much to withhold</th>
</tr>
</thead>
<tbody>
<tr>
<td>A payment of salary etc. to an employee.</td>
<td>12-35</td>
<td>The amount worked out under the Commissioner’s withholding schedules and procedures. These amounts will be based on progressive rather than flat rates. They will have regard to the:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• marginal income tax rates;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• rates of Medicare levy and HECS contributions; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• effect of residency, the general exemption, various tax offset and family tax benefit entitlements.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In cases where the recipient has not provided an effective TFN declaration, the TAR 1953 will require that an amount equal to 48.5% of the payment be withheld.</td>
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**Pay as you go (PAYG) withholding**

<table>
<thead>
<tr>
<th>Withholding payment</th>
<th>Section</th>
<th>How much to withhold</th>
</tr>
</thead>
<tbody>
<tr>
<td>A payment of remuneration to the director of a company.</td>
<td>12-40</td>
<td>As above.</td>
</tr>
<tr>
<td>A payment of salary etc. to an office holder.</td>
<td>12-45</td>
<td>As above.</td>
</tr>
<tr>
<td>A return to work payment.</td>
<td>12-50</td>
<td>As above.</td>
</tr>
<tr>
<td>A payment covered by a voluntary agreement.</td>
<td>12-55</td>
<td>As above.</td>
</tr>
<tr>
<td>A payment under a labour hire arrangement or a payment specified in the regulations.</td>
<td>12-60</td>
<td>As above.</td>
</tr>
<tr>
<td>A payment of pension or annuity.</td>
<td>12-80</td>
<td>As above.</td>
</tr>
<tr>
<td>A payment for unused leave.</td>
<td>12-90</td>
<td>As above.</td>
</tr>
<tr>
<td>A social security or similar payment.</td>
<td>12-110</td>
<td>As above.</td>
</tr>
<tr>
<td>A Commonwealth education or training payment.</td>
<td>12-115</td>
<td>As above.</td>
</tr>
<tr>
<td>A compensation, sickness or accident payment.</td>
<td>12-120</td>
<td>As above.</td>
</tr>
<tr>
<td>An eligible termination payment.</td>
<td>12-85</td>
<td>The rates currently applying under regulation 98. These rates will be prescribed either by the TAR 1953 or in a withholding schedule.</td>
</tr>
<tr>
<td>A payment arising from an investment where the recipient does not quote its TFN, or in some cases, ABN.</td>
<td>12-140</td>
<td>48.5% of the payment unless the income is in the form of a partly franked dividend. (In which case the 48.5% rate effectively applies only to the unfranked proportion – see subsection 221YHZC(1D) of the ITAA 1936). These rules will be prescribed by the TAR 1953.</td>
</tr>
<tr>
<td>Investor becoming presently entitled to income of a unit trust.</td>
<td>12-145</td>
<td>48.5% of the payment. This rate will be prescribed by the TAR 1953.</td>
</tr>
<tr>
<td>A payment for a supply where no ABN is quoted.</td>
<td>12-190</td>
<td>As above.</td>
</tr>
<tr>
<td>A dividend payment to an overseas person and a dividend payment received for a foreign resident.</td>
<td>12-210 12-215</td>
<td>The rates currently set out in regulation 136. These rates will be prescribed by the TAR 1953.</td>
</tr>
<tr>
<td>Withholding payment</td>
<td>Section</td>
<td>How much to withhold</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>An interest payment to an overseas person and an interest payment received for a foreign resident. An interest payment derived by a lender in carrying on business through overseas permanent establishment.</td>
<td>12-245</td>
<td>The rate of 10% currently set out in regulation 137. This rate will be prescribed by the TAR 1953.</td>
</tr>
<tr>
<td>A royalty payment to an overseas person and a royalty payment received for a foreign resident.</td>
<td>12-280</td>
<td>The rates currently set out in regulation 138. These rates will be prescribed by the TAR 1953.</td>
</tr>
<tr>
<td></td>
<td>12-285</td>
<td></td>
</tr>
<tr>
<td>A mining payment.</td>
<td>12-320</td>
<td>The current rate of 4% as set out in section 6 of the Income Tax (Mining Withholding Tax) Act 1979. This rate will be prescribed by the TAR 1953.</td>
</tr>
<tr>
<td>A natural resource payment.</td>
<td>12-325</td>
<td>The rate set by the Commissioner under sections 12-325 and 12-330.</td>
</tr>
</tbody>
</table>

SECTION 2 DECLARATIONS OF TFNs AND OTHER MATTERS AFFECTING AMOUNTS WITHHELD

Summary of the amendments

Purpose of the amendments

1.36 The amendments will replace the current system of employment declarations contained in Division 3 of Part VA of the ITAA 1936 (Division 3) with a new system of TFN declarations.

1.37 The amendments also allow a recipient of certain PAYG withholding payments to provide his or her payer with other declarations about matters affecting how much must be withheld. These declarations are called withholding declarations in this Chapter.

1.38 In this section, references to regulations are to the ITR 1936.

Date of effect

1.39 The amendments will apply from 1 July 2000. [Subclause 2(10)]
Background

The existing arrangements

1.40 Currently under Division 3 an employee may give their employer an employment declaration stating their TFN. *Employee* has the same extended meaning as in the PAYE provisions (i.e. it covers office holders, directors, social security recipients, etc.). *Employer* and *salary or wages* have corresponding meanings. In some cases (e.g. certain pensioners) Division 3 deems an employee to have given an employment declaration stating their TFN, even though they have not.

1.41 An employer who currently receives an employment declaration must send it to the Commissioner within 28 days of receipt.

1.42 The primary purpose of the employment declaration system is to improve the efficiency and effectiveness of the ATO’s income-matching systems as a means of detecting undisclosed income. Employment declarations are also used by other Commonwealth agencies for authorised data matching purposes.

1.43 If an employee does not give an employment declaration stating their TFN, regulation 81 requires tax instalments to be withheld from payments of salary and wages made to that employee at the rate of 48.5%.

1.44 Regulations 85 to 90 establish a system of additional declarations. An employee for PAYE purposes may give one or more of these declarations to their employer notifying of matters the employee wishes to have taken into account in calculating the amount withheld from their salary or wages.

1.45 Broadly, these regulations enable an employee to notify the employer of their residency, that they wish to claim the general exemption and/or that they are entitled to various rebates, family tax assistance or Medicare levy variations. All of these matters have the effect of reducing the amount required to be withheld from payments of salary or wages made to the employee.

1.46 These regulations also:

- require an employee that makes an employment declaration under Division 3 to notify their employer if they have an accumulated HECS debt; and

- enable an employee to elect to meet their liability to the Medicare levy surcharge through the PAYE withholding arrangements.

1.47 Both of these matters have the effect of increasing the amount that must be withheld from payments of salary or wages made to the employee.
1.48 The current practice is to incorporate many of the declarations given under regulations 85 to 90 into the employment declaration given under Division 3. This practice is authorised by subregulation 89(2). Medicare levy variation declarations are not currently incorporated into the employment declaration and must be given separately.

1.49 Regulations 91 to 94 establish a system of Commissioner’s certificates. Under this system employees may, in certain cases, give a declaration to the Commissioner rather than their employer. The Commissioner then issues the employee with a certificate to give to their employer in place of a declaration. This certificate operates as if it was a declaration given directly by the employee to the employer and deals with the same matters as a declaration.

The new arrangements

TFN Declarations

1.50 The current system of employment declarations in Division 3 will be replaced with a system of TFN declarations. The rules about these declarations will continue to be located in Division 3.

1.51 This change is necessary because the existing employment declaration system relies heavily on the extended definitions of the terms employee and employer contained in subsection 221A(1) of the ITAA 1936 and used in the current PAYE arrangements.

1.52 The PAYG withholding legislation does not use these extended definitions. Instead, it describes separately the various payments currently within the definition of salary or wages applying under the PAYE arrangements.

1.53 Consequently, the provisions dealing with employment declarations need to be revised to support the new PAYG withholding framework, in particular the absence of the PAYE concepts of employee and employer in the new withholding law.

1.54 Despite this change in terminology, TFN declarations will continue to fulfil the same roles as employment declarations. Like employment declarations, they will be voluntary. However, individuals who elect not to provide an effective TFN declaration will be subject to withholding at the top marginal rate in the same way as if they were taken not to have made an effective employment declaration. These individuals are entitled to a credit in their assessments for the income year equal to the amounts withheld.

1.55 Employment declarations in force at the end of 30 June 2000 will be deemed to be effective TFN declarations from 1 July 2000. This will avoid the need for individuals who have previously given an employment declaration to make a new TFN declaration on 1 July 2000. [Item 74 of Schedule 5]
Withholding Declarations

1.56 Under the new PAYG withholding arrangements, a recipient of a payment covered by Subdivision 12-B, 12-C or 12-D will be able to give the entity making the payment a withholding declaration about matters affecting the amount to be withheld. Broadly, withholding declarations will cover the same kinds of matters about which an employee can currently give a declaration under regulations 85 to 90 (e.g. certain tax offsets, the family tax benefit, full or partial exemption from the Medicare levy).

1.57 A recipient who has given a TFN declaration will also be able to give a withholding declaration notifying of a change in circumstances affecting information given in the TFN declaration.

1.58 The payer will take the information provided in a withholding declaration into account when working out how much to withhold. This will be done by using the withholding schedules applying to a payment when a payer has received a declaration about a particular matter. The new withholding schedule arrangement is explained in Section 1 of this Chapter.

Commissioner’s certificates

1.59 The new law will not expressly provide for the system of Commissioner’s certificates currently set out in regulations 91 to 94. In practice it is exceedingly rare for this arrangement to be used. In future the arrangement will be provided for administratively.

Explanation of the amendments

TFN Declarations

1.60 The amendments at items 1 to 54 of Schedule 5 to this Bill replace the current employment declaration system in Division 3 with the new TFN declaration arrangements.

1.61 The majority of these amendments are consequential amendments to Divisions 1, 2 and 3 of Part VA of the ITAA 1936 which are necessary to replace the current references to PAYE concepts such as employee, employer and employment declaration with the new PAYG concepts of recipient, payer and TFN declaration.

1.62 The majority of rules currently applying to employment declarations under Division 3 will apply to TFN declarations.

1.63 The TFN declaration arrangements will be located in Division 3. This Division contains sections 202A to 202G.
Who can give a TFN declaration?

1.64 Under new subsection 202C(1), a person who receives an eligible PAYG payment or is likely to receive such a payment may give the person making the payment a TFN declaration. [Item 17]

1.65 Section 202A will define an eligible PAYG payment to mean a payment from which an amount must be withheld under Subdivision 12-B, 12-C or 12-D. The definition also covers a non-cash payment in respect of which an amount is payable under Division 14 where a cash payment would be covered by Subdivision 12-B, 12-C or 12-D. [Item 2]

1.66 The definition of eligible PAYG payment excludes payments to be covered by a voluntary agreement under section 12-55. This stems from the fact that under section 12-55 a person wishing to enter into a voluntary agreement must do so in the approved form which will involve quoting their ABN. Under the new tax system it is intended that a business should be able to use its ABN as its sole identifier for Government purposes. A requirement for a business that is party to a voluntary agreement to also state its TFN would be inconsistent with this policy and an unnecessary compliance burden.

How must the declaration be given?

1.67 A TFN declaration must be given in the approved form. [New subsection 202C(2), item 17]

1.68 For the purposes of the TFN declaration arrangements, approved form will have the same meaning as in subsection 995-1(1) of the ITAA 1997. [Item 1]

1.69 The Government envisages that the approved form will require a recipient who wishes to give a TFN declaration to also state in that declaration whether they:

- are an Australian resident for income tax purposes; and
- wish to claim the general exemption; and
- have an accumulated HECS debt.

1.70 The approved form for a voluntary agreement made under section 12-55 will allow the recipient of payments covered by the agreement to make these statements. This will provide a mechanism for these recipients, who will not be governed by the TFN declarations in new section 202C, to advise the payer of this information.

1.71 Under new Division 15 a payer will need to take this information into account in working out how much to withhold from payments caught by the 3 Subdivisions above. This is explained in more detail in Section 1 of this Chapter.
When is a TFN declaration effective?

1.72 New subsection 202CA(1) provides that a TFN declaration commences to be effective when it is made. [Item 18]

1.73 This is subject to the rule in new subsection 202CB(1) that a TFN declaration will not be effective unless it contains the person’s TFN. [Item 210]

1.74 New subsections 202CB(2) to (5) replicate the effect of the existing subsections 202CB(2) to (5). These provide that a TFN will be taken to have been stated in certain circumstances for a limited period of time.

When does a TFN declaration cease to have effect?

1.75 A TFN declaration will cease to have effect if one of the following occurs:

- the recipient gives the payer another effective TFN declaration;

- a period of 12 months has passed since the declaration was given and no eligible PAYG payment has been made by the payer to the recipient during that period; or

- a period of 12 months has passed since the last eligible PAYG payment was made by the payer to the recipient. [Item 18, new subsections 202CA(1A), (1B) and (1C)]

What must a payer do with a TFN declaration?

1.76 New paragraph 202CD(1)(b) provides that a payer must forward a TFN declaration to the Commissioner within 14 days after it has been given to the payer. [Item 28]

1.77 This is different to the current rule for forwarding of employment declarations under which the employer has 28 days or such further period allowed by the Commissioner to forward the declaration.

1.78 Where an effective employment declaration is given before 1 July 2000 but the current forwarding period under subsection 202CD(3) has not expired by that date, the employer will still have 28 days within which to forward the declaration to the Commissioner. [Subitem 74(2)]

1.79 New paragraphs 202CD(4)(a) and (b) maintain the current effect of existing paragraphs 202CD(4)(a) and (b) by requiring a payer who receives a TFN declaration that does not state the recipient’s TFN number to write that number on the declaration if the recipient gives it to the payer before the payer sends the declaration to the Commissioner. [Item 30]
1.80 The payer will also need to take the information provided in the TFN declaration into account when working out how much to withhold under the withholding schedules. [New section 15-1]

**What happens if a TFN declaration is not given?**

1.81 Under **new section 202CF** a person making an eligible PAYG payment will be required to notify the Commissioner of recipients who do not give an effective TFN declaration. The notification will be in an approved form. [Item 54, new section 202CF]

1.82 This requirement is explained in detail in Section 3 of this Chapter.

1.83 Under the regulations, a payer will also be required to withhold at the top marginal rate if the recipient has not given an effective TFN declaration under Division 3.

**Withholding Declarations – PAYG Withholding**

**Who can give a withholding declaration?**

1.84 Under **new subsection 15-50(1)**, an individual who expects to receive a payment covered by Subdivision 12-B, 12-C or 12-D will be able to give the payer a withholding declaration about various matters the individual wishes to have taken into account when the payer works out how much to withhold. The declaration must be given in the approved form.

1.85 An individual who wishes to change particular information given in a TFN declaration under Division 3 may also give a withholding declaration under **new subsection 15-50(3)**.

1.86 **Under new paragraph 15-50(2)(a)**, an individual may only give a withholding declaration under **new subsection 15-50(1)** if they have given the payer a TFN declaration in the approved form stating their TFN or have entered into a voluntary agreement with the payer under section 12-55. If an individual has not given a TFN declaration or entered into a voluntary agreement, the payer will be required to withhold at the top marginal rate regardless of any other matter.

1.87 **New paragraph 15-50(2)(b)** ensures that an individual can only give a declaration about prescribed matters under **new subsection 15-50(1)** to one payer at any given time. An individual will not be able to choose to have declarations about different prescribed matters in force concurrently with different payers. This rule will help to ensure that an appropriate rate of withholding applies to payments received by the individual.
What will a withholding declaration cover?

1.88 An individual will only be able to give a withholding declaration about a matter prescribed by the regulations. [New paragraphs 15-50(1)(b) and (3)(a)]

1.89 These matters will be prescribed in the TAR 1953. The regulations will enable an individual to give withholding declarations about many of the matters on which an employee can currently give a declaration under regulations 85 to 90. This will include matters such as rebate and family tax benefit entitlements and Medicare levy variations.

1.90 However, under the new arrangements an individual will give a TFN declaration under Division 3 rather than a withholding declaration under new section 15-50 to:

- claim the general exemption;
- advise the payer of their residency status; and/or
- advise the payer of an accumulated HECS debt.

1.91 While a TFN declaration must initially be used to notify a payer of these 3 matters, an individual will give a withholding declaration under new subsection 15-50(3) to notify the payer of any later changes to these matters. Unlike a declaration given under new subsection 15-50(1), a declaration under new subsection 15-50(3) may be in effect with more than one payer at the same time.

What is the effect of a withholding declaration?

1.92 As highlighted by new section 15-1, a payer will need to take the information in a withholding declaration into account in working out how much to withhold from payments falling within Subdivision 12-B, 12-C or 12-D.

1.93 The withholding schedules and procedures made by the Commissioner under new section 15-25 will explain how the payer must do so. The process will essentially be the same as under the current PAYE arrangements. Under these arrangements an employer has regard to the matters stated in an employee’s employment declaration when working out how to apply the tax instalment schedules published by the Commissioner.

Change in circumstances

1.94 New subsection 15-50(5) provides that if:

- an individual gives an entity a declaration under new subsection 15-50(1) or (3) about a prescribed matter; and
- the individual’s circumstances change in relation to the matter;
the regulations may prescribe when the individual must give the entity a new withholding declaration about the matter.

1.95 It is envisaged that the TAR 1953 will require an individual whose circumstances in relation to a prescribed matter have changed to give a new withholding declaration reflecting that change in broadly the same range of situations as currently prescribed in regulation 95.

1.96 This will include an obligation to provide a new withholding declaration where an individuals entitlement to a particular tax offset or Medicare levy variation has changed or ceased altogether. It will also include an obligation to provide a new withholding declaration where an individual who is receiving the family tax benefit through reduced amounts of withholding decides to receive the family tax benefit through Centrelink payments.

**Operation of a withholding declaration**

1.97 *New subsection 15-50(4)* makes clear that for the purposes of *new section 15-50* the regulations may prescribe:

- the matters about which a withholding declaration may be given; and

- when a withholding declaration starts or ceases to have effect; and

- when a withholding declaration will be taken to have been given.

1.98 It is envisaged that the new withholding schedules made by the Commissioner under *new section 15-25* will set out procedures governing when a payer must have regard to a withholding declaration given under *new section 15-50*. Ordinarily a payer will need to take a withholding declaration into account when working out how much to withhold from payments made after receipt of the declaration.

1.99 The TAR 1953 will prescribe when a withholding declaration ceases to have effect. It is envisaged that a withholding declaration will cease to have effect in a similar range of circumstances as currently set out in regulation 90. A new regulation will also maintain the current operation of regulation 87 which deems certain members of the Defence Force to have given a declaration claiming a Medicare levy variation entitlement.
SECTION 3 PAYER REPORTING OBLIGATIONS

Summary of the amendments

Purpose of the amendments

1.100 The purpose of the amendments is to require entities making payments covered by the PAYG withholding system to give an annual report about those payments to the Commissioner.

1.101 The amendments also require entities making payments covered by Subdivision 12-B (payments for work or services), 12-C (annuities, retirement payments and eligible termination payments) or 12-D (benefit and compensation payments) to notify the Commissioner of recipients who do not provide a TFN declaration stating their TFN.

Date of effect

1.102 An entity will be required to provide an annual report about a payment subject to withholding if the entity makes the payment during a financial year commencing on or after 1 July 2000. [Item 73 of Schedule 5]

1.103 The requirement to notify the Commissioner about recipients who do not give a TFN declaration stating their TFN will apply from 1 July 2000. [Subclause 2(10)]

Background

Annual reporting

1.104 The 9 existing withholding arrangements contained in Part VI of the ITAA 1936 each impose different annual reporting obligations on a person required to deduct amounts under that Part. Under those arrangements a person must give a separate report about amounts withheld under each of the different withholding systems. The content of the report also differs between the various systems. For example, under the existing PAYE, PPS and investment income withholding arrangements, payers must give reports containing different types of reconciliations. Under the PAYE arrangements an employer must reconcile the total deductions shown in each group certificate with the total amount paid to the Commissioner in respect of those deductions. Investment bodies must currently reconcile the total of amounts deducted from investment income with the sum of all amounts paid to the Commissioner in respect of those deductions and all amounts offset by the body in respect of refunded amounts.

1.105 PAYG withholding will rationalise the annual reporting rules for payers. This will allow many payers to make one annual report about all the withholding payments they make. Under the PAYG arrangements the
existing reconciliation statement obligations applying to various payers will also be removed.

**Employment declarations**

1.106 Under the existing employment declaration arrangements contained in Division 3 of Part VA of the ITAA 1936, an employer is not required to notify the Commissioner if an employee does not provide an employment declaration stating his or her TFN.

1.107 Under the new TFN declaration arrangements which will be replacing employment declarations, payers will be required to notify the Commissioner of recipients who do not give effective TFN declarations.

1.108 This supplementation of the TFN declaration arrangements is designed to improve compliance with the tax and social security systems.

**Explanation of the amendments**

**Annual reporting**

1.109 Under *new section 16-153* an entity will be required to give an annual report to the Commissioner if, during a financial year, the entity is required to:

- withhold an amount under Division 12; and/or
- pay an amount to the Commissioner in respect of a non-cash benefit under Division 14. [*Item 69*]

**What must be in the report?**

1.110 The general rule will be that the annual report must be given in a form approved by the Commissioner. This includes a requirement to provide any of the information required in the approved form. [*New subsections 16-153(1) and (2)*]

1.111 However an entity required to withhold an amount under Subdivision 12-B, 12-C or 12-D during a financial year may choose to give an annual report about that payment in one of the following forms:

- a report in the approved form; or
- a report consisting of a copy of each annual payment summary issued under section 16-155 for amounts withheld under those 3 Subdivisions together with a statement in the approved form. [*New subsections 16-153(2) and (3)*]

1.112 It is envisaged that the form approved by the Commissioner for the annual report will require the following kinds of information to be given:
Pay as you go (PAYG) withholding

- the details of each recipient to whom the entity has made a withholding payment;
- the total of each kind of withholding payment made to the recipient;
- the total amount withheld from payments made to the recipient or paid to the Commissioner in relation to non-cash payments;
- the total of any reportable fringe benefits amounts paid to the recipient because of their employment with the payer;
- the total amount refunded to the recipient under section 18-65; and
- the aggregate totals for amounts withheld or paid to the Commissioner for non-cash benefits under each kind of withholding payment for all recipients.

Investment bodies

1.113 Investment bodies (e.g. financial institutions, public companies) making withholding payments covered by section 12-140 or 12-145 will not be required to give this annual report. Instead, they will continue to give the reports currently required under regulations 55 and 56 of the ITR 1936. These regulations will be amended to require reporting of an entity’s ABN where this has been quoted in place of its TFN under section 12-155. The current obligation on investment bodies to give a reconciliation statement will not be retained under the PAYG arrangements.

When must the report or payment summaries be given?

1.114 The due date for the annual report will be:

- no later than 31 October after the end of the relevant financial year for payers that withhold amounts under section 12-190, Subdivision 12-F or 12-G [new subsection 16-153(1)]; or
- no later than 14 August after the end of the relevant financial year for payers who withhold amounts under Subdivisions 12-B, 12-C or 12-D [new subsection 16-153(2)].

1.115 If a payer withholds amounts under both, they must provide one report for amounts withheld under section 12-190, Subdivision 12-F or 12-G and another report for amounts withheld under Subdivisions 12-B, 12-C or 12-D. The former must be provided no later than 31 October in the relevant financial year, the latter by 14 August in that year. A payer may choose to discharge both these obligations at the one time by providing both reports by 14 August in the relevant year.
1.116 As explained above, an entity that withholds an amount under Subdivision 12-G must provide an annual report no later than 31 October after the end of the financial year in which the amount was withheld. This changes the existing annual reporting obligation in paragraph 221ZC(1)(b) of the ITAA 1936 for a person who deducts an amount from a mining payment. Under the existing rule that person must give an annual report within 2 months after the end of the relevant financial year. This change will facilitate a greater alignment of annual reporting obligations.

**What happens if a report is not given?**

1.117 Under the existing annual withholding reporting obligations, failure to provide a report as required is an offence punishable on conviction by a fine of up to $1,000, $2,000 or 20 penalty units depending on the withholding system. Failure to provide a report also attracts the Late Reconciliation Statement Penalty under Division 3 of Part IIA of the TAA 1953.

1.118 Under the new annual reporting provisions failure to provide a report as required will constitute an offence under section 8C of the TAA 1953. Alternatively, the payer will be liable to an administrative penalty of 10 penalty units. [New subsection 16-153(4)] The value of a penalty unit is worked out under section 4AA of the Crimes Act 1914. The current monetary value of a penalty unit is $110.

1.119 The proposed machinery rules in new Division 298 of new Part 4-25 of the TAA 1953 governing civil penalties expressed in penalty units will apply to this penalty. [Item 24 of Schedule 12]

**The Commissioner may vary the obligation**

1.120 New subsection 16-153(6) will allow the Commissioner to vary any of the requirements about giving an annual report either for one payer or a class of payers. A variation to the obligations of a class of payers must be made by way of notice published in the Gazette. A variation to the obligations of an individual payer must be made by written notice given to the payer. [New subsection 16-153(7)]

1.121 This is a change to most of the current annual withholding reporting rules under which the Commissioner does not have the ability to vary a payer’s reporting obligations.

**Recipients who do not give a TFN declaration**

1.122 A person who expects to receive a withholding payment covered by Subdivision 12-B (payments for work or services), 12-C (annuities, retirement payments and eligible termination payments) or 12-D (benefit and compensation payments) will be able to give their payer a TFN declaration under Division 3 of Part VA of the ITAA 1936 stating their TFN. [Item 190, new section 202C]
1.123 Under the new arrangements, a payer that commences a relationship with a recipient or any other person under which the recipient is entitled, or will become entitled, to receive a payment covered by Subdivisions 12-B, 12-C or 12-D from the payer must give a notice in the approved form about the recipient. The notice must be given to the Commissioner not later than 14 days after entering into the relationship unless a TFN declaration is in force between the payer and the recipient at the end of that 14 day period. [Item 54, new subsection 202CF(1)]

Recipients who do not have an employment declaration in place on 1 July 2000

1.124 There is a special transitional arrangement for recipients (e.g. employees) of payments covered by Subdivision 12-B, 12-C or 12-D who, at 1 July 2000, have not given an effective employment declaration to their payer. The payer will be required to notify the Commissioner no later than 31 October 2000. The payer will not be required to give the notice if the recipient provides a TFN declaration by 31 October 2000 that is in force on that day. This transitional rule, like the TFN declaration rules, does not apply to voluntary agreements under section 12-55. [New subsection 202CF(2)]

What happens if the payer does not notify the Commissioner?

1.125 Failure to provide notification as required under new section 202CF will constitute an offence under section 8C of the TAA 1953. Alternatively, a payer who fails to provide the required notification will be liable to an administrative penalty of 10 penalty units. [New subsection 202CF(3)]

1.126 The proposed machinery rules in new Division 298 of new Part 4-25 of the TAA 1953 governing civil penalties expressed in penalty units will apply to this penalty. [Item 24 of Schedule 12]

SECTION 4 TECHNICAL IMPROVEMENTS TO THE PAYG BILL

Summary of the amendments

Purpose of the amendments

1.127 The amendments will ensure that the labour hire withholding provision:

- only requires a firm to withhold from a payment to an individual under a labour hire arrangement if the firm is carrying on a labour hire business; and
• does not require withholding from payments under subcontracts.

1.128 The amendments will also make minor technical improvements to the PAYG withholding provisions contained in the PAYG Bill.

Date of effect

1.129 The PAYG withholding provisions, as amended by this Bill, will apply to payments made on or after 1 July 2000. [Subclause 2(9) of this Bill, item 3 of Part 1 in Schedule 1 of the PAYG Bill]

Background

Labour hire arrangements

1.130 The Government’s proposed new PAYG withholding system includes 3 new cases where withholding will be required. One of those is payments for work or services under labour hire arrangements, or as specified in the regulations. The provision requiring withholding in these circumstances is section 12-60 of Schedule 1 to the TAA 1953.

1.131 Paragraph 12-60(a) covers a payment by an entity to an individual if the payment is under an arrangement involving the performance of work or services by the individual for a client of the entity.

1.132 Paragraph 12-60(a) could potentially cover some payments that are not commonly regarded as made under labour hire arrangements. For example, the paragraph might cover some payments from a solicitor to a barrister for work done for the solicitor’s client. The labour hire event in the PAYG withholding system was not intended to cover such payments. Consequently, an amendment is proposed so that withholding under paragraph 12-60(a) is limited to payments by labour hire firms.

Minor technical improvements

1.133 The PAYG withholding provisions contained in the PAYG Bill have the following weaknesses:

• holders of exemption certificates in force on 30 June 2000 under the current withholding provisions for natural resource payments to non-residents would have to apply for new certificates under the PAYG system – if they wished to continue to make those payments without notifying the Commissioner;

• some aspects of the relationship between the ITAA 1997, the ITAA 1936 and the TAA 1953 are unclear;
• the date of effect of some consequential amendments contained in the PAYG Bill is not clear; and

• they contain specific provisions for PAYG withholding about the Commissioner’s power to obtain information and about how obligations apply to entities that are not legal persons (e.g. partnerships), rather than relying on more general provisions. This approach necessitates the replication of such rules when other sets of provisions are added to Schedule 1 of the TAA 1953.

Explanation of the amendments

Labour hire arrangements

1.134 Section 12-60 will be replaced by a new section 12-60 which does not change the proposed provision about withholding from payments specified in the Regulations. However, the new labour hire provision, subsection 12-60(1), differs from previous one in 2 ways. [Item 2 of Part 1 in Schedule 10]

1.135 First, there will be a requirement, in paragraph 12-60(1)(a), that the entity making the payments is carrying on a business of arranging for people to perform work or services for clients of the entity. This requirement will be satisfied if:

• the entity’s activities consist only of a business of arranging for people to perform work or services for clients of the entity; or

• the entity’s activities include a business of arranging for people to perform work or services for clients of the entity unless that business is merely incidental to the other business activities of the enterprise.

1.136 Thus, it is not necessary that the labour hire activities be the only business, or even the main business, of the paying entity. For example, if a firm’s main business is providing services as a consultant but it has a secondary business of labour hire, new paragraph 12-60(1)(a) is satisfied. However, if arranging for people to perform work or services for clients is merely incidental to another business activity of the entity, the labour hire provision will not require withholding. For example, if a solicitor arranges for a barrister to perform work for the solicitor’s client, that would only be incidental to the other business activities of the solicitor and withholding would not be required under the labour hire provision.

1.137 Secondly, the requirement that the payment be made under an arrangement involving the performance of work or services for a client of the paying entity will be modified to require that the work be done directly for the client. This change is intended to clarify that payments by
a contractor to a subcontractor are outside the provision. It is not intended to require that there be any legal relationship (e.g. contractual) between the worker and the end user of the work or services.

Example 1.1

Paul is a builder and contracts to build a house for Susan. He subcontractsWith Bruce for Bruce to do the plumbing work for the house. Paul does not have to withhold amounts under the labour hire provision from his payments to Bruce under the subcontract, because Bruce is not performing the work directly for Susan.

1.138 The new provision is intended to cover traditional labour hire arrangements of the type considered by the courts in the Odco and Drake Personnel cases\(^2\). The provision is also intended to cover payments to an individual under similar arrangements that feature the on-hiring of labour to an end user.

Exemption certificates for natural resource payments

1.139 The existing withholding provisions for natural resource payments to non-residents prohibit a person making such a payment unless:

- the person has notified the Commissioner and the Commissioner has then notified the person of how much to withhold; or

- the payment is covered by an exemption certificate that is in force (subsection 221YHZB of the ITAA 1936).

1.140 The PAYG withholding provisions in proposed sections 12-325 to 12-335 will have the same effect. However, exemption certificates issued under the existing law would not apply to payments made on or after 1 July 2000. Consequently, holders of exemption certificates would need to apply for new certificates under the PAYG provisions if they wished to continue to make natural resource payments without notifying the Commissioner.

1.141 To ensure that existing exemption certificates can have effect after 30 June 2000, this Bill will amend the application provisions for the PAYG withholding provisions (item 3 of Schedule 1 to the PAYG Bill). The amendment inserts subitem 3(3A), which provides that exemption certificates in force at the end of 30 June 2000 are treated as if the Commissioner had issued them under the new PAYG withholding provisions. [Item 20 of Part 2 in Schedule 10]

Relationship between the ITAA 1997, ITAA 1936 and the TAA 1953

Definitions of ‘this Act’

1.142 The PAYG provisions will be located in Schedule 1 to the TAA 1953. The ITAA 1936, ITAA 1997 and Schedule 1 are intended to work together as one body of law. To help achieve this outcome, the PAYG Bill proposed to amend the definitions of ‘this Act’ in both the ITAA 1936 and ITAA 1997 by adding a new paragraph (c) to section 6 of the ITAA 1936 to include Schedule 1.

1.143 Paragraph (b) of the definitions of ‘this Act’ refers to Part IVC of the TAA 1953 which is about objections, reviews and appeals, so far as that Part relates to the ITAA 1936 or the ITAA 1997. The intention of paragraph (b) is to read the objection and review provisions as part of the income tax law, to the extent that they concern income tax issues.

1.144 This Bill will replace paragraph (b) in both the ITAA 1936 and the ITAA 1997 so that it also covers the objection, review and appeal provisions to the extent that they relate to PAYG and any other provisions in Schedule 1. [Item 22 of Part 2 in Schedule 10, item 36 in Schedule 18]

Application of definitions in the TAA 1953

1.145 Under the PAYG Bill the definitions in the TAA 1997 apply to the PAYG provisions (and any other provisions) in Schedule 1 of the TAA 1953 (proposed section 3AA of the TAA 1953). This Bill will amend section 2 of the TAA 1953 to make it clear that the general definitions in the TAA 1953 do not apply to Schedule 1. [Item 1 of Part 1 in Schedule 10]

Application of definitions in ITAA 1997

1.146 Subsection 995-1(2) of the ITAA 1997 is designed to ensure that the definitions in that Act do not apply to the ITAA 1936, ‘except as provided’. Subsection 995-1(2) ITAA 1997 does not mention Part IVC of the TAA 1953 – despite the definitions section (section 995-1) beginning “in this Act” and the definition of ‘this Act’ including Part IVC of the TAA 1953 (so far as it relates to income tax). This Bill will replace subsection 995-1(2) ITAA 1997 to clarify that the definitions in the ITAA 1997 do not apply to Part IVC, unless that Part provides otherwise. [Item 37 of Schedule 18]

Date of effect of some consequential amendments contained in the PAYG Bill

1.147 Item 3 of Part 1 in Schedule 1 contained application rules for the new PAYG withholding rules, but not for the associated consequential amendments. The only consequential amendments that had express application rules were the amendments to the FBTAA 1986 (Item 84 in Part 2 of Schedule 1). Therefore, the other consequential amendments would have, under clause 3 of the PAYG Bill, operated according to their
terms. In a few cases it may not have been clear from the terms of a consequential amendment as to when it was intended to start.

1.149 This Bill contains some amendments to clarify the application of some consequential amendments in the PAYG Bill. The amendments to the substantiation and car expense provisions of the ITAA 1997 and to the ABNA 1999 commence on 1 July 2000. The amendment to paragraph 221YHZQ(1)(b) of the ITAA 1936 (dealing with the collection of TFN withholding tax payable on the non-quotation of a TFN for deferred interest securities) applies to an income year ending after 30 June 2000. [Items 19 and 21 of Part 2 in Schedule 10]

**Application of obligations to partnerships, unincorporated companies and superannuation funds**

1.150 Proposed Subdivision 20-A of Schedule 1 to the TAA 1953 explained how the PAYG withholding provisions applied to entities that are not legal persons – in particular, partnerships, unincorporated companies and superannuation funds.

1.151 This Bill will repeal Subdivision 20-A and replace it with generic provisions in **new Division 444 of Schedule 1**. The rules in Division 444 are the same as those in Subdivision 20-A, except that:

- they apply to all of Schedule 1, not just to the withholding provisions; and
- they do not include rules about offences where obligations are imposed on partnerships or unincorporated companies.

[Item 103 in Part 2 of Schedule 2, item 4 in Part 1 of Schedule 2]

1.152 Those offence rules will be in **new section 20-45 of Schedule 1**. The rules are the same as those in Subdivision 20-A. [Item 104 in Part 2 of Schedule 2]

**Commissioner’s power to obtain information and evidence**

1.153 Proposed section 20-60 of Schedule 1 to the TAA 1953 gives the Commissioner power, in relation to the withholding provisions, to require any person to provide information, to attend and give evidence or to produce documents.

1.154 This Bill will repeal Subdivision 20-C, which includes section 20-60, and replace it with generic provisions in **new Division 353 of Schedule 1. New section 353-10** is the same as section 20-60 except that:

- it applies to all of Schedule 1, not just to the withholding provisions; and
- it expressly states that the Commissioner’s powers to require any person to provide information, to attend and give evidence
or to produce documents can only be exercised by notice in writing.

[Item 105 in Part 2 of Schedule 2, item 3 in Part 1 of Schedule 2]

SECTION 5   REGISTRATION OF PAYG WITHHOLDERS

Summary of the amendments

Purpose of the amendments

1.155 The amendments in Schedule 14 to this Bill will introduce new Subdivision 16-BA into the PAYG withholding provisions. The new provisions will require an entity with a PAYG withholding obligation to register with the Commissioner. They will also enable an entity to register a branch for PAYG withholding purposes.

Date of effect

1.156 The amendments will apply from the date of Royal Assent. This will allow early identification of entities and their branches so that the Commissioner can assist them to understand their PAYE withholding rights and obligations.

Background

1.157 In order to efficiently administer the range of taxes covered by the BAS provisions, the Commissioner needs to be able to identify entities which have a notification or payment obligation. Identification is necessary for the Commissioner to be able to provide relevant businesses with information about the new tax system and to be able to issue each reporting entity with a BAS for the tax period.

1.158 Under the GST law, an entity carrying on an enterprise which has an annual turnover at least $50,000 must be registered for GST purposes. With ITI, FBTI and DCOIN obligations, the Commissioner will know whether an entity has an obligation to pay an instalment because of the assessment of tax payable in a previous year. The only debts under the new tax system where the Commissioner may not be aware whether an entity has an obligation is PAYG withholding.

1.159 Under the current law, an employer is required to register for PAYE purposes. This enables the Commissioner to identify employers, provide them with relevant information, and allocate group registration numbers to assist in accounting for their remittances. The PAYE provisions also allow the Commissioner to register any class of employees
of an employer, i.e. the registration of a branch within the employer entity. This is similar to the GST law which allows the registration of a GST branch of an entity. The registration of branches within an entity enables the alignment of reporting and payment obligations with the accounting structure of larger businesses.

**Explanation of the amendments**

*Registration of an entity for PAYG withholding*

1.160 Under the PAYG withholding system, if an entity is required to pay the Commissioner either:

- an amount withheld from payments made in respect of various withholding events – Division 12; or
- an amount in respect of a non-cash benefit – Division 14,

then the entity must apply for registration for PAYG purposes under new subsection 16-140(1). The application must be in the approved form and given to the Commissioner by the day on which the entity is first required to withhold an amount under Division 12 or pay an amount under Division 14. The Commissioner will have the discretion to extend the time for making an application for registration. [Item 1 of Schedule 14, new subsection 16-140(2)].

1.161 The need to exercise the discretion could arise where an unregistered entity is required to withhold an amount from a payment for a cash-on-delivery supply because the recipient of the payment did not quote an ABN. Alternatively, the Commissioner may not need to extend the time because the approved form for notification may be by phone or electronic message. The provisions give the Commissioner the flexibility to work with business to facilitate the registration process.

1.162 An entity that fails to apply for registration will be liable to a civil penalty of 5 penalty units under new subsection 16-140(3). The machinery provisions for civil penalties are introduced in Schedule 12 to this Bill and are contained in new Part 4-5 of Schedule 1 to the TAA 1953.

1.163 The Commissioner will have the discretion to register a person who has applied for registration and will also have the discretion to cancel a registration. [New section 16-141]

1.164 In administering this registration requirement the Commissioner will, where possible, rely on the ABN registration system as the mechanism for registering entities with PAYG withholding obligations. The ABN is the principal registration process for a business enterprise and the ABN registration form will be used to capture details of an entity’s taxation obligations under the new tax system. The Commissioner can decide that the ABN form is the approved form for PAYG withholding
registration. The requirement to have an entity separately apply for a PAYG withholding registration will primarily arise where an entity will have a withholding obligation but is not entitled, or chooses not, to be on the ABN register.

1.165 Under the current PAYE provisions all employers have a group employer number. This will not be used for PAYG purposes. Instead, the Commissioner will use an entity’s ABN as its PAYG account number. Where an entity does not have an ABN the Commissioner will use the entity’s TFN. In the case of branches, the Commissioner will use a number that is linked to the entity’s ABN.

1.166 It is anticipated that many government entities, such as schools, hospitals and departments will have an ABN. They will be able to register for PAYE withholding purposes and will also have their own RBA. The effect of their registration will be the same as a PAYE withholding branch which is discussed in paragraphs 1.167 to 1.172.

**Branch registration**

1.167 Subdivision 54-A of the GSTA 1999 provides rules for the registration of GST branches. Similar provisions are being inserted into the PAYG withholding provisions to allow an entity to operate through branches for notification and remittance purposes. This will not affect the liability of the entity to pay any tax debt arising under the PAYG withholding provisions by the due date, or the requirement for the entity to notify the Commissioner of all payments by the due date. Nor will it change the electronic notification and payment obligations of entities that are large withholders. Each branch will carry those obligations because they still remain part of the large withholder entity.

1.168 The Commissioner will be able to establish a separate RBA for each branch and allow the branch to notify debts on a separate BAS. If an amount is outstanding on the branch’s RBA then the GIC will accrue on that amount and it will be a tax debt payable by the entity. Having a separate RBA will assist entities whose normal accounting practice is to account on a divisional or branch basis. An entity is not required to register its branches. Alternatively, it can choose to register one, some or all its branches. A branch for PAYG purposes may also be registered as a branch for GST purposes.

1.169 **New section 16-142** sets out the rules for PAYG withholding branch registration. An application for branch registration must be made in an approved form and can be made by the entity or a branch on behalf of the entity. However, the application can only be made if the entity has an ABN or is in the process of applying for one. Having an ABN will enable the Commissioner to link each branch’s RBA to the entity. The registration is also contingent on the Commissioner being satisfied that the branch:

- maintains an independent system of accounting;
• can be separately identified by the nature of activities or location; and

• is carrying on, or intends to carry on, an enterprise.

1.170 The approved form for applying for PAYG withholding branch registration may be the same form as used for GST branch registration. This is possible because of the flexibility of the definition of approved form.

1.171 The registration of a PAYG withholding branch can be cancelled if the Commissioner is satisfied that the above criteria are not satisfied. If an entity’s registration is cancelled, all PAYG withholding branches of that entity cease to have effect. [New sections 16-144 and 16-145]

1.172 Registration of a PAYG withholding branch will mean that any amount an entity is required to withhold and pay to the Commissioner, or notify in a BAS, will be separated into amounts relating to the branch of the entity and amounts that do not relate to the branch. The separated amounts will be treated as if they were amounts of a separate entity. The amounts that do not relate to the branch will be amounts the entity will continue to withhold, notify in a BAS and pay to the Commissioner. [New section 16-143]

SECTION 6 CONSEQUENTIAL AMENDMENTS

Consequential amendments

1.173 The PAYG legislation necessitates consequential amendments to the tax legislation and other Commonwealth Acts listed below to update references to terms and provisions so that they reflect the new PAYG law. These consequential amendments are contained in Schedule 11 to this Bill.

Income Tax Assessment Act 1997

1.174 Section 3-1 of the ITAA 1997 includes a table which lists the locations of guides to particular topics. Item 3 of the table is obsolete due to the repeal of Parts 4-5 and 4-10 of the ITAA 1997 by the PAYG Bill. Item 3 of the table is repealed. [Item 80]

1.175 Section 12-5 of the ITAA 1997 contains a table which lists provisions of the ITAA 1936 and ITAA 1997 which allow deductions. Items 81 and 82 replace the references to the current ITAA 1936 provision with references to the new ITAA 1997 provision which allows a deduction for interest paid by a non-resident if withholding tax has been paid.
Pay as you go (PAYG) withholding

1.176 Divisions 25, 26 and 28 of the ITAA 1997 address aspects of the deductibility of amounts. Certain provisions within these Divisions refer to provisions and concepts of the current withholding systems. Items 83 to 86 amend these rules to refer to withholding payments and amounts withheld or payable under the new PAYG withholding system.

1.177 Division 34 of the ITAA 1997 contains rules about deductions for the costs of non-compulsory uniforms which are currently stated in terms of PAYE earners and PAYE earnings. Items 87 to 90 restate these rules in terms of the specific payments which are covered by the new PAYG withholding system.

1.178 Section 130-90 of the ITAA 1997 contains rules about capital gains tax in relation to employee share schemes, which are currently stated with reference to the term PAYE earner. Items 91 to 94 restate these rules in terms of the specific payments which are covered by the new PAYG withholding system.

1.179 In the provisions in Division 900 of the ITAA 1997 for the substantiation of business travel expenses there are a number of notes which refer to the defined term PAYE earnings. Items 95 to 100, 103 and 105 amend these notes to reflect the amendment of section 900-12 which refers to withholding payments covered by the new PAYG system.

1.180 Items 101, 102 and 104 replace references to group certificates with references to the new summary document in the PAYG withholding system called a payment summary.

Income Tax Assessment Act 1936

1.181 A number of provisions of the ITAA 1936 refer to provisions and concepts in current Part VI of the ITAA 1936. Amendments are made to these provisions to update the references to also refer to the new PAYG withholding system equivalent provisions and concepts. [Items 14 to 30, 33 to 40 and 77 to 79]

1.182 Subsection 159ZR(1) of the ITAA 1936 contains definitions of eligible income and salary or wages which refer to concepts in current Part VI of the ITAA 1936. These definitions are amended to refer to the new PAYG system equivalent provisions to maintain the current scope of the law. [Items 31 and 32]

1.183 The defined term salary or wages in subsection 221A(1) of the ITAA 1936 is replaced by a new label, work and income support related withholding payments and benefits, which is defined as payments from which amounts must be withheld or in respect of which amounts must be paid to the Commissioner under the new PAYG withholding system. The definitions of employer and employee are amended to reflect this new label. [Items 41 to 43]

1.184 Subdivision C of Division 3B of Part VI of the ITAA 1936 contains rules for the collection of TFN withholding tax on the
non-quotation of TFNs in respect of eligible deferred interest investments. These rules have not been translated into the new PAYG withholding system. Sections 221YHZX and 221YHZZ of this Subdivision refer to provisions of the current collection systems which have been translated into the new system. Item 44 inserts new sections 221YHZXA and 221YHZXB into the ITAA 1936 to apply the new PAYG withholding system crediting and penalty rules to eligible deferred interest investments. Item 45 amends paragraph 221YHZZ(b) to refer to the new PAYG withholding system equivalent rules.

Division 8 of Part VI of the ITAA 1936 provides for the prompt recovery, through estimates and payment agreements, of certain amounts withheld but not remitted. These rules currently refer to collection provisions of Part VI which have been replaced by the new PAYG withholding system. The amendments insert into these rules references to the provisions of the new PAYG withholding system. The rules in Division 8 of Part VI of the ITAA 1936 will apply where obligations have not been met under Divisions 12, 14 and 16 of Schedule 1 to the TAA 1953. [Items 47 to 58]

Item 46 amends the title of Division 8 of Part VI to remove references to divisions of Part VI which have been superseded by the PAYG withholding provisions.

The amendments of Division 8 will remove an anomaly by covering amounts withheld from payments for mining on Aboriginal land. They will also clarify that payments to the Commissioner in relation to non-cash payments covered by the withholding rules are also within Division 8.

Item 59 amends the title of Subdivision B of the Division 9 of Part VI to remove references to divisions of Part VI which have been superseded by the PAYG withholding provisions.

Division 9 of Part VI of the ITAA 1936 provides rules to encourage company directors to ensure that a company meets its obligations in relation to the collection of tax. These rules currently refer to collection provisions of Part VI which have been replaced by the new PAYG withholding system. The amendments insert into these rules references to the provisions of the new PAYG withholding system. New section 222AOBA is inserted to provide that these rules will apply to obligations related to non-cash benefits for which amounts must be paid to the Commissioner. [Items 60 to 75]

Item 76 amends subsection 255(2A) to also refer to the new PAYG withholding system provision which corresponds to Division 3B of Part VI of the ITAA 1936.
Pay as you go (PAYG) withholding

Income Tax Rates Act 1986

1.191 The definition of salary or wages in the Income Tax Rates Act 1986 is amended to refer to payments under the new withholding events of the PAYG withholding system. [Item 106]

Crimes (Taxation Offences) Act 1980

1.192 In subsection 3(1) of the Crimes (Taxation Offences) Act 1980 the term income tax is defined with reference to provisions of the current collection systems. This definition defines the scope of certain rules of the Act by identifying those withholding payments in relation to which the rules apply. The definition is amended to also refer to the equivalent provisions of the new PAYG withholding system in Schedule 1 to the TAA 1953. [Item 10]

Taxation (Interest on Overpayments and Early Payments) Act 1983

1.193 In subsection 3(1) of the Taxation (Interest on Overpayments and Early Payments) Act 1983 the term relevant tax is defined with reference to provisions of the current collection systems. This definition identifies those payments in relation to which interest may be payable to a taxpayer under the Act. The definition is amended to also refer to the equivalent provisions of the new PAYG withholding system in Schedule 1 to the TAA 1953. [Items 113 and 114]

Taxation Administration Act 1953

1.194 Section 8WC of the TAA 1953 contains rules imposing penalties where affairs have been conducted so as to avoid the TFN requirements of the taxation law. The section refers to provisions of the current collection systems. Items 111 and 112 amend sub-subparagraphs 8WC(1)(b)(iii)(A) and (B) of the TAA 1953 to also refer to the provisions of the new PAYG withholding system.

Consequential amendments to other Commonwealth Acts

Aboriginal Land Rights (Northern Territory) Act 1976

1.195 The new PAYG system also incorporates new rules for withholding from payments in respect of mining on Aboriginal land. Part VI of the Aboriginal Land Rights (Northern Territory) Act 1976 provides that amounts may be transferred from the Aboriginal Benefits Reserve to Consolidated Revenue. Further, subsection 64A(2) provides that these transfers are not to be subject to the rules for withholding from payments in respect of mining on Aboriginal land. The proposed amendment to the Aboriginal Land Rights (Northern Territory) Act 1976 inserts reference to new section 12-320 of Schedule 1 to the TAA 1953 to ensure that the new
law will operate in the same way as the current law in relation to mining payments covered by the new PAYG system. [Items 1 and 2]

Bankruptcy Act 1966

1.196 In the new withholding system the information currently presented on group certificates as part of the PAYE system will be included on a more general summary document to be called a payment summary. Paragraph 139U(3)(b) of the Bankruptcy Act 1966 is amended so that it will refer to group certificates and payment summaries. [Item 3]

Child Support (Registration and Collection) Act 1988

1.197 In the Child Support (Registration and Collection) Act 1988 the terms employee, employer and salary or wages are defined by reference to Division 2 of Part VI of the ITAA 1936 which contains rules for the PAYE system. The introduction of the new PAYG system means that these references are obsolete. The defined term salary or wages is replaced with the new defined term work and income related withholding payments which has the same meaning. The definitions of the terms employee and employer are revised to refer to this new label. [Items 4, 5, 6 and 7]

1.198 Subsection 46(8) refers to Division 2 of Part VI of the ITAA 1936. Item 8 amends the section to also refer to the equivalent provision of the new PAYG withholding system.

1.199 Paragraph 72B(4)(b) contains rules which apply to persons receiving or controlling money of a debtor who is outside Australia. These rules refer to natural resource payments and royalty payments within the meaning of Division 3B of Part VI of the ITAA 1936. The subsection is amended to refer to the new system equivalents, new section 12-325 and Subdivision F of Schedule 1 to the TAA 1953. [Item 9]

Defence Act 1903

1.200 In subsection 120B(16) of the Defence Act 1903 ‘net salary’ is defined with reference to salary payable under the current PAYE system. The amendment repeals the reference to Division 2 of Part VI of the ITAA 1936 and substitutes reference to the new PAYG system equivalent, Part 2-5 of Schedule 1 to the TAA 1953. [Items 11 and 12]

Higher Education Funding Act 1988

1.201 The Higher Education Funding Act 1988 currently refers to Division 2 of Part VI of the ITAA 1936 in relation to the collection of HECS amounts. The provision is amended to refer to the new PAYG withholding system equivalent provisions. [Item 13]
Pay as you go (PAYG) withholding

Public Service Act 1922

1.202 In subsection 64(18) of the Public Service Act 1922 ‘net salary’ is defined with reference to salary payable under the current PAYE system. The amendment repeals the reference to Division 2 of Part VI of the ITAA 1936 and substitutes a reference to the new PAYG system equivalent, Part 2-5 of Schedule 1 to the TAA 1953. [Items 107 and 108]

Social Security Act 1991 and the Veterans’ Entitlements Act 1986

1.203 In the new PAYG withholding system the information currently presented on group certificates as part of the PAYE system will be included on a more general summary document to be called a payment summary.

1.204 Subparagraph 93C(1)(a)(i) and paragraph 93C(2)(a) of the Social Security Act 1991 are amended so that they will refer to group certificates and payment summaries. [Items 109 and 110]

1.205 Subparagraph 45UA(1)(a)(i) and paragraph 45UA(2)(a) of the Veterans’ Entitlements Act 1986 are amended so that they will refer to group certificates and payment summaries. [Items 115 and 116]
Chapter 2
Collection and recovery rules

Overview

2.1 Schedule 2 to this Bill will introduce new Part 4-15 into Schedule 1 to the TAA 1953 to establish standardised rules which will enable the Commissioner to collect and recover tax-related liabilities which:

- arise under the various taxation laws for which the Commissioner has general administration; and

- remain unpaid after they become due and payable.

2.2 The standardised rules, together with amendments to ensure their application from 1 July 2000, are contained in Part 1 of Schedule 2 to this Bill. Parts 2 and 3 of Schedule 2 to this Bill contain the consequential and savings provisions which are necessary to either cease or modify the application of existing collection and recovery rules so that there will be a smooth transition to the new standardised rules from 1 July 2000.

2.3 The standardised collection and recovery rules represent a consolidation of features of the existing recovery provisions throughout the various taxation laws and, as such, do not reflect any significant change to existing policy. Examples of areas where variations have been necessary in moving to a standard rule are explained at paragraphs 2.39 to 2.52.

2.4 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum.

Summary of the legislation

Purpose of the amendments

2.5 The purpose of the amendments is to introduce standardised collection and recovery provisions which will:

- eliminate the duplication of these provisions across the different taxation laws administered by the Commissioner;

- remove inconsistencies in those provisions;

- achieve greater efficiencies in the collection of outstanding tax liabilities. For example, the Commissioner will be able to
proceed to recover multiple taxation liabilities under one legislative provision rather than the multiple recovery provisions which currently exist; and

- align the collection and recovery procedures with other reform initiatives which involve integrated accounts to record and monitor outstanding debts which will be recovered either as individual debts or as an RBA deficit debt.

2.6 Because the standardised collection and recovery rules are replacing the operation of the existing recovery provisions throughout the taxation laws, there is a need to ensure the existing recovery rules cease to apply so that future recovery actions can, as far as possible, be governed by the new provisions being introduced in this Bill. Amendments to achieve this outcome in relation to the more essential existing recovery rules are in Parts 2 and 3 of Schedule 2 to this Bill. If necessary, amendments will be introduced in a later Bill to complete the transition.

Date of effect

2.7 The standardised collection and recovery rules will generally apply from 1 July 2000 to all tax-related liabilities which exist on 1 July 2000, whether or not those liabilities have arisen before, on, or after that day. [Item 2 of Part 1 of Schedule 2]

2.8 Specific consequential and savings provisions to other Acts administered by the Commissioner, required in order to ensure a smooth transition to the standardised collection and recovery rules, are contained in Parts 2 and 3 of Schedule 2 to this Bill.

Background to the legislation

2.9 Currently, each taxation law contains its own collection and recovery provisions. The ITAA 1936 has several sets of collection and recovery rules which have evolved as new tax obligations have been introduced. For example, Part VI of the ITAA 1936 contains separate Divisions to provide for the collection and recovery of income tax debts and other debts arising under different withholding systems such as the PAYE, PPS and RPS systems.

2.10 Many of the recovery provisions in Divisions in Part VI of the ITAA 1936 are identical or similar in effect and result in a significant amount of duplication. In addition, there are also different provisions to achieve the same outcome but which vary, in various degrees, in structure and content.

2.11 The standardised collection and recovery rules will generally apply when tax-related liabilities remain unpaid after their due date for payment. Existing provisions in the different taxation laws which specify when a tax debt is due and payable are not affected by these amendments.
The standardised collection and recovery rules in new Part 4-15 will comprise:

- general rules about the collection and recovery of all tax-related liabilities. These rules cover variation of due dates for payment and court proceedings;

- specific rules about the collection and recovery of a person’s tax-related liabilities from third parties, e.g. liquidators, receivers, agents and trustees of the estate of a deceased person. The third party rules also cover the collection of money from a person who owes money to a person who has a tax-related liability; and

- other supporting matters such as the right of a person to recover from another person an amount paid in discharge of a tax related liability.

Explanation of the amendments

The amendments contained in Schedule 2 to this Bill to introduce the standardised collection and recovery rules are explained in the following Sections:

- Section 1: Standardised collection and recovery rules
- Section 2: Application, consequential and savings provisions
- Section 3: Finding tables

Where not specifically stated, legislative references throughout this Chapter (e.g. new Divisions, sections, subsections and paragraphs) in relation to the standardised collection and recovery rules are references to provisions in new Part 4-15 of Schedule 1 to the TAA 1953.

SECTION 1  STANDARDISED COLLECTION AND RECOVERY RULES

The explanation for the amendments, which will be in new Part 4-15 of Schedule 1 to the TAA 1953, to introduce the standardised collection and recovery rules is provided in the following Parts:

- Part 1: Structure of the new collection and recovery provisions
- Part 2: Standardising existing collection and recovery provisions
Part 3  Variations to existing collection and recovery provisions

Part 1  Structure of the new collection and recovery provisions

2.16  Item 1 of Schedule 2 to this Bill introduces the various elements of the standardised collection and recovery rules. The rules are in the following Divisions in new Part 4-15 of Schedule 1 to the TAA 1953:

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<td>255-B</td>
<td>Tax-related liabilities</td>
</tr>
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<td></td>
<td>255-C</td>
<td>Commissioner’s power to vary payment time</td>
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<tr>
<td></td>
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<td>Recovery proceedings</td>
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<td>260</td>
<td>260-A</td>
<td>Special rules about collection and recovery</td>
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<tr>
<td></td>
<td>260-B</td>
<td>From third party</td>
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<td></td>
<td>260-C</td>
<td>From liquidator</td>
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<td></td>
<td>260-D</td>
<td>From receiver</td>
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<td></td>
<td>260-E</td>
<td>From agent winding up business for non-resident principal</td>
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<tr>
<td></td>
<td></td>
<td>From deceased person’s estate</td>
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<tr>
<td>265</td>
<td>265-A</td>
<td>Other matters</td>
</tr>
<tr>
<td></td>
<td>265-B</td>
<td>Right of person to seek recovery or contribution</td>
</tr>
</tbody>
</table>

2.17  The features contained in new Divisions 255 to 265 are generally present in the existing collection and recovery provisions throughout the taxation laws. The Finding tables in Section 3 of this explanation provide a comprehensive map of those provisions which identifies the legislative references to the various features.

Definitions to support the new recovery rules

2.18  Schedule 18 to this Bill will add new definitions to Chapter 6 (the Dictionary) of the ITAA 1997 to support the interpretation of the standardised collection and recovery rules. The new definitions include tax-related liability, outstanding tax-related liability and definitions of assessment and taxation law.
2.19 **Proposed new subsection 3AA(2)** provides a mechanism whereby the definitions in the Dictionary in Chapter 6 of the ITAA 1997 apply to Schedule 1 to the TAA 1953, which contains the legislative provisions governing the PAYG system and the standardised collection and recovery provisions being introduced by this Bill.

### Part 2  Standardising existing collection and recovery provisions

2.20 The paragraphs in this Part explain some of the features of the new provisions and some aspects of the standardisation process.

#### Guide material and new concepts

2.21 **New Division 250** is the introduction to **new Part 4-15**. It contains **new Subdivision 250-A** which is the Guide to **new Part 4-15**. The Subdivision introduces and explains some important concepts about a **tax-related liability** that is defined in **new section 255-1**. The Subdivision contains 2 tabular indexes of different types of liabilities which arise throughout the various taxation laws and that would fall within the definition of tax-related liability. The 2 tables in **new section 250-10** summarise those occurrences in the ITAA 1936 and in other Acts respectively.

2.22 The tables in **new section 250-10** also specify the relevant provisions which provide for when those liabilities become due and payable. It is at this time that the new standardised collection and recovery provisions will generally apply in relation to those liabilities.

2.23 Subsection 950-150(2) of the ITAA 1997 explains that a Guide is separate from the operative provisions. However, in interpreting an operative provision, a Guide can be considered in a number of ways, including determining the purpose or object underlying the provision or clarifying ambiguity.

2.24 As mentioned in the Background to the legislation in this Chapter, the provisions in the various taxation laws which specify the time for payment of a tax-related liability are not affected by the introduction of the new rules. Rather, they will generally become the trigger for when the standardised collection and recovery rules apply.

2.25 Example 2.1 shows the interaction between an existing due and payable provision, section 204 of the ITAA 1936, and the standardised collection and recovery provisions. Section 204 is identified as item 55 in the table contained in **new subsection 250-10(1)** of tax-related liabilities in the ITAA 1936. The table entry clarifies that income tax includes liabilities taken to be income tax (e.g. penalties and HECS debts) for the purposes of section 204.

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3 Introduced into the TAA 1953 in Schedule 1 to the PAYG Bill on 30 June 1999.
Example 2.1

Where income tax has been assessed under Part IV of the ITAA 1936, section 204 specifies that the assessed amount is due and payable on a date specified in a notice of assessment, not being less than 30 days after the service of the notice, or, if no date is specified, the 30th day after the notice was served.

New subsection 255-5(2) will allow the Commissioner to sue in a court to recover the liability when the amount remains unpaid after it becomes due and payable.

Object of new Part 4-15

2.26 New Subdivision 250-B deals with other preliminary matters. New section 250-25 explains the object of new Part 4-15: to ensure that unpaid amounts are collected or recovered in a timely manner.

General rules

Variation of payment time

2.27 New Subdivision 255-B contains 3 provisions which facilitate the collection and recovery of tax-related liabilities through a variation of payment time. Notes are provided to each provision to explain how application of the provisions interacts with the GIC on liabilities which remain unpaid after they become due and payable. [New sections 255-10, 255-15 and 255-20]

2.28 As with other provisions in the standardised collection and recovery rules, the Finding tables in Section 3 of this explanation provide the appropriate reference to the provisions in the different taxation laws which will be replaced by new Subdivision 255-B.

Evidentiary certificates and the giving of evidence by affidavit in recovery proceedings

2.29 Standardising the current recovery rules has provided an opportunity to elevate some evidentiary provisions contained in the ITR 1936, and other regulations, into one place in the principal legislation, thus allowing their use in proceedings for the recovery of all tax-related liabilities.

2.30 The standardised provisions covering evidentiary certificates and evidence by affidavit are in new sections 255-45 and 255-55. The Finding tables in Section 3 of this explanation show that these new sections will remove the need for regulations 67 and 68 in the ITR 1936, and FBT regulations 16 and 17.

2.31 The new standardised provisions will continue to provide administratively convenient methods of presenting evidence to a court. As the evidence presented in an evidentiary certificate is prima facie, it will not restrict a taxpayer from presenting evidence as a defence. The new standardised provisions for evidentiary certificates and evidence by
affidavit will complement the new provision for the use of averments in recovery proceedings (new section 255-50 – see paragraph 2.43).

Special rules about collection and recovery

Third parties

2.32 New Subdivision 260-A will enable the Commissioner to continue to recover outstanding tax-related liabilities of a taxpayer by giving a notice to an entity (a third party) who owes or may later owe money to the taxpayer. Section 218 is the relevant section in the ITAA 1936 and the Finding tables in Section 3 of this explanation show the similar provisions in other taxation laws that are being standardised.

2.33 Current administrative arrangements result in separate notices being issued under each provision for a particular liability. From 1 July 2000, one notice will issue under new subsection 260-5(2) in respect of multiple tax-related liabilities of a person.

2.34 Item 4 of Part 1 inserts new Part 5-45 into Schedule 1 of the TAA 1953. The new Part clarifies the application of Schedule 1, including the standardised collection and recovery rules in new Part 4-15, to entities (e.g. partnerships, unincorporated companies and superannuation funds) that are not legal persons. [New sections 444-5, 444-10 and 444-15]

Liquidators, receivers and agents

2.35 Provisions throughout the taxation laws covering liquidators, receivers and agents are generally structured so that one provision covers all 3 applications. Section 215 of the ITAA 1936 provides an example of this structure. The Finding tables in Section 3 provide other examples.

2.36 The standardised provisions in new Part 4-15 for liquidators, receivers and agents are contained in new Subdivisions 260-B, 260-C and 260-D respectively. As with the notices issued under new Subdivision 260-A, from 1 July 2000 the Commissioner will be able to issue one notice in respect of multiple tax-related liabilities.

Deceased person’s estate

2.37 The standardised provisions in new Part 4-15 relating to deceased estates are contained in new Subdivision 260-E. Sections 216 and 220 are the relevant sections in the ITAA 1936, and the Finding tables in Section 3 show the similar provisions in other taxation laws that are being standardised.

Consequential amendments in the ITAA 1936

2.38 Consequential amendments are being made in Part 2 of Schedule 2 to this Bill to provide that:
- section 215 will not apply to liquidators, receivers and agents where their responsibilities commence in relation to particular affairs on or after 1 July 2000;

- sections 216 and 220 will not apply to deceased estates where the death occurred on or after 1 July 2000; and

- notices cannot be issued under section 218 on or after 1 July 2000.

[Items 28 to 31]

Part 3 Variations to existing collection and recovery provisions

2.39 Having one standard rule for each particular aspect of collection and recovery has required some minor variations to aspects of the current specific recovery provisions throughout the different taxation laws. In some cases, the standardised collection and recovery provisions will fill gaps that exist in the various recovery provisions throughout the taxation laws.

2.40 The Finding tables in Section 3 provide an overview of where gaps currently exist in the different laws. Evidentiary certificates discussed in Part 2 above and averments discussed below provide 2 such examples.

2.41 These variations are a necessary consequence of having standardised provisions. Taxpayers should not be adversely affected by these variations. Examples of where variations have been necessary, in addition to those discussed in Part 2 above, are discussed below.

Substituted service of notice

2.42 An example of this wider application is the standardisation of the provision dealing with substituted service. The current application of section 214 of the ITAA 1936 will be achieved through new section 255-40. Section 214 currently allows the Commissioner to post the service of process to a taxpayer’s last known place of business or abode in Australia. New section 255-40 proposes that the notice can be served at any Australian address of the taxpayer that is last known to the Commissioner. In practice, a taxpayer’s application for an ABN or dealings with the Commissioner on other matters may disclose a more relevant address for service than the taxpayer’s last known place of business.

Averments

2.43 The existing recovery provisions allow the use of averments in originating proceedings in some cases (e.g. for the recovery of amounts under the RPS, PAYE and PPS systems), but not others (e.g. for the
recovery of assessed tax liabilities). **New section 255-50** will allow the use of averments in recovery proceedings for all tax-related liabilities. This will complement the standardised rule in **new section 255-45** which allows the use of evidentiary certificates in proceedings for the recovery of all tax-related liabilities.

2.44 The new standardised provisions will continue to provide administratively convenient methods of presenting evidence to a court. As the evidence presented using an averment under **new section 255-50** is *prima facie*, it will not restrict a taxpayer in presenting evidence as a defence.

**General references to debts under the withholding systems**

2.45 Section 215 of the ITAA 1936 contains special rules in relation to recovering tax-related liabilities from specific persons such as liquidators, receivers and certain agents. Those rules, as well as the provisions in section 218 of the ITAA 1936, generally refer to amounts recoverable by the Commissioner under the various withholding systems in Part VI of the ITAA 1936, other than withholding under the mining withholding tax system in Division 5 of Part VI.

2.46 **New Subdivisions 260-A, 260-B, 260-C and 260-D**, which standardise the current rules in relation to third parties and specific persons, will cover the collection of all tax-related liabilities, including mining withholding tax along with all other PAYG withholding amounts. These tax-related liabilities are referred to in the tabular index of liabilities at item 105 of the table in **new subsection 250-10(2)**.

**Withdrawable shares**

2.47 The current provisions in section 218 of the ITAA 1936 and other comparable provisions such as section 56 of the SGAA 1992 currently allow the Commissioner to garnishee withdrawable shares held by members of building and similar societies. The practice of requiring members to have such shares is now infrequent and, as such, this aspect of the provisions has not been incorporated in the standardised collection and recovery provisions in **new Subdivision 260-A**.

**Priority for recovery from estate of a deceased person**

2.48 Paragraph 216(1)(d) of the ITAA 1936 (and similar provisions in other taxation laws) contain a priority in favour of the Commissioner in relation to recovery from a trustee of any outstanding tax-related liabilities in relation to a deceased taxpayer. This priority currently ensures that any tax payable by the trustee has priority over all other claims on the taxpayer’s estate in the trustee’s hands. This priority is no longer asserted by the Commissioner in dealings with trustees of deceased estates and, as such, is not contained in **new section 260-140**.
Objection rights for estate of a deceased person

2.49 Some current recovery provisions (e.g. section 72 of the STAA 1992) permit the trustee of a deceased person’s estate, or a person with an interest in an unadministered estate (e.g. section 220 of the ITAA 1936), to lodge an objection against an assessment of the tax payable by the estate of the deceased person. The standardised rules in new sections 260-140 and 260-145 will continue to apply to the collection and recovery of all tax-related liabilities, including tax assessed, from a deceased person’s estate.

Recovery from unadministered deceased estates

2.50 The standardised rule in new section 260-150 in relation to unadministered deceased estates permits the Commissioner to authorise a person to seize and dispose of a deceased person’s property to satisfy any outstanding tax-related liabilities of the person. Before the Commissioner could exercise these powers, regulations would need to be made under new subsection 260-150(2) setting out procedures for the seizure and disposal of property. The Finding tables in Section 3 show how this rule is currently included in some existing recovery provisions but not others.

Right of person to seek recovery or contribution

2.51 The sections in new Subdivision 265-A will enable a person who has paid tax for or on behalf of another person to recover from that person the amount paid [new section 265-40]. In the case of persons with a joint tax liability, the person who paid may recover the appropriate contribution from another joint taxpayer [new section 265-45]. Sections 258 and 259 are the relevant sections in the ITAA 1936, and the Finding tables in Section 3 show the similar provisions in other taxation laws that are being standardised.

2.52 A person may recover, under current section 258 of the ITAA 1936, in a court of competent jurisdiction, the costs of recovery of tax paid on behalf of another person. However, section 259 does not allow these costs to be recovered by a person who is a joint taxpayer. The standardised provisions remove this inconsistency.

SECTION 2 APPLICATION, CONSEQUENTIAL AND SAVINGS PROVISIONS

2.53 The application provisions to support the standardised collection and recovery rules are contained in item 2 of Part 1 of Schedule 2 to this Bill. The consequential and savings provisions are in Parts 2 and 3 of this Bill respectively. These provisions are discussed in the following paragraphs.
Relationship between application, consequential and savings provisions

2.54 **Subitems 2(1) to 2(10) in Part 1 of Schedule 2** specify the application rules for specific sections and the Subdivisions of **new Part 4-15**. As the new provisions are continuing the collection and recovery function of provisions contained in the different taxation laws, it is important that the application provisions are read in conjunction with the corresponding consequential and savings provisions, if relevant.

**General approach taken**

2.55 The approach taken to achieve the transition from the current to the new standardised collection and recovery provisions for income tax-related liabilities differs slightly to that taken for other liabilities (e.g. fringe benefits, GST). In relation to income tax liabilities, this usually involves a cessation of the application of the current provisions without their repeal. This approach reflects the drafting technique that has been generally adopted in ceasing the application of particular income tax provisions. **Part 2 of Schedule 2** to this Bill contains the necessary consequential amendments to ensure the transition.

2.56 In relation to other liabilities, the respective provisions are generally repealed in **Part 2** and a savings provision is included, where necessary, in **Part 3** to enable the provision repealed to continue to have effect as appropriate on or after 1 July 2000.

2.57 Example 2.2 shows those relationships for **new section 255-5**, which provides that a tax-related liability that is due and payable is a debt due to the Commonwealth and payable to the Commissioner and can be sued for by the Commissioner in a Court. **New section 255-5** is the standardised provision to replace existing provisions in all recovery areas of the various taxation laws, including sections 208 and 209 of the ITAA 1936 for income tax and section 94 of the FBTAA 1986.

**Example 2.2**

*Subitem 2(1) in Part 1 of Schedule 2* to this Bill provides that **new section 255-5** applies in relation to an amount of a tax-related liability that becomes due and payable on or after 1 July 2000.

The consequential amendments in **Part 2 of Schedule 2** to this Bill are:

- **item 12** which repeals section 94 of the FBTAA 1986; and
- **items 25 and 26** which introduce ‘stoppers’ so that sections 208 and 209 do not apply in relation to income tax that becomes due and payable on or after 1 July 2000.

The savings provision in **item 130 of Part 3 of Schedule 2** of this Bill provides that, despite the repeal of section 94 of the FBTAA 1986, the section continues to have effect in relation to amounts that became due and payable before 1 July 2000.
2.58 Similar relationships to those discussed in example 2.2 will apply for other standardised collection and recovery provisions. Those relationships can be explained in the following two steps:

- ascertain the standardised provision in item 2 of Part 1 by referring to either the particular provision or the Finding tables in Section 3;
- locate the relevant consequential and saving provision in Parts 2 and 3 of Schedule 2.

2.59 The following paragraphs work through this approach for recovery proceedings which commenced prior to 1 July 2000.

Recovery proceedings after 1 July 2000

2.60 These proceedings will rely on both the current collection and recovery provisions and the new standardised rules. For example, a cause of action enabling the Commissioner to sue for a pre-July 2000 liability through a Court will arise under the current provisions. However, where those proceedings continue after 30 June 2000, the new standardised evidentiary and procedural rules for recovery proceedings will then apply.

2.61 Paragraph (b) of subitem 2(3) of Schedule 2 will enable the standardised provisions dealing with the service of documents and evidentiary certificates in new sections 255-40 and 255-45 to apply in proceedings which commenced before 1 July 2000.

2.62 The Finding tables in Section 3 of this Chapter show that the income tax equivalent to new section 255-40 is section 214 of the ITAA 1936. The consequential amendment in item 27 of Schedule 2 provides that a process cannot be served under section 214 on or after 1 July 2000.

Consequential amendments

2.63 Part 2 of Schedule 2 to this Bill contains consequential amendments to Acts administered by the Commissioner. These consequential amendments are to ensure that certain provisions fit into and operate within the context of the standardised collection and recovery provisions.

2.64 The TAA 1953 is amended to reflect the relocation of certain collection and recovery rules from Part IIA of that Act to new Part 4-15 of Schedule 1 of that Act. [Items 86 to 92]

2.65 Item 93 of Schedule 2 replaces existing subsection 8AAZH(1) of the TAA 1953 to ensure that a due date is specified in the taxation law for payment of an RBA deficit debt. The new subsection 8AAZH(1) is referred to at item 85 of the tabular index in new subsection 250-10(2).
2.66 The Finding tables summarise the provisions in the various taxation laws which have been standardised in the development of the collection and recovery rules in new Part 4-15 of Schedule 1.

**Finding table 1: Description of new collection and recovery rules**

<table>
<thead>
<tr>
<th>Standardised provisions</th>
<th>New collection and recovery rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>255-5(1)</td>
<td>a tax-related liability that is due and payable is a debt due to the Commonwealth and is payable to the Commissioner</td>
</tr>
<tr>
<td>255-5(2)</td>
<td>the Commissioner may recover an unpaid tax-related liability in a court</td>
</tr>
<tr>
<td>255-10</td>
<td>the Commissioner may defer the time for payment of a tax-related liability</td>
</tr>
<tr>
<td>255-15</td>
<td>the Commissioner may permit payment of a tax-related liability by instalments</td>
</tr>
<tr>
<td>255-20</td>
<td>the Commissioner may, in certain cases, bring forward the time for payment</td>
</tr>
<tr>
<td>255-40</td>
<td>service of documents in certain cases</td>
</tr>
<tr>
<td>255-45</td>
<td>an evidentiary certificate is <em>prima facie</em> evidence of the matters stated</td>
</tr>
<tr>
<td>255-50</td>
<td>certain statements or averments are <em>prima facie</em> evidence</td>
</tr>
<tr>
<td>255-55</td>
<td>a person may give evidence by affidavit</td>
</tr>
<tr>
<td>260-A</td>
<td>the Commissioner may collect amounts from a third party</td>
</tr>
<tr>
<td>260-B</td>
<td>the Commissioner may collect amounts from a liquidator</td>
</tr>
<tr>
<td>260-C</td>
<td>the Commissioner may collect amounts from a receiver</td>
</tr>
<tr>
<td>260-D</td>
<td>the Commissioner may collect amounts from an agent winding up a business for a non-resident principal</td>
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<tr>
<td>260-140</td>
<td>the Commissioner may collect amounts from the trustee of a deceased person’s estate</td>
</tr>
<tr>
<td>260-145 260-150</td>
<td>the Commissioner may collect amounts from an unadministered deceased estate</td>
</tr>
<tr>
<td>265-40</td>
<td>the right of recovery if another person is liable to pay the tax-related liability</td>
</tr>
<tr>
<td>265-45</td>
<td>the right of contribution if persons are jointly liable to pay the tax-related liability</td>
</tr>
</tbody>
</table>
Finding table 2: Current collection and recovery rules of Part VI of the ITAA 1936 and their relationship with the new recovery rules

<table>
<thead>
<tr>
<th>Standard provisions</th>
<th>Income tax assessed</th>
<th>Div 1AA Payment of RPS, PAYE and PPS</th>
<th>Div 1AA RPS</th>
<th>Div 2 PAYE</th>
<th>Div 3A PPS</th>
<th>Div 3B NRP Part VA investment</th>
<th>Div 4 DIRWT</th>
<th>Div 5 MWT</th>
<th>Div 6 Films</th>
<th>Div 6A FMD</th>
<th>Div 1C Company instalments</th>
<th>Div 3 Provisional tax</th>
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<tr>
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<td>208</td>
<td>220AAZA(2)^</td>
<td>220AY(2)</td>
<td>221R(1)</td>
<td>221YHN(1)</td>
<td>221YZ(1)^</td>
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<td>221ZR(1)</td>
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^ The recovery provisions for ultimate beneficiary non-disclosure tax are contained in Division 6C of Part III of the ITAA 1936. The recovery provisions for family trust distribution tax are contained in Division 271 of Schedule 2F to the ITAA 1936.

^ Amounts owing under Division 8 (Estimates and payment agreements) and Division 9 (Directors of non-remitting companies) of Part VI of the ITAA 1936 are recoverable under s. 221AAZA, s. 221YHZJ and s. 221YR.

^ This provision is not being replaced by the generic provisions.

^ Subsections 221YDB(2) and (3), and section 221ZXJ, were repealed on the introduction of the GIC, which applies from 1 July 1999.

^ The requirement to pay amounts to the Commissioner under all of these Divisions will generally be covered under the proposed PAYG system which will apply from 1 July 2000.
### Finding table 3: Current collection and recovery rules of other Acts and their relationship with the new recovery provisions

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* Amounts recoverable under the GSTAA 1999 include the GST, luxury car tax and wine equalisation tax. Provisions will be contained in Part VI of the TAA 1953.

^ STAA 1992 does not apply to assessable dealings occurring on or after the introduction of the GST, which applies from 1 July 2000.

# This provision is not being replaced by the generic provisions.

< This provision is being amended by this Bill.
Chapter 3

Binding oral advice on income tax matters

Outline of Chapter

3.1 The amendments contained in Part 1 of Schedule 3 to this Bill will insert a new Part in the TAA 1953. The Schedule will contain new Part 5-5 the new oral rulings regime.

3.2 The amendments contained in Part 2 of Schedule 3 to this Bill will insert new sections in the ITAA 1936. They will provide for an oral ruling to be binding upon the Commissioner in much the same way as a written private ruling is. They will also determine the priority of conflicting rulings, whether written or oral, that apply for the same income year.

Context of Reform

3.3 Currently, the Commissioner is not bound by his or her oral advice in the same way as by written rulings. Where a taxpayer relies, to their detriment, on incorrect oral advice their assessment and final tax is determined according to the income tax law without regard to the fact that they relied on incorrect oral advice given by the Commissioner.

3.4 On 13 August 1998, the Government announced, in ANTS, its intention to ensure that taxpayers with simple tax affairs can rely on oral advice received from the ATO. Under this reform, oral advice will be binding on the Commissioner in much the same way as written private rulings.

3.5 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum. Where not specifically stated, legislative references throughout this Chapter (eg. sections, subsections and paragraphs) in relation to the new oral rulings regime are references to provisions in new Part 5-5 of Schedule 1 to the TAA 1953.

Summary of new law

3.6 New Part 5-5 will provide that an individual can apply to the Commissioner for an oral ruling about a range of matters under an income tax law where they meet the requirements of having simple tax affairs and a simple inquiry.
3.7 Amendments to the ITAA 1936 will provide that, where a taxpayer applies for, and is given, an oral ruling and the income tax law applies in a different way which is less favourable to the taxpayer than is the oral ruling, the Commissioner will be bound by the oral ruling. An oral ruling is more favourable to the taxpayer if an assessment of the taxpayer in accordance with it would result in a lesser amount of final tax than an assessment raised in accordance with the terms of the income tax law. An oral ruling will not be binding on the taxpayer.

3.8 The amendments will also provide for the priority of rulings where an oral ruling conflicts with either public rulings or written private rulings or both.

3.9 The amendments to the TAA 1953 and the ITAA 1936 will apply from 1 July 2000 with effect for the 2000-2001 income year and later income years. [Item 2 of Part I of Schedule 1]

**Detailed explanation of new law**

**Overview of the oral rulings regime**

3.10 An oral ruling will be binding on the Commissioner in much the same way as written private rulings are. However, an oral ruling will not be binding on the taxpayer. Broadly, where an individual with simple tax affairs and a simple inquiry is given an incorrect oral ruling affecting their assessment and final tax, the Commissioner will be bound by that oral ruling where it is favourable to the taxpayer i.e. results in a lower amount of final tax payable than would an assessment raised in accordance with the income tax law.

3.11 A taxpayer will not be able to obtain an oral ruling in circumstances where they would not have been able to obtain a written private ruling. Further, the eligibility tests for the oral rulings regime mean that its scope will be narrower than that of the written private rulings regime. In particular, it will only apply to resident individuals who are not in business and are not withholders.

**What is an oral ruling?**

3.12 An oral ruling means a ruling applied for under section 360-20 or 360-25. It is a ruling given to an individual, on the way in which, in the Commissioner’s opinion, an income tax law would apply to a taxpayer in respect of an income year in relation to an oral ruling arrangement. [Section 360-20 and subsection 360-25(1)]

3.13 An oral ruling arrangement is:

- an action;
• a course of action;
• a course of conduct; or
• a transaction;

that has been, is being, or is proposed to be, engaged in, entered into or carried out, but only if none of the parties to it is an associate of any of the others. [Subsection 360-30(2)]

Applying for an oral ruling

How the application is to be made

3.14 A taxpayer must make their application orally, either in person or by live 2-way conversation using a method of communication approved by the Commissioner. [Subsection 360-35(1)] When applying for an oral ruling, the taxpayer (or an authorised person) does not need to use any particular form of words or technical language. However, they must make it clear that they are seeking an oral ruling and not, for example, non-binding oral advice.

3.15 As the oral rulings regime refers to an individual in that capacity, an individual will not be able to apply for an oral ruling in any other capacity. For example, an individual who is a trustee cannot apply for an oral ruling in their capacity as trustee. [Existing subsection 960-100(4) of the ITAA 1997]

3.16 In addition, when a taxpayer makes an application for an oral ruling, they must identify themselves to the Commissioner’s satisfaction. Where an authorised person makes an application on behalf of the taxpayer, they must identify the taxpayer to the Commissioner’s satisfaction. The taxpayer, or that authorised person, must also give whatever information, in whatever form, the Commissioner requires in order to make the oral ruling. [Subsection 360-35(2)]

3.17 The Commissioner must request that the taxpayer give him or her further information where he or she considers that a ruling cannot be made without further information and that, if the information were given, there would be no reason not to comply with the taxpayer’s application. [Section 360-40]

Application for an oral ruling by a person authorised to make inquiries on behalf of a taxpayer

3.18 A person is only authorised to apply to the Commissioner for an oral ruling on a taxpayer’s behalf in the circumstances specified in section 360-25. If an authorised person does apply on a taxpayer’s behalf, the oral rulings regime has effect as if the taxpayer had made the application himself or herself. Consequently, it is the taxpayer who must
satisfy the requirements which govern when the Commissioner may give an applicant an oral ruling. [Subsection 360-25(3)]

3.19 The authorised person may communicate with the Commissioner and otherwise deal with him or her, as if they were the taxpayer. The Commissioner may communicate with the authorised person, and otherwise deal with them, as if they were the taxpayer. [Paragraphs 360-25(3)(a) and (b)]

When the taxpayer can authorise another person to apply on their behalf

3.20 The requirement that a taxpayer must apply for an oral ruling on their own behalf means that, with one limited exception, they cannot authorise another person, either in writing or otherwise, to apply on their behalf. The exception arises where an enduring power of attorney has been provided by a taxpayer who has subsequently become legally incapacitated because of a mental impairment. The holder of the enduring power of attorney may, in these circumstances, apply for an oral ruling on behalf of that legally incapacitated taxpayer. [Paragraph 360-25(2)(c)]

When another person is authorised to apply on a taxpayer’s behalf

3.21 Another person may apply for an oral ruling on a taxpayer’s behalf where the taxpayer is:

- under 18:
  - and is the child of the other person; or
  - the other person has, in relation to the taxpayer, all the duties, powers, responsibilities and authority which, by law, a parent has in relation to a child; or
  - the other person is authorised by an Australian law to act on behalf of the taxpayer, in matters including their tax affairs;

- mentally impaired:
  - and the other person is authorised by an Australian law to act on behalf of the taxpayer, in matters including their tax affairs; or
  - the other person holds an enduring power of attorney in relation to that taxpayer. This may also be referred to as a protected power of attorney in some jurisdictions.

- physically impaired:
  - and the other person is authorised by an Australian law to act on behalf of the taxpayer, in matters including their tax affairs.
[Subsection 360-25(2)]

**What the application can cover**

3.22 An application for an oral ruling may relate to:

- a past income year; or
- the income year in which the application is made.

It cannot relate to a future income year, or to more than one income year.

[Subsection 360-30(1)]

3.23 The application may be for an oral ruling on the way in which the Commissioner would act under the income tax law to which the application relates. This covers the following kinds of acts:

- forming an opinion, or refusing or failing to form an opinion; or
- attaining a state of mind, or refusing or failing to attain a state of mind; or
- making a determination, or refusing or failing to make a determination; or
- exercising a power, or refusing or failing to exercise a power.

[Subsections 360-30(3) and (4)]

3.24 A taxpayer will be given more than one oral ruling where the same issue relates to more than one income year or the taxpayer raises more than one issue for the same income year.

**Example 3.1**

Janet has 2 questions that relate to the 2000-2001 income year. Her tax affairs and both inquiries satisfy the tests within the oral rulings regime, including those relating to the basic categories. Janet is entitled to receive 2 oral rulings, each with its own registration identifier.

**An application for an oral ruling does not affect a taxpayer’s obligations or the Commissioner’s powers**

3.25 Although a taxpayer may have applied for an oral ruling this does not in the meantime affect:

- their obligation to lodge a return or do any other act; or
- the Commissioner’s power to make or amend an assessment.

[Section 360-175]
Withdrawal of application

3.26 A taxpayer may withdraw their application for an oral ruling before the ruling is made. They must do so orally, either in person or by live 2-way conversation using a method of communication approved by the Commissioner. [Subsection 360-35(3)]

How the Commissioner is to deal with the application

If the application relates only to basic categories

3.27 The Commissioner must give a taxpayer an oral ruling if he or she is satisfied that:

- their application complies with Subdivision 360-A; and
- their assessable income, exempt income, deductions and tax offsets, for the inquiry period, satisfy the requirements in sections 360-70, 360-75, 360-80 and 360-85 respectively; and
- during the inquiry period, no CGT event happened from which the taxpayer could have made a capital gain or capital loss (even if the taxpayer did not make one from the event); and
- their application relates only to the assessable income, exempt income, deductions or tax offsets within the basic categories;

unless Subdivision 360-C prevents the Commissioner from complying with the application. [Section 360-65]

3.28 However, a taxpayer can have an unapplied net capital loss for a previous income year which they are unable to apply as they did not make a capital gain. [Note to paragraph 360-65(1)(c)]

Inquiry period

3.29 If an oral ruling application relates to an earlier income year – the inquiry period is that income year. [Paragraph 360-65(2)(a)]

3.30 If an oral ruling application relates to the income year during which the application is made – the inquiry period is so much of the income year as elapses up to and including the day on which the taxpayer makes the application. [Paragraph 360-65(2)(b)]

If the application involves additional categories

3.31 The Commissioner must also give a taxpayer an oral ruling if:
• he or she is satisfied that their application complies with Subdivision 360-A; and

• in his or her opinion, their tax affairs were simple throughout the inquiry period; and

• in his or her opinion, their inquiry is simple; and

• he or she is satisfied that their assessable income for the inquiry period consisted only of one or more items, each of which is covered by section 360-70 (basic categories) or section 360-105 (additional categories); and

• he or she is satisfied that their exempt income (if any) for the inquiry period consisted only of one or more items covered by section 360-75 (basic categories); and

• he or she is satisfied that their deductions for the inquiry period consisted only of one or more items, each of which is covered by section 360-80 (basic categories) or section 360-110 (additional categories); and

• he or she is satisfied that their tax offsets for the inquiry period consisted only of one or more items, each of which is covered by section 360-85 (basic categories) or section 360-115 (additional categories); and

• he or she is satisfied of the matters in subsections 360-100(2), (3) and (4) (about the taxpayer’s capital gains tax situation); unless Subdivision 360-C prevents the Commissioner from complying with the application. [Subsection 360-100(1)]

**CGT events**

3.32 The Commissioner must be satisfied that no CGT event happened during the inquiry period from which the taxpayer could have made a capital gain or capital loss (even if they did not make one from the event) except a CGT event from which they could have made a capital gain or capital loss covered by subsection 360-100(3) – see discussion at paragraph 3.33. [Subsection 360-100(2)]

**Capital gains and losses**

3.33 The Commissioner must be satisfied that each capital gain (if any), and each capital loss (if any), that the taxpayer made during the inquiry period:

• is to be disregarded because of section 118-5 of the ITAA 1997 (about cars, motor cycles and valour decorations); or
• resulted from CGT event A1 happening in relation to shares in a company that was an Australian resident and a listed public company, and whose shares were listed for quotation in the official list of the Australian Stock Exchange Limited, throughout the period when they owned the first-mentioned shares; or

• resulted from CGT event A1 or E4 happening in relation to units in a unit trust that was a resident trust for CGT purposes and a listed widely held trust (within section 272-115 of the ITAA 1936), and whose units were listed for quotation in the official list of the Australian Stock Exchange Limited, throughout the period when they owned the first-mentioned units.

However, a taxpayer is not disqualified if CGT event E4 results in a reduction of the cost base of their units, rather than in a capital gain. [Subsection 360-100(3) and the note to paragraph 360-100(3)(c)]

Net capital loss for an earlier income year

3.34 If, during the inquiry period, the taxpayer made one or more capital gains each of which is covered by paragraph 360-100(3)(b) or (c), the Commissioner must be satisfied that the taxpayer has no unapplied net capital loss for an earlier income year. [Subsection 360-100(4)] However, a taxpayer can have unapplied net capital losses for a previous income year that they are unable to apply as they did not make a capital gain. [Note to subsection 360-100(4)]

Operation of the rules relating to basic categories

Assessable income

3.35 The assessable income that a taxpayer may derive during the inquiry period and still satisfy the basic categories is:

• payments to them as an employee, company director or office holder or a Commonwealth education and training payment as mentioned in sections 12-35, 12-40, 12-45 and 12-115 in Schedule 1 to the TAA 1953;

• the following types of payments:
  − social security payments;
  − veterans’ affairs payments;
  − payments made under the Repatriation Act 1920;
  − an education entry payment.

[Subsections 360-70(1) and (2)]
Example 3.2

For example, a taxpayer’s assessable income may include one or more of the following amounts:

- salary and wages, commissions, bonuses;
- Newstart allowance, youth allowance, AUSTUDY, ABSTUDY, widow allowance;
- age pension, bereavement allowance, carer payment, disability support pension, mature age allowance, parenting payment, widow B pension, age service pension, carer service pension, invalidity service pension, partner service pension.
- interest that is payable by a financial institution or a government body [subsection 360-70(3)]; or
- a dividend that is paid by a company that is an Australian resident, and a listed public company whose shares are listed for quotation on the official list of the Australian Stock Exchange Limited when the dividends are declared (if the liability to pay arises at this time); when the dividend becomes due and payable; or when the dividend is paid, whichever is earliest [subsection 360-70(4)].

Exempt income

3.36 The ordinary income or statutory income, to the extent that it is exempt income, that a taxpayer may derive during the inquiry period and still satisfy the basic categories is:

- a non-cash benefit that is exempt according to subsection 23L(1) of the ITAA 1936;
- the following types of payments:
  - certain payments to defence personnel;
  - Australian-American Educational Foundation grants;
  - certain welfare payments;
  - social security payments;
  - veterans’ affairs payments;
  - payments made under the Repatriation Act 1920;
payments made because of subsection 4(6) of the Veterans’ Entitlements (Transitional Provisions and Consequential Amendments) Act 1986;

− payment of child care assistance or child care rebate;

− private health insurance incentive payment;

− bonus payments made to certain older Australians;

− Commonwealth education and training payment;

− a disability services payment, a domiciliary nursing care benefit, or a wounds and disability pension;

− payments that are similar to Australian and United Kingdom veterans’ payments.

[Section 360-75]

**Deductions**

3.37 The deductions that a taxpayer may be entitled to for the inquiry period and still satisfy the basic categories are amounts that are:

- expenditure incurred for managing tax affairs as mentioned in paragraph 25-5(1)(a) of the ITAA 1997; or

- an account-keeping fee charged by a financial institution; or

- a tax imposed under an Australian law on an account kept with a financial institution (e.g. financial institutions duty, debits tax or a similar tax); or

- money, (but not property or trading stock), that is a gift or contribution to which items 1, 2 or 3 of the table in section 30-15, of the ITAA 1997 applies.

[Section 360-80]

**Tax offsets**

3.38 The following is a list of tax offsets to which a taxpayer may be entitled during the inquiry period and still satisfy the basic categories:

- child-housekeeper – child works full time keeping house for the taxpayer;

- housekeeper – caring for child, invalid relative or disabled spouse;
• maintaining the taxpayer’s parent(s), spouse’s parent(s) or an invalid relative;

• sole parent rebate;

• spouse rebate;

• low income aged person;

• certain low income individuals;

• net medical expenses over $1,250;

• 30% private health insurance rebate;

• beneficiary rebate for certain social security benefits or payments;

• pensioner rebate for certain social security or veterans’ pensions, allowances or benefits;

• franked dividend offset (imputation credit) received by the taxpayer as a shareholder;

• personal superannuation contributions rebate for low income earners;

• superannuation contributions for a non-working or low income-earning spouse;

• zone rebate for residents of isolated areas.

[Section 360-85]

3.39 If a taxpayer does not satisfy the basic categories, or their inquiry is in respect of a matter not encompassed by the basic categories, they may still be entitled to an oral ruling under the additional categories.

Operation of the rules for additional categories

Assessable income

3.40 The assessable income that a taxpayer may derive during the inquiry period and still satisfy the additional categories is:

• a pension or annuity as mentioned in section 12-80 of Schedule 1 to the TAA 1953; or

• compensation, sickness or accident pay as mentioned in section 12-120 of Schedule 1 to the TAA 1953; or
• a payment of a pension under an occupational superannuation scheme as mentioned in subsection 55-5(1) of the ITAA 1997; or

• a distribution made by a unit trust that, at the time when the distribution becomes due and payable or when the distribution is made (whichever is earliest) is a listed widely held trust that is a resident trust for CGT purposes and whose units are listed for quotation in the official list of the Australian Stock Exchange Limited; or

• a net capital gain as provided for in paragraphs 360-100(3)(b) and (c).

[Section 360-105]

Deductions

3.41 A taxpayer’s deductions for the inquiry period may include amounts that relate to assessable income derived as an employee, company director or office holder. [Section 360-110]

Tax offsets

3.42 A taxpayer’s tax offsets for the inquiry period may include:

• overseas forces rebate – for serving overseas as a member of Australia’s Defence Force or a United Nations armed force;

• franked dividend offset (imputation credit) received by the taxpayer as a beneficiary of a trust;

• rebateable eligible termination payment (ETP) annuity;

• rebateable superannuation pension;

• credit for foreign tax paid on foreign income;

• heritage conservation rebate;

• rebate for interest from Government securities issued before 1 November 1968; or

• rebate on certain lump sum payments in arrears;

[Section 360-115]

3.43 If the taxpayer does not satisfy the additional categories or, in the Commissioner’s opinion, their tax affairs and inquiry are not simple, they will not be given an oral ruling. They may, however, be given non-binding oral advice or, they may apply, in writing, for a written private ruling.
When the Commissioner cannot be required to comply with an application

Aspects of a taxpayer’s tax affairs that disqualify them

3.44 The Commissioner must not comply with a taxpayer’s application for an oral ruling unless he or she is satisfied that:

- the taxpayer is an Australian resident throughout the inquiry period; and

- the taxpayer, at no time during the inquiry period, carried on a business; and

- the taxpayer, at no time during the inquiry period, was a withholder; and

- their assessable income for the inquiry period did not include an amount in respect of a non-cash benefit.

[Subsection 360-140(1)]

Other grounds on which an application must be refused

3.45 The Commissioner must not comply with the taxpayer’s application for an oral ruling if, in his or her opinion:

- the taxpayer’s application for an oral ruling is frivolous or vexatious; or

- the oral ruling arrangement to which the application relates has not been, and is not being, carried out and is not seriously contemplated by the taxpayer; or

- the taxpayer has not given sufficient information, despite a request under section 360-40, to enable the ruling to be made; or

- it would be unreasonable to comply, or continue to attempt to comply, having regard to the extent of the Commissioner’s resources that would be required to comply.

[Subsection 360-145(2)]

3.46 The Commissioner must not comply with a taxpayer’s application for an oral ruling in so far as it involves calculating an amount. [Subsection 360-145(3)]

Example 3.3

Calculations that would not form part of an oral ruling:
• calculation of a taxpayer’s taxable income, tax payable or tax refund for an income year;
• calculation of an amount to be included at a label on a return; or
• calculation of a rebate entitlement.

3.47 The Commissioner need not comply with a taxpayer’s application for an oral ruling if he or she is satisfied that, had the application been for a written private ruling, he or she would not have been required to comply with it. [Subsection 360-145(4)]

When an oral ruling is taken never to have been made

Aspects of a taxpayer’s tax affairs that disqualify them

3.48 The Commissioner must not comply with a taxpayer’s application for an oral ruling if:

• the taxpayer’s assessable income or exempt income for the inquiry period includes an amount arising from a transaction with their associate; or
• the taxpayer’s deductions for the inquiry period include an amount paid to their associate; or
• an anti-avoidance provision applies to the taxpayer during the income year to which their application relates.

[Subsection 360-140(2)]

Other grounds on which an application must be refused

3.49 The Commissioner must not comply with a taxpayer’s application for an oral ruling if:

• there is already an oral ruling, in respect of the same income year, on the matter sought to be ruled on; or
• there is already a written private ruling on the matter sought to be ruled on; or
• the matter sought to be ruled on has been decided for the purposes of a Commissioner assessment; or
• a tax audit is being carried out of which the taxpayer has been informed and which, in the Commissioner’s opinion, will require the Commissioner to decide the matter sought to be ruled on; or
• the matter sought to be ruled on is the subject of an objection against a self-assessment; or
• the taxpayer is a not a SPOR taxpayer for the income year to which their application relates, and the application is made later than 4 years after the last day allowed to them for lodging an income tax return for that income year; or

• the taxpayer is a SPOR taxpayer for the income year to which their application relates, and the application is made later than 2 years after the last day allowed to them for lodging an income tax return for that income year.

[Subsection 360-145(1)]

Effect on oral ruling if provisions not complied with

3.50 An oral ruling is taken never to have been made, and never to have been communicated, if subsection 360-140(2) or 360-145(1) applied to the application for the ruling. However, the validity of an oral ruling is not affected because any other provision of the TAA 1953 has not been complied with. [Section 360-155]

Making an oral ruling

*How and when an oral ruling is made*

3.51 The Commissioner makes an oral ruling by communicating its contents to the taxpayer orally, either in person or by live 2-way conversation using a method approved by the Commissioner. The ruling is made at the time of the communication. [Subsection 360-120(1)]

3.52 The taxpayer is not entitled to receive a written record of the communication. [Subsection 360-120(3)] However, a taxpayer who requires a written record of advice could apply for a written private ruling under Part IVAA of the TAA 1953. [Note to subsection 360-120(3)]

*Delegated power must be exercised at specified place*

3.53 An oral ruling can only be made by a person to whom the Commissioner has delegated a function or power under Division 360. The person must perform the function, or exercise the power, at places specified in the delegation. The person may communicate with a person who is not at such a place by live 2-way conversation using a method approved by the Commissioner in order to perform the function or exercise the power. [Section 360-60]

*Content of an oral ruling*

3.54 The communication must:

• set out the matter ruled on; and
• identify the person to whom, and the income tax law, the income year and the oral ruling arrangement to which, the ruling relates; and

• indicate that the ruling is an oral ruling; and

• if the correctness of the ruling depends on an assumption – set out the details of the assumption; and

• include a registration identifier for the ruling.

[Subsection 360-120(2)]

3.55 The registration identifier is not required to be provided by a taxpayer in order to establish that they have been given an oral ruling. However, the quotation of a valid registration identifier will be evidence that an oral ruling was provided.

Assumptions

3.56 If the Commissioner considers that the correctness of an oral ruling would depend on which assumptions were made about a future event or other matter, The Commissioner may decline to make the ruling or make such assumptions as he or she considers most appropriate. [Section 360-150]

Who can rely on an oral ruling

3.57 Only the taxpayer may rely on the oral ruling. [Subsection 360-5(4)]

Effect on oral ruling if tax law re-enacted

3.58 If the Commissioner makes an oral ruling about an income tax law (the old law) and that law is re-enacted or remade (the new law), the ruling is taken also to be an oral ruling about the new law but only in so far as the new law expresses the same ideas as the old law. This is irrespective of whether or not the old law was re-enacted or remade with or without modifications and whether or not the old law was repealed. [Section 360-180]

Remedies available to a taxpayer who is dissatisfied with an oral ruling

3.59 A taxpayer is not bound by an oral ruling. [Subsection 360-5(5)]

3.60 Neither a taxpayer nor anyone else is entitled to object against an oral ruling under Part IVC of the TAA 1953. The oral ruling is not a taxation decision for the purposes of that Part. [Subsection 360-120(4)]

3.61 A taxpayer who is dissatisfied with an oral ruling may request a written private ruling. If they do so, they will be able to exercise the objection rights conferred under the written private rulings regime if they are dissatisfied with the private ruling. [Note to subsection 360-120(4)]
The effect of an oral ruling

3.62 Where a taxpayer applies for and is given an oral ruling and the income tax law applies in a different way which is less favourable to the taxpayer than is the oral ruling, the Commissioner will be bound by the oral ruling. An oral ruling is more favourable to the taxpayer if an assessment of the taxpayer in accordance with it would result in a lesser amount of final tax than an assessment raised in accordance with the terms of the income tax law. [New section 170BCA of the ITAA 1936; item 5 of Schedule 3]

3.63 However, consistent with the written private rulings regime, the taxpayer will not be entitled to rely on the oral ruling and pay the lesser amount of tax if the facts on which the oral ruling was based differ from what actually transpired during the inquiry period.

Priority of rulings

3.64 Where a taxpayer has been given an oral ruling that conflicts with a public ruling, the taxpayer’s assessment and amount of final tax will be determined according to the ruling that provides them with the lowest amount of final tax. [New section 170BDA of the ITAA 1936; item 6 of Schedule 3]

3.65 Where there are 2 or more conflicting public rulings and a conflicting oral ruling, the assessment and amount of final tax must be determined according to the ruling that results in the lowest amount of final tax. [New section 170BDA of the ITAA 1936; item 6 of Schedule 3]

3.66 Where a taxpayer has been given an oral ruling and a later written private ruling on the same subject matter for the same income year, the taxpayer’s assessment and amount of final tax will be determined according to the written private ruling. [New section 170BDB of the ITAA 1936; item 6 of Schedule 3]

3.67 Where there are 2 or more conflicting written private rulings and a conflicting oral ruling, the assessment and amount of final tax must be determined according to the written private ruling that results in the lowest amount of final tax. [New section 170BDB of the ITAA 1936; item 6 of Schedule 3]

3.68 Where a public ruling, a later written private ruling and an oral ruling conflict, the taxpayer’s assessment and amount of final tax will be determined as they would have been had the oral ruling not been given. [New section 170BDC of the ITAA 1936; item 6 of Schedule 3]


Chapter 4
Payment, ABN and identification verification system

Overview

4.1 *Schedule 4* to this Bill will introduce *new Part 5-30* into Schedule 1 of the TAA 1953 to establish a transaction reporting, ABN and identification verification system aimed at improving compliance with the taxation laws. The system is intended to be used in areas where non-compliance with the taxation laws is entrenched. The main objective of the new system is to ensure that business participants meet their tax obligations and that any current or future competitive advantage resulting from non-compliance is minimised.

4.2 The new compliance system, aspects of which were foreshadowed in ANTS, will contain 4 components each of which will be able to apply to payments for supplies which are specified in regulations.

4.3 Components of the new compliance system will only be used in areas where there is entrenched non-compliance and when the Government is convinced that it is necessary.

4.4 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum.

Summary of the legislation

Purpose of the amendments

4.5 The purpose of the amendments is to provide a legislative framework for the application of one or more of 4 components of a new compliance payment and identification system. The framework enables specific components to be activated, by specifying payments in the regulations, depending on the nature of the non-compliance.

4.6 The specified payments will cover targeted areas or particular industries when it can be shown that tax evasion is occurring or is suspected. Each component may operate independently from or in combination with other components. The components include:

- transaction reporting by purchasers;
- transaction reporting by suppliers;
• verification of a supplier’s ABN by a purchaser; and
• verification of a supplier’s identity by a purchaser.

4.7 It is envisaged that the proposed system will be responsive to areas of non-compliance. It is also expected that the system will be able to operate within a changing technological environment.

4.8 The verification components are designed to support the application of the no ABN withholding event under the PAYG withholding system introduced in the PAYG Bill. This support will come through targeted purchasers being better informed as to whether an ABN quoted on a supplier’s invoice is in fact the supplier’s ABN.

4.9 Section 12-190 of the new PAYG Bill requires a purchaser to withhold an amount from a payment made to a supplier where no ABN is quoted or there is doubt that the ABN quoted by the supplier is the supplier’s ABN.

Date of effect

4.10 The new compliance system will operate from 1 July 2000 and will be able to apply to certain payments which are specified in regulations. [Item 2 of Schedule 4]

Background to the legislation

4.11 The Government has foreshadowed, as part of its tax simplification strategy, the need to reduce compliance costs incurred by businesses in the industries in which reporting systems currently operate. At the same time, there is also a need to ensure compliance with the taxation laws.

4.12 The introduction of a targeted reporting and verification system is considered to be an appropriate response to address systematic tax evasion in high risk areas and improve compliance with the taxation laws. This approach will be more flexible in its application than the current PPS and RPS arrangements thereby reducing compliance costs.

4.13 The linkage to the no ABN withholding event will also assist purchasers to comply with the no ABN withholding event in the PAYG Bill and help ensure the integrity of the new tax system.

Explanation of the amendments

4.14 The amendments contained in Schedule 4 to this Bill to introduce the new compliance system are in 2 Parts. Part 1 of Schedule 4 introduces
new Part 5-30 of Schedule 1 of the TAA 1953. Part 2 of Schedule 4 contains the application item governing the new system. [Items 1 and 2]

4.15 Where not specifically stated, legislative references throughout this Chapter (eg. new Divisions, sections, subsections and paragraphs) in relation to the new compliance system are references to provisions in new Part 5-30 of Schedule 1 to the TAA 1953.

The new payment, ABN and identification verification system

4.16 The new compliance system, incorporating the 4 components, will be contained in new Part 5-30 and structured as follows:

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<thead>
<tr>
<th>Component</th>
<th>Division</th>
<th>Sections</th>
<th>Element</th>
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</thead>
<tbody>
<tr>
<td>All</td>
<td>400</td>
<td></td>
<td>Guide to Part 5-30</td>
</tr>
<tr>
<td>1</td>
<td>405</td>
<td>405-5</td>
<td>Transaction reporting by purchasers</td>
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<td></td>
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<td>405-10</td>
<td>Payments to which this Division applies</td>
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<td>405-15</td>
<td>Reporting requirements</td>
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<td>Invoices produced by purchasers</td>
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<td>2</td>
<td>410</td>
<td>410-5</td>
<td>Transaction reporting by suppliers</td>
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<td>410-10</td>
<td>Payments to which this Division applies</td>
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<td></td>
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<tr>
<td>3</td>
<td>415</td>
<td>415-5</td>
<td>Verification of suppliers’ ABNs by purchasers</td>
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<td></td>
<td></td>
<td>415-10</td>
<td>Payments to which this Division applies</td>
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<td>415-15</td>
<td>ABN verification requirements</td>
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<td>415-20</td>
<td>Method of obtaining ABN verification</td>
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<td>Verification applies to later payments</td>
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<td>4</td>
<td>417</td>
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<td>415-10</td>
<td>Payments to which this Division applies</td>
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<td>415-15</td>
<td>Identity verification requirements</td>
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<td>415-20</td>
<td>Method of obtaining identity verification</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Verification applies to later payments</td>
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</tbody>
</table>
### Features of the new system

4.17 The various components of the new system contain similar elements to ensure their operation. This particular structure has been selected so as to provide maximum flexibility from an administrative perspective. Unlike the current reporting elements of the RPS, PPS and PAYE systems, each of the 4 components of the new system will be capable of application to specific payments.

4.18 Further, the requirements in relation to those payments will be tailored, if necessary, to suit specific purchasers/suppliers covered by particular payments. Features of the new system are explained at paragraphs 4.19 to 4.29.

### Payments affected

4.19 For a payment to come within a component of the new reporting and identity verification system it must be specified in regulations made for the purpose of each section governing that component. [New subsections 405-5(1), 410-5(1), 415-5(1) and 417-5(1)]

4.20 As noted in the Overview of this Chapter, payments will only be subject to the new system when the Government is satisfied there is evidence of tax evasion in a particular industry.

### Flexibility as to reporting and verification requirements

4.21 The Government recognises the additional cost through requiring taxpayers to comply with various aspects of the taxation laws. In the RPS and PPS for example, a one in all in type approach has been adopted in a specific industry to enable the Commissioner to ensure that taxpayers within an industry are meeting their obligations.

4.22 Such an approach can add additional compliance costs on taxpayers who are fully complying with the laws. The new system will address those situations by trying to better target non-complying areas within an industry and by recognising that business practices can vary considerably between industries. The new system also allows the obligations to be tailored to minimise compliance costs.

<table>
<thead>
<tr>
<th>Component</th>
<th>Division</th>
<th>Sections</th>
<th>Element</th>
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<tbody>
<tr>
<td>All</td>
<td>420</td>
<td>420-5</td>
<td>Penalties for not reporting or verifying: Failing to report or verify: civil penalty</td>
</tr>
<tr>
<td>All</td>
<td>425</td>
<td>425-20</td>
<td>Other matters</td>
</tr>
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<td></td>
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<td>425-25</td>
<td>Constructive payment</td>
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<td></td>
<td></td>
<td>425-30</td>
<td>Non-cash benefits</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Amounts to be expressed in Australian currency</td>
</tr>
</tbody>
</table>
Transaction reporting by purchasers and suppliers

4.23 To achieve a more targeted approach, each reporting component will allow the Commissioner to vary specific requirements in relation to a purchaser/supplier or class of purchaser/supplier. [New subsections 405-10(4) and 410-10(4)]

Verification of suppliers’ ABNs and identities

4.24 New subsections 415-15(1) and 417-15(1) will provide that the verification procedures for the components covering a supplier’s ABN and a supplier’s identity will be as determined, in writing, by the Commissioner. The Commissioner will issue administrative guidelines covering these verification procedures.

4.25 In relation to ABN verification, the procedure may not involve the Commissioner. For example, it may be appropriate for a purchaser to access the Australian Business Register (eg. via the internet if available) to verify that the ABN provided on an invoice is entered on the Register with the name of the supplier.

Variations remaining in force

4.26 A purchaser will generally only have to verify a supplier’s ABN or identity once. New subsections 415-20(1) and 417-20(1) provide that a verification will continue to apply until 2 years has elapsed during which no further payments are made.

Penalties under the new system

4.27 New section 420-5 will introduce a civil penalty of 20 penalty units for when purchasers and suppliers fail to meet their respective reporting and verification requirements.

4.28 New Division 298 which is being introduced into the TAA 1953 by Schedule 12 to this Bill provides general machinery provisions to govern the notification, due dates for payment, remission and GIC in relation to civil penalties imposed on entities under a taxation law and which are expressed as penalty units.

Other matters

4.29 New Division 425 contains provisions covering other matters such as constructive payment, non-cash benefits and the expression of amounts in Australian currency.
Chapter 5
Shorter period of review

Overview

5.1 Schedule 6 to this Bill will amend the ITAA 1936 and the TAA 1953 in relation to individual resident taxpayers with simple tax affairs in an income year. The Bill will reduce, from 4 to 2 years, the period during which amendments may be made to assessments of such taxpayers. There will be a similar reduction for such taxpayers in the period required for:

- keeping certain records;
- applying for private binding rulings;
- lodging objections to assessments and to private binding rulings.

5.2 Taxpayers with simple tax affairs are referred to as shorter period of review (SPOR) taxpayers.

5.3 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum.

Summary of the amendments

Purpose of the amendments

5.4 The purpose of the amendments is to provide greater certainty for SPOR taxpayers and also to reduce their record keeping obligations.

Date of effect

5.5 The amendments will apply to the 2000-2001 income year and later income years. [Item 24]
Background to the legislation

Tax reform package

5.6 On 13 August 1998 the Government released its ANTS tax reform package. The document stated that for taxpayers with simple tax affairs who were doing the right thing the 4 year period allowed for amending assessments was too long and should be reduced to 2 years.

Current law

5.7 Section 170 of the ITAA 1936 provides a framework under which the Commissioner may amend the assessments of taxpayers within specified time periods.

5.8 In general, the Commissioner has 4 years from the date when tax became due and payable on an assessment to amend the assessment. However, in some cases the amendment period is unlimited, for example, where there is fraud or evasion.

5.9 Taxpayers generally have 4 years under the income tax law within which to:

- seek amendments to assessments;
- seek private binding rulings;
- lodge objections against assessments and private binding rulings.

5.10 Generally, under the income tax law, taxpayers must keep records for a period of 5 years.

Explanation of the amendments

Taxpayers eligible for a reduced period of review

5.11 The following diagrams:

- provide an overview of the operation of the new provisions; and
- set out how the amendments will affect SPOR taxpayers compared to other taxpayers.
Diagram 5.1: Determining if a taxpayer is a SPOR taxpayer in a year of income

Capacity Test – ss 6AD(1)
Is the taxpayer an individual, other than an individual acting in the capacity of a trustee?

YES

Income Test – ss 6AD(2)
Is the taxpayer’s income derived only from one or more of the following:
1. salary or wages, pensions, benefits;
2. interest; or
3. dividends from Australian resident listed public companies?

NO

YES

Deduction Test – ss 6AD(3)
Does the taxpayer only claim one or more of the following:
1. gifts and donations;
2. account keeping fees or Government charges on account transactions; or
3. expenses of managing tax affairs?

NO

YES

Ineligibility Test – ss 6AD(4)
Do any of the following apply or occur in the income year?

Residence para 6AD(4)(a)
1. the taxpayer is a non-resident for any part of the income year

Foreign Income/Credits paras 6AD(4)(b) and (f)
2. the taxpayer earned certain exempt foreign service income
3. the taxpayer is entitled to a foreign tax credit

Associates paras 6AD(4)(c) and (d)
4. the taxpayer claimed a deduction incurred to an associate
5. the taxpayer derived income from an associate

CGT Gain/Loss para 6AD(4)(e)
6. the taxpayer had a capital gain
7. the taxpayer made a capital loss

YES

NO

The taxpayer is a SPOR taxpayer for the income year

The taxpayer is a not a SPOR taxpayer for the income year
Diagram 5.2: Comparison of effect of being a SPOR taxpayer in a year of income

Criteria to determine if a taxpayer qualifies as a SPOR taxpayer

5.12 Objective criteria will apply to determine if a taxpayer qualifies as a SPOR taxpayer for an income year. The criteria relate to:

- the taxpayer’s capacity;
• the assessable income derived by the taxpayer;
• the deductions claimed by the taxpayer;
• certain matters that will disqualify the taxpayer from being a SPOR taxpayer.

5.13 SPOR taxpayer will be defined in subsection 6(1) of the ITAA 1936 to have the meaning given by new section 6AD. [Item 1]

Taxpayer capacity

5.14 A SPOR taxpayer must be an individual who is not acting in the capacity of a trustee [new subsection 6AD(1), item 2]. Trustee is defined in subsection 6(1) of the ITAA 1936.

5.15 A trustee who is an individual may be a SPOR taxpayer if they satisfy the SPOR tests in their personal capacity. However, these provisions will not apply to a taxpayer in their capacity as a trustee.

Example 5.1

Richard is a SPOR taxpayer. He is also the executor of his father’s deceased estate. The estate derives rental income. Richard has lodged a trust return as executor for his late father which includes the rental income. Richard is a non-SPOR taxpayer for this purpose. However, he remains a SPOR taxpayer for the purposes of his own tax return.

Income test

5.16 A SPOR taxpayer’s assessable income for an income year must only include the following categories of Australian source assessable income:

• salary or wages;
• interest income derived from financial institutions and government bodies;
• dividend income received from certain Australian resident, listed public companies.

[new subsection 6AD(2)]

Salary or wage income

5.17 Salary or wage income will take the meaning given in subsection 159ZR(1) of the ITAA 1936. This Bill will also amend subsection 159ZR(1) so that it broadly covers the following payments:
• payments to employees which include amounts of salary, wages, commission, bonuses or allowances paid to an individual as an employee;

• payments to company directors;

• payments to office holders;

• payments of pensions and annuities;

• social security and veterans’ affairs payments and other benefits;

• Commonwealth education or training payments; and

• compensation sickness and accident payments.

[New paragraph 6AD(2)(a) and Item 32, Schedule 11]

Interest income

5.18 A SPOR taxpayer’s assessable income may also include interest derived from a financial institution or government body as defined by section 202A of the ITAA 1936. A financial institution is a bank, building society or credit union. A government body is the Commonwealth, a State, a Territory or an authority of one of these. [New paragraph 6AD(2)(b), item 2]

Dividend income

5.19 Finally, a SPOR taxpayer’s assessable income may include a dividend derived from a company that was:

• an Australian resident; and

• a listed public company whose shares were listed for quotation in the official list of the Australian Stock Exchange Limited at the earliest of the following times:

  − when the dividend was declared, if liability to pay the dividend arose at that time;

  − when the dividend was due and payable; or

  − when the dividend was paid

[New paragraph 6AD(2)(c), item 2].

5.20 Listed public company takes its meaning from the dictionary in subsection 995-1(1) of the ITAA 1997. Broadly, it is a company in which shares (other than fixed rate dividend shares) are listed for quotation in
the official list of an approved stock exchange. A company is not a listed public company if, in general terms, 20 or less persons:

- control 75% or more of the voting power in the company; or
- have the right to receive 75% or more of the dividends or distributions of capital in the company.

**Examples of income that will not meet the SPOR income test**

5.21 Taxpayers who derive capital gains, rental income, business income, partnership or trust distributions, ETPs, lump sum payments on retirement, foreign income, life assurance or friendly society bonuses in an income year will not be SPOR taxpayers for that income year. This is because they have derived income other than salary and wages, certain interest and dividend income. This is not a complete list of such income.

**Consequences of other types of income being identified after an assessment has been received**

5.22 The SPOR income test is based on the income *derived* rather than the income *included* in the taxpayer’s tax return. This will ensure that there is no incentive for taxpayers to leave certain income out of their tax returns so as to qualify as a SPOR taxpayer.

**Example 5.2**

Mary includes her salary in her tax return but decides not to declare trust income that she has earned. Later this omitted trust income is identified by the Commissioner and an amended assessment is issued. Mary is a non-SPOR taxpayer even though her income tax return did not disclose the trust income derived.

**Deduction test**

5.23 A taxpayer will, subject to the other tests, be a SPOR taxpayer for an income year if only the following items are deducted in determining their taxable income:

- expenditure incurred in managing the taxpayer’s tax affairs. The expenditure must be of a kind to which paragraph 25-5(1)(a) of the ITAA 1997 applies and includes fees paid to a registered tax agent, barrister or solicitor concerning the taxpayer’s tax return; or
- expenditure incurred for account keeping fees charged by financial institutions, or Commonwealth, State or Territory taxes such as financial institutions duty, Government duty tax, debits tax or similar taxes concerning such an account with a financial institution; or
• gifts and donations of money.

*New subsection 6AD(3), item 2.*

**Gifts and donations of money**

5.24 Under the deduction test, a SPOR taxpayer may claim deductions for gifts of money and donations of money to which item 1, 2 or 3 in the table in section 30-15 of the ITAA 1997 applies. These include gifts of money or contributions of money to:

- a political party;
- a fund, authority or institution broadly in the following areas: health, education, research, welfare and rights, defence, environment, industry, trade and design, the family, international affairs, sports and recreation, philanthropic trusts and cultural organisations; or
- a public fund established under a will or instrument of trust solely for providing money to a fund, authority or institution in any of the above areas.

**Examples of expenditure that will not meet the SPOR deduction test**

5.25 The following are examples of items that will not meet the SPOR deduction test:

- work related expenses (other than account keeping fees or Government charges on such accounts that relate to salary or wages);
- prior year losses;
- film industry incentives;
- non-employer sponsored superannuation contributions; and
- election expenses.

The above list is not a complete list of such expenses.

**Expenditure must be deducted from a taxpayer’s assessable income by the Commissioner in making an assessment**

5.26 The SPOR deduction test is based on expenditure deducted from a taxpayer’s assessable income by which the Commissioner makes an assessment of the taxpayer’s taxable income (i.e. in effect claimed as a deduction). This contrasts with the SPOR income test which applies concerning income derived. Taxpayers who fail to identify all deductions that they are entitled to claim will not be disadvantaged. For example, if a taxpayer omits to claim a deduction for self-education expenses, the
person can still qualify as a SPOR taxpayer, provided no amendment to claim the amount is sought.

**Change of SPOR status under deduction test**

5.27 Situations may arise in which a taxpayer lodges a tax return where, for example, only a salary has been derived and no deductions are claimed. In such a situation the taxpayer is a SPOR taxpayer. If the Commissioner later amends that assessment and additional deductions are allowed which do not meet the SPOR deduction test, then the taxpayer becomes a non-SPOR taxpayer for that income year.

**Example 5.3**

Paul lodges his tax return. He only derives income from salary and wages. He claims a deduction for a gift made to a tax deductible charity. He qualifies as a SPOR taxpayer. Some months later he realises that he is entitled to a work related expense claim for boots and he has his assessment amended. Paul is not a SPOR taxpayer following the making of the amended assessment, as the deduction does not satisfy the SPOR deduction test.

**Ineligibility test**

5.28 Taxpayers will not qualify as SPOR taxpayers in an income year:

- unless they are Australian residents (as defined in subsection 6(1) of the ITAA 1936) for the whole of the income year; or

- if they have an entitlement to a foreign tax credit under Division 18 or 18A of Part III of the ITAA 1936; or

- if they derived income from or incurred expenses to an associate. Associate takes the meaning that the term has in section 318 of the ITAA 1936. An associate of a taxpayer includes:
  - a relative, partner or a spouse or child of a partner; or
  - a trustee of a trust estate under which the taxpayer or an associate of the taxpayer benefits or has the potential to benefit; or
  - broadly, a company controlled by the taxpayer or associates of the taxpayer; or

- if they incurred a capital loss in the income year or derived a capital gain in the income year; or

- if they derived income from employment in a foreign country or employment on an approved overseas project which is
exempt from income tax under section 23AF or 23AG of the ITAA 1936.

[New subsection 6AD(4), item 2]

Example 5.4

Virginia lodges her tax return. She derives income from salary and wages. She claims a deduction for tax agent fees paid to her brother.

Virginia’s brother is an associate and she is therefore not a SPOR taxpayer.

Matters that do not affect SPOR status

5.29 A taxpayer may qualify as a SPOR taxpayer even though they have an entitlement to:

- a personal tax offset or rebate, other than foreign tax credits;

- receive fringe benefits provided by the taxpayer’s employer which are exempt from income tax in the hands of the recipient under subsection 23L(1) of the ITAA 1936. Such benefits may include the provision by the employer of a motor vehicle to an employee, payment of school fees etc.;

- a claim for an undeducted purchase price of an Australian pension or annuity. Such a claim represents the portion of the capital amount of the pension or annuity that has been purchased by the recipient.

Example 5.5

Vladimir lodges his tax return. He derives income from salary and wages. He claims a medical expenses offset (rebate) for unreimbursed medical expenses. His employer provides him with a fully maintained vehicle as part of a salary package and pays FBT on it.

Vladimir is a SPOR taxpayer. Neither the receipt of fringe benefits nor the claim for the rebate affects his eligibility for SPOR status.

Annual SPOR test

5.30 It will be possible for a taxpayer to be a SPOR taxpayer in one income year but not meet the test in a following year. The criteria for determining SPOR status must be applied in each income year.
Consequences of being a SPOR taxpayer in an income year

5.31 Broadly, if a taxpayer qualifies as a SPOR taxpayer, then the effect of the changes discussed in this chapter will be to reduce to a period of 2 years the time within which:

- assessments can be amended;
- certain records (other than for CGT purposes) must be kept;
- applications for private binding rulings can be made; and
- objections to assessments and to private bindings rulings can be lodged.

Review of assessments for SPOR taxpayers

5.32 Section 170 of the ITAA 1936 authorises the Commissioner to amend an assessment in certain circumstances. As a general rule, the Commissioner may amend an assessment within a period of 4 years after tax became due and payable under the assessment. For SPOR taxpayers, the Bill will make a number of amendments to section 170 which will reduce that period to 2 years. However, in cases of fraud or evasion etc., the Commissioner will continue to have an unlimited period of review.

5.33 More specifically, this Bill will reduce to 2 years the period within which the Commissioner is authorised to:

- further amend an assessment to increase a taxpayer’s liability following an amendment to reduce the taxpayer’s liability on the basis of the taxpayer’s statement (subsection 170(1A));
- amend an assessment as the Commissioner thinks necessary to correct the assessment (subsection 170(2));
- amend an assessment to effect a reduction in the liability under the assessment (subsection 170(3)); and
- further amend an assessment that has been amended previously in a particular, to reduce the liability of the taxpayer in respect of that amendment as is reasonable (subsection 170(5)).

5.34 This Bill will also enable the Commissioner to amend an assessment for a SPOR taxpayer after 2 years from the date that tax was due and payable if:
• the taxpayer has supplied to the Commissioner within the 2 year period all information needed by the Commissioner to enable the application to be decided (subsection 170(6)); or

• an application for a private ruling has been made within the 2 years period after the last day allowed to the taxpayer for lodging an income tax return for that year and the Commissioner has made a private ruling concerning the application (subsection 170(6A) renumbered to subsection 170(6AA)).

[Items 8 and 9]

Amendments concerning non-SPOR matters

5.35 There will be situations in which a mistake in making an assessment will lead to the Commissioner and the taxpayer believing that the taxpayer is a SPOR taxpayer when in fact they are a non-SPOR taxpayer and vice versa. In these cases, the Commissioner will be authorised to amend the assessment after the period in which SPOR taxpayers’ assessments can generally be amended (SPOR amendment period), so as to reflect the taxpayer’s correct status. This broadly maintains the existing 4 year amendment period in these cases.

5.36 If a taxpayer was incorrectly assumed to be a SPOR taxpayer in an income year, then items 4 to 9 will allow the Commissioner to amend the assessment after the SPOR amendment period to correct the error. This is because this Bill will not alter the amendment rights of non-SPOR taxpayers.

5.37 Alternatively, if a taxpayer was incorrectly assumed to be a non-SPOR taxpayer in an income year, new subsection 170(9E) will allow the Commissioner to amend the assessment after the SPOR amendment period to similarly correct the error. [Item 11]

5.38 Accordingly, the Commissioner may amend an assessment after the end of the 2 year amendment period for SPOR taxpayers:

• to exclude from the taxpayer’s assessable income, income that does not satisfy the SPOR income test;

Example 5.6

Luigi returned a salary and a distribution from a trust in his return for the 2000-2001 income year. Therefore it appeared that Luigi was a non-SPOR taxpayer. Three years after his assessment for the 2000-2001 income year was due and payable his new accountant discovers that the trust distribution was assessable in the 2001-2002 income year rather than the 2000-2001 income year. Luigi is a SPOR taxpayer for the 2000-2001 income year. Luigi’s assessment can be amended to
excluded the trust distribution even though the SPOR amendment period has expired.

- to include or exclude an amount that has been deducted from assessable income by the Commissioner in determining the taxpayer’s taxable income, other than a deduction that satisfies the SPOR deduction test;

**Example 5.7**

Gavin lodges his tax return showing that his only income is salary. He does not claim any deductions. He receives his assessment. Gavin is a SPOR taxpayer for the income year. Three years after his assessment is due and payable Gavin realises that he should have claimed a deduction for his membership of a professional association. Gavin is able to have his assessment amended to claim the deduction. Gavin becomes a non-SPOR taxpayer for the income year as a result of the amendment.

- because circumstances that were previously thought to disqualify the taxpayer from being a SPOR taxpayer for the income year have been found not to exist;

**Example 5.8**

Teresa took extended leave from her job and travelled overseas for half of the 2000-2001 income year. Teresa incorrectly showed on her tax return that she was a non-resident therefore suggesting that she was a non-SPOR taxpayer. She would otherwise qualify as a SPOR taxpayer except for this statement.

Teresa discovered her error in the 2003-2004 income year and requested that her assessment for the 2000-2001 income year be amended to show her as a resident. The Commissioner is authorised to make the amendment.

- if a consequential amendment is necessary solely because of an amendment made above.

**Example 5.9**

Assume the same facts as example 5.8. However, Teresa also requested that her assessment for the 2000-2001 income year be amended to allow her to claim a medical expenses rebate. Teresa did not originally claim the rebate as she incorrectly thought that she was a non-resident for tax purposes. Teresa qualified for the rebate as a consequence of her resident status. The assessment can be amended to allow the rebate.

**Correction of incorrect assessments**

5.39 A situation may arise where the Commissioner has amended an assessment more than 2 years after it was made on the understanding that
the taxpayer was a non-SPOR taxpayer. However, it may later become apparent that the taxpayer was a SPOR taxpayer for that particular year. In these circumstances the amendment should not have been made because it was made outside the 2 year period within which the Commissioner is generally authorised to amend the assessments of SPOR taxpayers. Accordingly, if this occurs the Commissioner will be authorised to further amend the assessment to reverse the effect of the original amendment. [New subsection 170(9F), item 11]

Example 5.10

Joe returned salary, interest and a share of partnership income for the 2000-2001 income year. Therefore it appeared that Joe was a non-SPOR taxpayer. Three years after his assessment for the 2000-2001 income year was due and payable he requests that the Commissioner amend his assessment to include a further amount of interest income that he derived in that income year.

Later Joe changes accountants. His new accountant discovers that the partnership income was assessable in the 2001-2002 income year rather than the 2000-2001 income year. Joe is a SPOR taxpayer for the 2000-2001 income year. His new accountant seeks a further amended assessment for the 2000-2001 income year, 3½ years after tax on the original assessment was due and payable, to exclude the partnership income.

The amendment to exclude the partnership income is authorised under new subsection 170(9E). The amendment to exclude the interest income is authorised under new subsection 170(9F).

Renumbering of subsection

5.40 This Bill will also make a technical correction to section 170. Currently, the section has 2 consecutive subsections numbered (6A). This Bill will renumber the second one as (6AA). [Item 10, Schedule 6]

Record keeping obligations

5.41 A number of provisions in the taxation law require taxpayers to keep records for a period of 5 years. This Bill will reduce this period to 2 years for record keeping provisions that will apply to SPOR taxpayers. There is one exception. This Bill will not change the record keeping requirements for CGT purposes.

5.42 Additionally, for SPOR taxpayers, the Bill will modify the date from which the record keeping retention period will commence. That period will commence:

- from the date that tax is due and payable under the taxpayer’s assessment or amended assessment for the income year; or

- if no tax is due and payable for that year, from the 30th day after the day on which notice has been served on the taxpayer
by the Commissioner that no tax is due and payable for the income year.

5.43 These changes will apply to the following provisions:

- section 161E of the ITAA 1936, which requires a taxpayer declaration in support of an electronic lodgment of a return or application for amendment; and

- section 251R of the ITAA 1936, to the extent that it provides for the keeping of family agreements for Medicare levy purposes; and

- section 18-100 of the TAA 1953 (as proposed to be inserted by the PAYG Bill), which will provide for keeping a payment summary (currently referred to as a group certificate) for salary and wages.

[Items 3, 12, 13 and 23]

**Capital gains tax records must still be kept for 5 years**

5.44 Regardless of whether a taxpayer is a SPOR taxpayer in an income year, they will need to keep records for CGT purposes in accordance with existing requirements.

**Applications for private binding rulings**

5.45 Consistent with the SPOR and record keeping provisions, the time allowed for a SPOR taxpayer to lodge a private binding ruling will also be reduced to 2 years. The period will commence after the last day allowed for the taxpayer to lodge a return for the income year to which the ruling relates. [New paragraph 14ZAN(fa) of the TAA 1953, item 16]

**Lodgment of objections**

5.46 The time limit for SPOR taxpayers to lodge an objection to an assessment will be 2 years from the date the assessment is due and payable. The time limit for SPOR taxpayers to lodge an objection against a private binding ruling will be the later of:

- 60 days after the private ruling was made; or

- 2 years after the last day allowed to the person to lodge a return for that income year.

[Items 18 and 19]

5.47 The time limit for SPOR taxpayers to lodge an objection against an amended assessment will be the later of:
• 60 days after the notice of the amended assessment has been served on the SPOR taxpayer; or

• 2 years after the day on which tax was due and payable under the assessment that was amended by the amended assessment.

[Item 20]

5.48 SPOR taxpayers will be able to seek the exercise of the Commissioner’s discretion to treat late objections as having been lodged within the required time period. [Item 21]

**SPOR status may be incorrectly determined**

5.49 There will be situations where taxpayers prepare income tax returns and only keep records for 2 years assuming that they are SPOR taxpayers for that income year. However, the Commissioner or the taxpayers may later discover that the taxpayer is a non-SPOR taxpayer.

5.50 No prosecution, administrative penalty or imposition of Medicare levy will be able to be imposed upon a non-SPOR taxpayer for failing to keep records for the required 5 year period in certain circumstances. This will be the case if the taxpayer has complied, to the extent they are capable, with any notice to produce records served within the SPOR record keeping period, and the taxpayer either:

• had reasonable grounds to believe that they were a SPOR taxpayer for the income year; or

• was a SPOR taxpayer for the income year but ceased to be a SPOR taxpayer for the income year as a result of an amendment, notice of which was served after the end of the SPOR record keeping period.

[Items 3, 12, 13 and 23]

**Example 5.11**

For the 2000-2001 income year, John includes income in his tax return from his salary and interest from a bank. He claims a deduction for a gift to his favourite charity, which qualifies for a deduction. John considers that he is a SPOR taxpayer. He lodges his tax return electronically through his tax agent and received an income tax refund for his return of income for the year ended 30 June 2001 in August 2001.

In December 2003 he disposed of his tax records for the 2000-2001 income year as he thought that he was a SPOR taxpayer for that year.

In January 2004 he was contacted by the executor of a deceased estate. John was advised that he was one of the beneficiaries under the will and that he is entitled to a share of income from July 2000. He is a non-SPOR taxpayer for the 2000-2001 income year.
John was unaware of this additional income and upon notification from the executor he writes to the Commissioner seeking to amend his assessment for the 2000-2001 income year to include the additional income. John could not reasonably have been expected to know of the estate income derived in the 2000-2001 income year.

Accordingly, John cannot be subject to any prosecution or administrative penalty for not keeping for the required 5 years his payment summary (group certificate) or the declaration for the electronic lodgment of his return.

**Example 5.12**

Robert’s only income for the 2000-2001 income year is from his Defence Force salary. His wife also works for the Defence Force. Accordingly, neither party is required to pay Medicare levy. However, they have a son who is not exempt from the Medicare levy. Robert and his wife sign a family agreement that his wife will pay the Medicare levy. Robert does not claim any deductions in his return. He receives an income tax refund for the year in August 2001.

Several years later he starts his own business. He visits a tax agent for advice in October 2003. The tax agent advises that his premiums paid to an insurance company for his sickness and accident policy he has paid since July 2000 are tax deductible and arranges for his assessment to be amended after obtaining details of the policy from the insurance company.

Robert has already destroyed his taxation records (including the family agreement) for the year ended 30 June 2001 as he thought that he was a SPOR taxpayer and only needed to keep records for 2 years.

In these circumstances Robert would normally be required to pay Medicare levy for his son. However, because he became a SPOR taxpayer for the 2000-2001 income year after the end of the SPOR record keeping period, he will not be subject to any penalty for not keeping his payment summary (group certificate) for the required 5 years even though he is a non-SPOR taxpayer. Similarly, Robert will not be liable for Medicare levy for his son for that income year.

**Application**

5.51 The amendments in Schedule 6 to this Bill apply to income years beginning on or after 1 July 2000. [Item 24]

**Commencement**

5.52 New section 18-100 of the TAA 1953 in item 23 to this Bill commences immediately after the commencement of the A New Tax System (Pay As You Go) Act 1999 (PAYG Act). This is necessary because item 23 will modify the payment summary record keeping provisions in the PAYG Act.
5.53 If item 23 of Schedule 6 to this Bill was to commence prior to the PAYG Act, the changes to the payment summary (group certificate) provisions in this Bill would not be effective until the commencement of the PAYG Act.
Chapter 6
Endorsement of deductible gift recipients and tax exempt charities

Overview

6.1 Schedules 7, 8 and 9 to this Bill will amend the ITAA 1997 to implement the Government’s proposal to register charities, announced on 13 August 1998, in ANTS.

6.2 The amendments will:

• require an entity seeking deductible gift recipient status to obtain an ABN and be endorsed by the Commissioner as gift deductible [Schedule 7, items 6 and 7, new section 30-17 new Subdivision 30-BA]. The Registrar will then register the endorsed entity in the ABN register as a deductible gift recipient [Schedule 7, item 8, new section 30-229]; and

• require any charity seeking to claim income tax exemption to obtain an ABN and be endorsed by the Commissioner as exempt from income tax [Schedule 8, item 15, new Subdivision 50-B].

6.3 Although this measure introduces a requirement to approach the Commissioner for the relevant endorsement, there is no change to the current requirements for concessional status. Previously implicit obligations about use of funds, reporting of certain changes, and in relation to the issue of receipts, will now be contained in the tax law.

6.4 The amendments apply in relation to:

• gifts made on or after 1 July 2000 [Schedule 7, item 18]; and

• income for the period 1 July 2000 onwards [Schedule 7, item 18 and Schedule 8, item 16].

6.5 Deductible gift recipients who are specifically listed by name in the ITAA 1997 (or ITAR 1997 in the case of prescribed private funds) are exempt from seeking deductible gift recipient endorsement. However, they may apply for an ABN for other purposes, including if they require income tax exempt status. [Schedule 7, item 6, new paragraphs 30-17(1)(a), (b) and (c)]

6.6 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum.
Summary of the amendments

Purpose of the amendments

6.7 The purpose of the measure is to protect the integrity of the taxation system in respect of deductible gift recipients and income tax exempt charities.

6.8 The amendments will do this by:

- extending the existing gift deductibility provisions to specify that a taxpayer can deduct only a gift made to a recipient that is endorsed by the Commissioner or listed by name in the income tax law [Schedule 7, item 6, new section 30-17]; and
- extending the existing income tax exempt entities provisions to add, as a further special condition, that an entity is not exempt from income tax unless it is endorsed as exempt from income tax [Schedule 8, item 9, new section 50-52].

To be endorsed:

- deductible gift recipients must identify themselves to the Commissioner by applying for an ABN and endorsement [Schedule 7, item 7, new section 30-130] and meet certain relevant conditions. The conditions include maintaining a gift fund and limiting its use to the deductible gift recipient’s principal purpose and, upon winding up or revocation of endorsement, to transfer any surplus assets of the fund to another deductible gift recipient [Schedule 7, item 7, new section 30-125]; and
- income tax exempt charities will also be required to identify themselves by seeking an ABN and endorsement and be able to meet the relevant conditions as outlined in the current law [Schedule 8, item 15, new sections 50-110 and 50-115].

Date of effect

6.9 The amendments to the gift deductibility provisions will apply from 1 July 2000 [Schedule 7, item 18]. The amendments to the income tax exempt entity provisions will apply in relation to income for 1 July 2000 and onwards. [Schedule 7, item 18 and Schedule 8, item 16]
Endorsement of deductible gift recipients and tax exempt charities

Background to the legislation

Current law

Gifts or contributions

6.10 Taxpayers are entitled to income tax deductions for certain gifts or contributions. The rules relating to these deductions are contained in Division 30 of the ITAA 1997. The structure of Division 30 is as follows:

<table>
<thead>
<tr>
<th>Subdivision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-A</td>
<td>Allows deductions for non-testamentary gifts or contributions to specified recipients where certain conditions are satisfied.</td>
</tr>
<tr>
<td>30-B</td>
<td>Lists general and specific recipients of deductible gifts and any special conditions that may apply.</td>
</tr>
<tr>
<td>30-C</td>
<td>Provides rules applying to gifts of property to public libraries, museums or art galleries, the Australiana Fund, Artbank or a National Trust body.</td>
</tr>
<tr>
<td>30-D</td>
<td>Allows a deduction for testamentary gifts of property under the Cultural Bequests Program.</td>
</tr>
<tr>
<td>30-E</td>
<td>Relates to the establishment of a register of environmental organisations.</td>
</tr>
<tr>
<td>30-F</td>
<td>Relates to the establishment of a register of cultural organisations.</td>
</tr>
<tr>
<td>30-G</td>
<td>Index to the Division.</td>
</tr>
</tbody>
</table>

6.11 Under section 30-15 of the ITAA 1997 the monetary value of certain gifts made to listed recipients are eligible for tax deductibility. The table in section 30-15 specifies the type of recipient, the type of gift or contribution, how much can be deducted and any special conditions that apply. The type of recipient includes public hospitals, public libraries, public museums and public benevolent institutions. These entities are entitled to receive gifts that are tax deductible to the donor and, after meeting endorsement requirements (if required to), are referred to as deductible gift recipients [Schedule 7, item 8, new section 30-227]. The Commissioner proposes to adopt the term deductible gift recipient when referring to entities he endorses/has endorsed and those named in the tax law.

Exempt Entities

6.12 Certain entities are exempt from income tax, some under special conditions. The rules relating to these entities are contained in Division 50 of the ITAA 1997. The structure of Division 50 is as follows:
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>50-5</td>
<td>Allows tax exemption to charitable, public educational, scientific and religious institutions as well as funds and charitable trusts.</td>
</tr>
<tr>
<td>50-10</td>
<td>Exempts from income tax societies, associations or clubs which are established for community service (except political or lobbying purposes).</td>
</tr>
<tr>
<td>50-15</td>
<td>Provides tax exemption to employee and employer associations and trade unions.</td>
</tr>
<tr>
<td>50-20</td>
<td>Friendly societies are exempted from income tax.</td>
</tr>
<tr>
<td>50-25</td>
<td>Exempts municipal corporations or local governing bodies and public authorities constituted under a Commonwealth law.</td>
</tr>
<tr>
<td>50-30</td>
<td>Public hospitals or hospitals carried on by a society or association and, certain organisations registered for the purposes of the National Health Act 1953 are exempted from income tax under this section.</td>
</tr>
<tr>
<td>50-35</td>
<td>Tax exempts the Phosphate Mining Company of Christmas Island Limited and to the British Phosphate Commissioners Banaba Contingency Fund.</td>
</tr>
<tr>
<td>50-40</td>
<td>Exempts income tax to societies or associations established for promoting aviation or tourism or certain Australian resources including agricultural, horticultural, industrial, manufacturing, pastoral and viticultural.</td>
</tr>
<tr>
<td>50-45</td>
<td>Societies, association or clubs established for the encouragement of animal racing, art, game or sport, literature, music or music purposes and the Australian Film Finance Corporation Pty Ltd are exempted.</td>
</tr>
</tbody>
</table>

6.13 Most of the above entities must satisfy certain special conditions before being income tax exempt. These special conditions vary depending on the nature of entity being exempted. Generally, however, the conditions cover the entity’s physical presence and operations in Australia, whether the entity is a deductible gift recipient, or whether the entity is specifically prescribed if located outside Australia. These special conditions are covered in sections 50-50, 50-55, 50-60, 50-65 and 50-70 of the ITAA 1997.
Explanation of the legislation

SECTION 1: ENDORSEMENT OF DEDUCTIBLE GIFT RECIPIENTS (SCHEDULE 7)

Requirement for endorsement

6.14 Schedule 7 to this Bill inserts new section 30-17 in Division 30 of the ITAA 1997 which provides that a donor cannot deduct a gift made to a fund, authority or institution unless the Commissioner has endorsed an entity that is, or operates, the fund, authority or institution as a deductible gift recipient.

6.15 A deductible gift recipient is an entity that:

- is endorsed as such by the Commissioner

  - to be endorsed the entity must have an ABN and be or have a fund, authority or institution that meets a specified description and satisfies certain requirements in the law; or

- is mentioned by name in the law as entitled to receive gifts that are tax deductible to the donor.

[Item 8, new section 30-227]

6.16 As outlined above in the discussion of the current law, the requirements in the law to be met by the entity or its fund, authority or institution (described in items 1, 2 or 4 of the ‘Recipient’ column of the table in section 30-15 of the ITAA 1997) are identified in the ‘Special conditions’ column of the table in section 30-15. Also the entity must meet further, formerly implicit, requirements such as:

- maintaining a fund (called a ‘gift fund’ in the legislation) for its principal purpose (including purposes incidental to the principal purpose), in which gifts of property and money (and moneys received because of such gifts) must be placed [item 7, new subsection 30-125(4)]

  - new subsection 30-125(4) is structured similarly to paragraphs 30-265(2)(a) and 30-300(3)(a) of the ITAA 1997 dealing with funds maintained by environmental and cultural organisations. Two technical amendments are also made to paragraphs 30-265(2)(a) and 30-300(3)(a) of the ITAA 1997 to make it clear that gifts of property must also be credited to the fund, as in new subsection 30-125(4) [items 10 and 11]; and
• only using the contents of the gift fund for the principal purpose of the entity [item 7, new subsection 30-125(5)]; and

• upon winding up or revocation of endorsement, surplus assets of the gift fund being transferred to another deductible gift recipient [item 7, new subsections 30-125(6) and (7)].

6.18 If an entity is entitled and applies for endorsement, the Commissioner must endorse it. [Item 7, new section 30-120]

6.19 An entity that is not named in the tax law as entitled to receive gifts that are tax deductible to the donor must be endorsed by the Commissioner as a deductible gift recipient by 1 July 2000 if the entity’s deductible gift recipient status is to continue unbroken. [Item 6, new section 30-17 and item 18]

Applying for endorsement

6.20 In applying for endorsement, the entity must apply in a form approved by the Commissioner (signed or containing the entity’s electronic signature if lodged electronically). The application must be lodged at, or posted to, an office or facility designated by the Commissioner as a receiving centre for an application of that kind. [Item 7, new section 30-130]

6.21 The Commissioner must give the applicant written notice whether the applicant is endorsed or refused endorsement. [Item 7, new section 30-140]

6.22 If a decision cannot be made whether an applicant is entitled to be endorsed, the Commissioner may request the applicant provide certain specified information or documents. [Item 7, new subsection 30-135(1)]

6.23 The Commissioner must specify a date of effect of endorsement. The date may be any date including a date before application for endorsement was made. Where an entity finds, for whatever reason, that it fails to lodge an application for endorsement, so that the entity is not a deductible gift recipient from 1 July 2000, this provision provides the Commissioner with the ability to backdate the endorsement of the entity to the date the entity first became entitled to endorsement. [Item 7, new section 30-145]

Refusal of endorsement

6.24 The applicant may object against a refusal of endorsement in the manner set in Part IVC of the TAA 1953. The applicant may object where it was seeking endorsement for a particular period and, although endorsed for other periods, was not endorsed for a date or dates it desired [item 7, new section 30-150]. Part IVC applies to taxation objections, reviews and appeals.
An applicant may treat his or her application as refused, by giving the Commissioner written notice of that fact, if the Commissioner has not given the applicant written notice of a decision by the later of:

- the end of the 60th day after the application was made; or
- the end of the 28th day after the last day on which the applicant gives the Commissioner further information or documentation as requested.

If the applicant has given such a notice, the review of refusal of endorsement operates as if the Commissioner had refused the application on the day on which the notice is given.

**Recording an endorsed deductible gift recipient on the Australian Business Register (ABR)**

The deductible gift recipient does not have to apply to be recorded on the ABR. The Registrar will enter a statement on the ABR as to whether an entity is a deductible gift recipient. Where a deductible gift recipient has an ABN and is listed by name in the income tax gift deductibility provisions, the Registrar will also enter a statement on the ABR that the entity is a deductible gift recipient.

The notation on the ABR will assist business and the public in targeting their philanthropy and facilitate publicity. There will be no statement on the ABR as to whether an entity is tax exempt or not. If an entity is endorsed for the operation of a fund, authority or institution the ABN registration will also show the fund’s, authority’s or institution’s name.

**Issuing receipts to donors**

When a deductible gift recipient issues a receipt for a gift, it must state the name of the fund, authority or institution to which the gift is being made, the entity’s ABN and the fact that the receipt is for a gift. Failure in this requirement provides cause for the Commissioner to revoke an entity’s endorsement.

**Checking entitlement to an endorsement**

The Commissioner may request an endorsed entity provide information relevant to its entitlement for continued endorsement. The entity must comply with that request. Failure in this obligation may attract prosecution under section 8C of the TAA 1953 and loss of endorsement.
6.31 An entity must give the Commissioner written notice before, or as soon as practicable after, it is no longer entitled to be endorsed [Item 7, new section 30-160]. Failure in this obligation may also attract prosecution under section 8C of the TAA 1953.

6.32 The Commissioner may revoke an entity’s endorsement if that entity:

- is no longer entitled to be endorsed as a deductible gift recipient; or
- has not provided requested information relevant to its endorsement; or
- has not ensured that the required things are stated on receipts issued for gifts.

[Item 7, new section 30-170]

6.33 The Commissioner must give the entity written or electronic notice if its endorsement is revoked. The revocation date is the date specified by the Commissioner but cannot be before a date on which the entity first ceased to be entitled.

[Item 7, new section 30-170]

6.34 The entity may object if it is dissatisfied with the revocation of its endorsement as a deductible gift recipient.

[Item 7, new section 30-175]

**Partnerships and unincorporated bodies**

6.35 The obligations, mentioned above, to comply with the Commissioner’s request to provide information relevant to an entity’s entitlement to endorsement or, informing the Commissioner when the entity has ceased to be entitled to be endorsed, are imposed on each partner in a partnership and each member of the committee of management of the association. The obligations may be discharged by any of the partners or any of the members of the committee.

[Item 7, new subsections 30-165(1) and (2)]

6.36 Where the obligations are not met, there will be an offence under section 8C of the TAA 1953. However, this Bill does not, on its own, create any offence. Nor does it reverse the onus of proof set out under section 8C, for example, that it is incumbent upon the Commissioner to prove that the person was capable of providing the required information.

6.37 Because of the need to extend the information obligations to cover each member of a partnership or each member of a management committee of an unincorporated association (to attach to the legal persons behind such entities), this Bill provides an additional safeguard to those members. Essentially, the proposed defence provided by new subsection 30-165(3) ensures that no offence will have occurred where the person proves that they did not knowingly fail to give the information. Of course,
this defence will not be necessary if the Commissioner cannot prove that the person was capable of providing the required information.

**Government entities (Schedule 9)**

6.38 Schedule 9 to this Bill extends the concept of ‘government entity’ in the *A New Tax System (Australian Business Number) Act 1999* (ABN Act 1999) [Schedule 9, Part I]. The amendment allows the ABN Registrar to allocate the ABN to a Government organisation where he is satisfied of a sufficiently discrete identity and level of management sophistication such that it would be appropriate to do so. This enables, for example, a public school to be endorsed as a deductible gift recipient in respect of its school building fund.

6.39 *New section 30-180* ensures that ‘government entities’ are treated like entities for the purpose of deductible gift endorsement.

**Consequential amendments**

6.40 Items 1, 2 and 4 of the column headed ‘Special conditions’ of the table in subsection 30-15(2) of the ITAA 1997 are amended to add the requirement that the fund, authority or institution must be endorsed [Schedule 7, items 2, 4 and 5]. The column headed ‘Recipient’ at table item 2 of subsection 30-15(2) is amended to ensure that the fund, authority or institution is endorsed [Schedule 7, item 3]. A similar change is made to section 30-230 to ensure a gift under the Cultural Bequests Program is to an endorsed fund, authority or institution [Schedule 7, item 9, new subsection 30-230(2A)].

**SECTION 2: ENDORSEMENT OF CHARITABLE ENTITIES AS EXEMPT FROM INCOME TAX (SCHEDULE 8)**

**Requirement for endorsement**

6.41 Schedule 8 to this Bill inserts *new section 50-52* in Division 50 of the ITAA 1997 which provides that a charitable entity covered by the following items in the table in section 50-5:

- item 1.1 (charitable institution);
- item 1.5 (fund established for public charitable purposes by will before 1 July 1997);
- item 1.5A (trust covered by paragraph 50-80(1)(c)); and
- item 1.5B (fund established in Australia for public charitable purposes by will or instrument of trust, and not covered by items 1.5 and 1.5A);
will not be exempt from income tax under any provision of the income
tax law unless it is endorsed as such by the Commissioner under new
Subdivision 50-B.

6.42 An entity is entitled to be endorsed under new Subdivision 50-B
if it has an ABN, is covered by item 1.1, 1.5, 1.5A or 1.5B of the table in
section 50-5 of the ITAA 1997 and meets the ‘special conditions’
applicable to each of those items. For entities that have not started any
activity as a charitable institution, there must be reasonable grounds for
believing that the entity will meet the relevant conditions referred to in the
column headed ‘Special conditions’. [Item 15, new section 50-110]

6.43 Where a trust is deemed to consist of a ‘new trust’ and an ‘old
trust’ under section 50-80 of the ITAA 1997, each trust will need to apply
for endorsement to be income tax exempt. The ABN of the actual trust
t entity is to be used by both deemed trusts.

6.44 If an entity is entitled and applies for endorsement, the
Commissioner must endorse it as exempt from income tax. [Item 15, new
section 50-105]

6.45 The amendments to the income tax exempt charitable entity
provisions will apply in relation to income for 1 July 2000 and onwards.
[Schedule 7, item 18 and Schedule 8, item 16]

Applying for endorsement

6.46 In applying for endorsement, the entity must apply in a form
approved by the Commissioner (signed or containing the entity’s
electronic signature if lodged electronically). The application must be
lodged at, or posted to, an office or facility designated by the
Commissioner as a receiving centre for an application of that kind. [Item
15, new section 50-115]

6.47 The Commissioner must give the applicant written notice
whether the applicant is endorsed or is refused endorsement. [Item 15, new
section 50-125]

6.48 The Commissioner must specify a date of effect of endorsement.
This date may be any date including a date before application for
endorsement was made. Where an entity finds, for whatever reason, that it
fails to lodge an application for endorsement, so that the entity’s income
is not exempt from income tax from 1 July 2000, this provision provides
the Commissioner with the ability to backdate the endorsement of the
entity to the date the entity first became entitled to endorsement. [Item 15,
new section 50-130]

6.49 If a decision cannot be made whether an applicant is entitled to
be endorsed, the Commissioner may request the applicant provide certain
specified information or documents. [Item 15, new subsection 50-120(1)]
Refusal of endorsement

6.50 The applicant may object against a refusal for endorsement in the manner set in Part IVC of the TAA 1953. The applicant may object where it was seeking endorsement for a particular period and, although was endorsed for other periods, was not endorsed for a date or dates it desired [item 15, new section 50-135]. Part IVC applies to taxation objections, reviews and appeals.

6.51 An applicant may treat his or her application as refused by giving the Commissioner written notice of that fact, if the Commissioner has not given the applicant written notice of a decision by the later of:

- the end of the 60th day after the application was made; or
- the end of the 28th day after the last day on which the applicant gives the Commissioner further information or documentation as requested.

[Item 15, new subsections 50-120(2) and (3)]

6.52 If the applicant has given such a notice, the review of refusal of endorsement operates as if the Commissioner had refused the application on the day on which the notice is given. [Item 15, new subsection 50-120(4)]

Checking entitlement to an endorsement

6.53 The Commissioner may request an endorsed entity provide information relevant to its entitlement for continued endorsement. The entity must comply with that request [item 15, new section 50-140]. Failure in this obligation may attract prosecution under section 8C of the TAA 1953 and loss of endorsement [item 15, new section 50-155].

6.54 An entity must give the Commissioner written notice before, or as soon as practicable after, it is no longer entitled to be endorsed [item 15, new section 50-145]. Failure in this obligation may also attract prosecution under section 8C of the TAA 1953.

6.55 The Commissioner may revoke an entity’s endorsement if that entity:

- is no longer entitled to be endorsed as exempt from income tax; or
- has not provided requested information relevant to its endorsement.

[Item 15, new section 50-155]

6.56 The Commissioner must give the entity written or electronic notice if its endorsement is revoked. The revocation date is the date
specified by the Commissioner but cannot be before a date on which the entity first ceased to be entitled.  [Item 15, new section 50-155]

6.57 The entity may object if it is dissatisfied with the revocation of its endorsement as exempt from income tax.  [Item 15, new section 50-160]

Partnerships and unincorporated bodies

6.58 The obligations to comply with the Commissioner’s request to provide information relevant to an entity’s entitlement to endorsement or, informing the Commissioner when the entity has ceased to be entitled to be endorsed, are imposed on each partner in a partnership and each member of the committee of management of an association. The obligations may be discharged by any of the partners or any of the members of the committee.  [Item 15, new subsections 50-150(1) and (2)]

6.59 Where the obligations are not met, there will be an offence under section 8C of the TAA 1953. This Bill again provides a defence to these persons identical to that provided to partners or members of a deductible gift recipient (see paragraphs 6.36 and 6.37).  [Item 15, new subsection 50-150(3)]

Consequential amendments

6.60 The column headed ‘Special conditions’ at table items 1.1, 1.5, 1.5A and 1.5B of subsection 50-5 of the ITAA 1997 is amended to refer to new section 50-52 [items 1 to 4]. The note at subsection 50-5 is repealed and in its place is a new note explaining the effect of the new section 50-52 on charitable institutions, funds or trusts [item 5]. Also a new note is added at end of section 50-50 to indicate that the entity has to meet a further condition, covered in new section 50-52, to be exempt from income tax.  [Items 7 and 8]

Other amendments (Schedules 7 and 8)

6.61 Certain special conditions are required to be met for an entity to be exempt from income tax under Division 50 of the ITAA 1997. To avoid any misunderstanding that a fund could be exempt from income tax without meeting the ‘special conditions’ that apply to such a fund for gift deductibility, as was required under the ITAA 1936, paragraph 50-60(d) of the ITAA 1997 is repealed and new paragraph 50-60(d) is inserted to ensure that the fund meets the description and requirements in item 1 or 2 of the table in section 30-15 [Schedule 7, item 15]. Similar repeal and new insertions are required for paragraphs 50-50(b), 50-55(b), 50-65(b) and 50-70(b) of the ITAA 1997 [Schedule 7, items 16 and 17; Schedule 8, items 6 and 10]. New section 50-57 is inserted to make item 1.5 in the table in section 50-5 of the ITAA 1997 consistent with the other items as amended.  [Schedule 8, item 11]
The ABN Act 1999 (Schedule 9)

6.62 The amendments to the ABN Act 1999 described above (see paragraph 6.38) have provided the opportunity to:

- insert a provision enabling the time limit, before an applicant for an ABN can force a deemed refusal, to be extended. This enables the Registrar, in requesting extra information in respect of an application for an ABN, sufficient time to properly consider the material before the matter is taken to the Administrative Appeals Tribunal. This amendment will bring closer alignment with similar provisions regarding applications for endorsement [Schedule 9, Part 2, items 3 and 4]; and

- correct an error in ‘Note (1)’ below section 14 of the ABN Act 1999. [Schedule 9, Part 3, item 6]
Chapter 7
Administration of BAS obligations

Overview

7.1 Schedules 12, 13 and 15 to this Bill will amend the TAA 1953 and other Acts for which the Commissioner has responsibility to further enhance the administration of the aligned business tax obligations of one return and one payment outlined in ANTS. The measures covered by the amendments will:

- require an entity to notify the Commissioner of all BAS obligations for a period in the same manner, i.e. using a uniform format for notification of each tax debt or credit entitlement;

- require an entity that either exceeds the GST electronic lodgment threshold or is defined as a large withholder under the PAYG withholding system to pay all their tax debts electronically;

- require an entity with a PAYG withholding obligation to register with the Commissioner;

- enable an entity to be entitled to interest where a refund of an RBA surplus or voluntary payment is not made within 14 days from the lodgment of a correct BAS or a request for refund of the voluntary payment or a remission of penalties; and

- remove the GST and WET refund rules to the extent that they are covered by the new generic refund rules in Part IIB of the TAA 1953.

7.2 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum.

7.3 The measures are explained in the following Sections:

Section 1 Electronic notification and payment of BAS amounts
Section 2 Delayed refund interest
Section 3 GST and WET refunds
SECTION 1 ELECTRONIC NOTIFICATION AND PAYMENT OF BAS AMOUNTS

Summary of the amendments

Purpose of the amendments

7.4 The amendments in Schedule 12 to this Bill will require an entity to notify the Commissioner of all BAS amounts for a period in the same manner.

Date of effect

7.5 The amendments will apply to BAS amounts notified from the commencement of the GSTA 1999. [Subclause 2(12) of this Bill]

Background

7.6 The Government announced in ANTS that most businesses would be able to complete a single tax compliance statement for reporting their periodic tax obligations and make one payment in respect of those debts. This is supported by aligning the due dates for payment of all business tax debts to the 21st day after the end of the reporting period.

7.7 Entities will report these tax debts and any entitlements to credits in a BAS. The BAS will be the approved form for notification of ITW, ITI, FBTI, and DCOIN. The BAS will also incorporate the GST return for reporting obligations about an entity’s GST, WET and LCT obligations. The only exception to the reporting of these tax debts on a BAS will be ITW amounts payable by large withholders under section 16-125 of the PAYG Bill. Those amounts, which are due up to 9 times a month, will be notified separately as part of the process of making a mandatory electronic payment.

7.8 All the amounts reported in the BAS will be aggregated to form a net amount owing to the Commissioner which is due for payment on or before the 21st day after the end of the reporting period. Upon receipt of the BAS, the Commissioner will record the respective liability amounts on the entity’s RBA. Any payments made in respect of those amounts for that period will also be recorded on the RBA. If there is a shortfall in the payment that results in a deficit balance on the RBA, the GIC will be payable on that deficit.

7.9 A net amount on the BAS that is a credit entitlement, may result in a surplus on the RBA when recorded to the entity’s account. The Commissioner may either apply the surplus against any other tax debt of the entity or refund the amount. Where an amount is not refunded within
Administration of BAS obligations

14 days the entity will be entitled to interest. This is explained in more detail in Section 2 of this Chapter.

7.10 To enable efficient recording of tax debts and credit entitlements to an RBA the Commissioner will be issuing every entity with a unique BAS for each reporting period. The BAS will be required to be lodged in a manner determined by the Commissioner, which may be as a paper document or electronic transmission. This aspect is covered by the definitions in subsection 995-1(1) of the ITAA 1997 and section 186-1 of the GSTA 1999.

7.11 While all businesses will be required to report their tax debts and credit entitlements in a BAS, a similar form will be used by entities that are not carrying on a business but have an obligation to report a tax debt. Non-business entities will report those amounts on an approved form from which the Commissioner will record liability amounts on the entity’s RBA.

7.12 The efficient processing of notifying liability amounts for a reporting period would be affected by an entity notifying some of those liabilities on paper and other liabilities electronically. It is therefore necessary to have a one in all in approach by which an entity notifies the Commissioner of BAS obligations. An entity will be required to notify all amounts for a reporting period in the same way. This will generally be either on paper or electronically.

7.13 To enable timely processing of payments, large entities will be required to pay all tax debts electronically. This requirement will affect approximately 25,000 entities, being the largest payers of tax debts in Australia.

Explanation of the amendments

7.14 Unless otherwise stated, items referred to in this explanation are in Schedule 12 to this Bill.

Electronic notification

7.15 Under section 31-25 of the GSTA 1999 an entity can choose to lodge a GST return electronically. However, an entity whose annual turnover exceeds the electronic lodgment turnover threshold must lodge the return electronically. The electronic lodgment turnover threshold is currently $20 million, or such higher amount as increased by regulation.

7.16 New Division 288 of Part 4-25 is being inserted into Schedule 1 to the TAA 1953 to provide rules for electronic notification and payment of amounts. It will require an entity that chooses or is required to lodge an electronic GST return to electronically notify the Commissioner of all other BAS amounts. The requirement will apply to any amount that is required to be notified on the BAS on the same day as a net amount of
GST. That is, amounts with aligned due dates for payment of the 21st day after the end of the tax period to which the payment relates. [Item 24, new section 288-5]

7.17 The amounts covered by this requirement are defined as BAS amounts. These are defined as debits or credits that arise under a BAS provision. These 2 new definitions are being introduced in the dictionary in Chapter 6 of the ITAA 1997. A BAS provision is a provision in which the following type of tax debts or credits arise:

- instalments of fringe benefits tax (FBTI);
- indirect tax (GST, WET or LCT);
- PAYG (ITI or ITW); and
- deferred final tax instalments under Division 1C of Part VI of the ITAA 1936 (DCOIN).

[Items 4 and 5 in Schedule 18]

7.18 With the exception of DCOIN, there is a requirement for debts arising under the BAS provisions to be notified to the Commissioner in an approved form. An amendment is being made to require DCOIN tax debts to be notified to the Commissioner in an approved form, as explained above. That means, where an entity chooses to defer the payment of a final instalment arising under Division 1C of Part VI of the ITAA 1936, the Commissioner will be able to require the deferred tax debt for the relevant quarter to be notified in the BAS. [Item 3, new section 221AZKD]

**Electronic payment**

7.19 Subsection 33-10(2) of the GSTA 1999 requires an entity whose annual turnover meets the electronic lodgment turnover threshold to pay any GST net amounts by electronic payment. An entity below the threshold can make a GST payment in any other manner determined by the Commissioner. That is cash, cheque or electronic transmission, although there are restrictions applying to where cash payments can be made and how much cash the collector will accept. For example, cash payments are not accepted by the ATO.

7.20 To facilitate electronic payment of tax debts, which is more efficient and timely than cheque payments, new Division 288 in Schedule 1 to the TAA 1953 will require all large businesses pay their tax debts electronically.

7.21 An entity that is required to pay, in any tax period, a net amount of GST by electronic payment will be required to pay all other tax debts that are due in that same tax period by electronic payment. [Item 24, new subsection 288-15(1)]
The tax period for an entity that is required to make an electronic payment, is one month. A *tax debt* is defined in section 8AAZA of the TAA 1953 as an amount due to the Commonwealth directly under a taxation law, including any such amount that is not yet payable. This definition is being inserted into the dictionary in Chapter 6 of the ITAA 1997. [*Item 34 in Schedule 18*]

The PAYG withholding provisions require electronic payment by all remitters. Subsection 16-85(1) of the PAYG Bill makes this mandatory for large remitters. Generally, a large withholder is a person, or company group, who has withheld more than $1 million in the previous year. Subsection 16-85(2) requires medium and small withholders to pay amounts by electronic payment unless the Commissioner has approved other means. As with payments of GST, the Commissioner will permit cash and cheque payments by medium and small withholders.

A large withholder that is required, in a particular month, to remit an ITW amount by electronic payment will be required to pay all other primary tax debts that are due in that month by electronic payment. [*Item 24, new subsection 288-15(2)*]

**Penalties**

An entity that fails to comply with the requirement in *new section 288-5* to make an electronic notification will be liable to a civil penalty of 5 penalty units. Similarly, an entity that fails to comply with the electronic payment requirement in *new section 288-15* will also be liable to a civil penalty of 5 penalty units. Both these penalties are generic penalties and apply to all non-electronic notification and payment requirements law. [*Item 24, new sections 288-10 and 288-20*]

**Machinery provisions for civil penalties**

*New Division 298* is being inserted into Schedule 1 to the TAA 1953 to provide generic machinery provisions for all civil penalties in the taxation law that are expressed as penalty units. A penalty unit is the common mechanism for expressing pecuniary penalties in the law. Its value is specified in section 4AA of the *Crimes Act 1914* and it is currently $110. [*Item 24, new section 298-5*]

The civil penalties in the taxation law are imposed where an entity has failed to satisfy a particular requirement. The matter is not an offence and, as such, does not require prosecution. The Commissioner is obliged to serve a notice of the penalty on the entity and the notice can be included in any other notice that the Commissioner gives the entity under *new section 298-10*. For example, if the penalty is imposed for failing to make an electronic notification, the Commissioner may choose to include the penalty notice in an RBA statement of the account to which the BAS amounts have been allocated. Under *new section 298-15*, the penalty will become due on the day specified in the notice which must be at least 14 days after service of the notice on the entity.
7.28 The Commissioner will be able to remit the penalty, in whole or in part. Where the Commissioner decides not to remit the penalty or to remit only part of the penalty he must give written notice of the remission decision to the entity. Where the entity is dissatisfied with the Commissioner’s remission decision and the penalty payable after the remission decision is more than 2 penalty units, the entity can object against the decision under Part IVC of the TAA 1953. This objection threshold also applies to objections against GST penalty remission decisions. [Item 24, new section 298-20]

7.29 A civil penalty is a tax debt and is due for payment on the day specified in the notice of penalty. Any unpaid penalty will be subject to the imposition of GIC. [Item 24, new subsection 298-20(1)]

**Consequential amendments**

7.30 Subsection 16-90(1) in the PAYG Bill and section 41 of the TAA 1953 are existing penalty provisions for not complying with requirements to make an electronic payment. These penalty provisions are being repealed as their effect is achieved by the generic non-electronic payment penalty provisions. [Items 7 and 22]

7.31 Section 45-72 in the PAYG Bill requires a taxpayer to make an electronic payment of an income tax instalment debt if another tax debt due on the same day is required to be paid electronically. This provision is being repealed as it is made redundant by the generic non-electronic notification provision. [Item 23]

7.32 The new definition of BAS amount covers all the provisions in the table in paragraph 8AAZLG(1)(b) of the TAA 1953. As a consequence, the reference to the table in that provision and in subsection 8AAZLH(1) are being removed and replaced by a reference to BAS amount. [Items 8 and 9]

7.33 The creation of generic machinery provisions for civil penalties have made redundant the machinery provisions that applied to the GST and PAYG civil penalties expressed as penalty units. A number of amendments are being made to remove these redundant provisions. [Items 12, 13, 16, 17, 18, 19 and 22]

7.34 A number of GST and PAYG provisions that impose a penalty are having notes added to them to advise that there are generic machinery provisions for civil penalties. The provisions requiring electronic payment by large withholders and GST entities are having notes added to advise that there is an obligation to pay other tax debts electronically and that a penalty applies for breaching the requirement. A similar note is being added to the GST electronic notification provision. [Items 1, 2, 10, 11, 14, 15, 20 and 21]
SECTION 2  DELAYED REFUND INTEREST

Summary of the amendments

Purpose of the amendments

7.35 These amendments in Schedule 13 to this Bill will create an entitlement to interest where a refund of an RBA surplus or voluntary payment is not made within 14 days from the lodgment of a correct BAS, a request for refund of the voluntary payment or the remission of a penalty.

Date of effect

7.36 The amendments will apply to RBA surpluses that arise on or after 1 July 2000. [Item 6]

Background

7.37 Section 35-5 of the GSTA 1999 provides that where an entity is entitled to a refund, the Commissioner must pay the amount within 14 days after an entity lodges a GST return for a tax period. The legislative note to the section says that interest is payable under the T(IOEP)A 1983 if the Commonwealth is late in making the payment. As the GST return will form part of a BAS and will include information about liabilities and payments in relation to all BAS provisions, the entitlement to interest must arise in respect of any refundable amount on an RBA.

7.38 This is necessary because the particular character of tax debts, credits and payments are merged when allocated to the RBA. The balance on the RBA can either be a deficit or a surplus that reflects movements in the account over a period of time. The entitlement to delayed refund interest will only apply where there is a surplus on an RBA in respect of BAS related amounts.

Explanation of the amendments

7.39 Unless otherwise specified, the sections and paragraphs referred to are in the T(IOEP)A 1983.

7.40 The entitlement to interest will arise where the following types of refunds are not paid within 14 days:

• a surplus on an RBA reflecting the allocation of a BAS amount to the RBA following lodgment of the BAS. The surplus could be made up of one or more credit amounts
notified in the BAS. For example, input tax credits that remain after off-setting amounts of GST [new section 12AA];

- a surplus on an RBA arising from the remission of a penalty relating to a BAS amount [new section 12AB]; and
- a surplus on an RBA reflecting a voluntary payment that arises because a payment is made in respect of an anticipated tax debt under a BAS provision [new section 12AC].

7.41 Interest is payable for the period specified in new section 12AD which commences at the beginning of the day after the RBA interest day and ends on the day the refund is paid to the entity. The RBA interest day is the 14th day after the latest of either the day the RBA went into surplus, or the day the entity requested a remission of penalty or a refund of a voluntary payment. [Item 5, new paragraph 12AF(a) of the ‘RBA interest day’ definition]

7.42 However, if there is an outstanding BAS or inaccurate information which may affect the amount of the refund, the RBA interest day does not commence until the BAS or the correct information is given to the Commissioner. The RBA interest day will also be delayed until such day on which a taxpayer notifies the Commissioner of the details of the financial institution account to which the refund must be paid. [Item 5, new paragraphs 12AF(b) and (c) of the ‘RBA interest day’ definition]

7.43 The interest rate that will apply to amounts not refunded by the RBA interest day is the annual rate that applies under section 214A of the ITAA 1936. This is the Treasury Note yield rate determined under subsection 8AAD(2) of the TAA 1953. At the date of introduction of this Bill the rate was 4.72% per annum. It is the same interest rate that applies under other provisions of the T(IOEP)A 1983. [New section 12AE].

Consequential amendments

7.44 Early payment of instalments under Division 1C of Part VI of the ITAA 1936 currently attracts interest under subparagraph 8A(1)(a)(x). Section 221AZKC of the PAYG Bill gives an entity the choice to defer some or all of the final instalment of tax for the 1999-2000 income year. This deferred amount is payable in equal instalments each quarter for a period up to 5 years. Choosing the deferral extends the due date for payment of the final instalment of tax.

7.45 An amendment is being made to prevent an entity that pays an amount of the deferred instalment early from being entitled to interest. Any amount paid after the original due date under section 221AZK of Division 1C will not be eligible for early payment interest. [Item 1, new subsection 8A(1A)]

7.46 Amendments are being made in Schedule 16 to this Bill to create an entitlement to interest on overpayments in respect of a request for
either a PAYG instalment credit or a remission of GIC payable under the PAYG instalment provisions in the PAYG Bill. These amendments will apply to the 2000-2001 year of income. They will enable entities with substituted accounting periods to claim interest for any credits or remissions arising before 1 July 2000. As the delayed refund interest, explained above, will replace this interest entitlement, amendments are being made to remove the redundant provisions. [Items 2, 3 and 4]

SECTION 3 GST AND WET REFUNDS

Summary of the amendments

Purpose of the amendments

7.47 The amendments in Schedule 15 to this Bill will remove the GST and WET refund rules to the extent that they are covered by the new generic refund rules in Division 3A of Part IIB of the TAA 1953.

Date of effect

7.48 The amendments will apply from the commencement of the GSTA 1999. [Subclause 2(12) of this Bill]

Background

7.49 The commencement of generic refund amendments in the PAYG Bill will make most of the GST refund provisions unnecessary. The generic provisions provide rules for the treatment of refunds of RBA surpluses and credits arising under all taxation laws.

Explanation of the amendments

7.50 Unless otherwise specified, the Division, sections and paragraphs referred to are in the GSTA 1999.

7.51 Section 35-5 currently requires the Commissioner to refund a net amount for a tax period that is negative, (i.e. where input tax credits exceed the GST), to an entity within 14 days after the GST return is given under Division 31. This provision is being amended to subject the refund to the generic refund rules in subsection 8AAZLF(1) of the TAA 1953. Those rules allow the Commissioner to apply the amount owing as a credit against any other tax debt of the entity. A new definition of credit is being placed in section 8AAZA of the TAA 1953 which will define a credit as an amount the Commissioner must pay a taxpayer under a
taxation law, which would include an amount under section 35-5. [Items 1 and 9]

7.52 Section 35-10 which makes it mandatory for refunds of GST to be paid electronically into an account at a financial institution is being repealed because this is a common requirement for all tax refunds under section 8AAZLH of the TAA 1953. Subsection 8AAZLH(2) is being amended to ensure that refunds can only be paid into an account of an institution which has a location or branch in Australia. [Items 2, 6 and 12]

7.53 There are special rules relating to refunds payable to joint venture operators and GST branches. Amendments are being made so that those refunds are treated the same as other GST refunds under section 35-5. That is, the Commissioner will be able to apply the amount owing as a credit against any other tax debt of the joint venture operator or the entity. [Items 4 and 5]

7.54 Section 17-20 of A New Tax System (Wine Equalisation Tax) Act 1999 requires wine tax credits to be applied against any other tax debts that an entity has under a taxation law. This is being amended so that the credits are subject to the generic credit and refund rules. [Items 7 and 8]

7.55 Sections 29, 38 and 39 of the TAA 1953 also provide special rules that apply to refunds of GST. Section 29 deals with multiple refunds and is no longer required because of the generic provisions. Section 38 allows the Commissioner to withhold a payment if a return is outstanding. As this is a generic requirement in section 8AAZLG of the TAA 1953, section 39 can also be repealed. However, the qualification in subsection 38(3) requiring the Commissioner to pay a refund if he has made an assessment is being inserted into the generic provisions. [Items 10, 11, 13 and 14]

7.56 Section 39 of the TAA 1953 deals with refunds of net amounts under section 35-5 and refunds of an amount of indirect tax (e.g. GST or LCT on an importation) arising because of an overpayment. Subsections 39(1) and (2) of the TAA 1953 require the Commissioner to refund an amount where it is not applied against another tax debt. These provisions are being amended because they are covered by the generic refund rule. Subsection 39(3) of the TAA 1953 is a special rule dealing with the reimbursement of an amount of tax to the recipient of the supply. The Commissioner is not obliged to refund or apply the amount against other tax debts where the reimbursement conditions are not satisfied. If the Commissioner is satisfied that the conditions have been met, he or she must refund the amount or apply it against another tax debt. This rule is being preserved. [Items 3, 15, 16, 17 and 18]
Chapter 8
Pay as you go (PAYG) instalments

Overview

8.1 The amendments contained in Schedules 10 and 16 to this Bill comprise the second instalment of the proposed PAYG income tax instalments (PAYG instalments) system. The first instalment is contained in the PAYG Bill.

8.2 PAYG instalments will replace the existing company instalment and provisional tax systems. Broadly, the new system will ensure that taxpayers pay either income tax instalments that reflect their current trading and investment conditions or quarterly instalments based on last year’s income tax and a GDP adjustment. The PAYG Bill contains the general scheme of the PAYG instalments system and provisions to close down the company instalment and provisional tax systems. It also contains transitional measures to help taxpayers currently in the company instalment system to make the transition to the new PAYG instalments system.

8.3 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum. Unless otherwise stated, legislative references are to provisions in Part 2-10 in Schedule 1 to the TAA 1953 which is to be inserted by the PAYG Bill.

Summary of the amendments

Purpose of the amendments

8.4 The amendments in Schedule 10 to this Bill consist of new provisions which:

- deal with the way in which quarterly instalment payers who choose to calculate their instalments using GDP-adjusted notional tax may vary their instalments; and

- make consequential amendments arising from the insertion of those new provisions.

8.5 The amendments in Schedule 16 to this Bill are consequential upon the introduction of the PAYG instalments system.
Date of effect

8.6 The new PAYG instalments provisions being inserted by Schedule 10 to this Bill will apply to the 2000-2001 and later income years. This is the same date of effect proposed for the provisions contained in the PAYG Bill. The consequential amendments being inserted by Schedule 16 to this Bill will also apply to the 2000-2001 and later income years.

Background to the legislation

8.7 Businesses and investors currently pay instalments of their expected tax liability through the company instalment or provisional tax system. For example, companies, superannuation funds and some corporate unit trusts, public trading trusts and corporate limited partnerships pay income tax instalments under the company instalment system. Some trustees and individuals who are carrying on business or investing are required to pay income tax instalments under the provisional tax system.

8.8 Those in the company instalment system mostly pay their income tax instalments after the income year. Those in the provisional tax system pay instalments of tax based on last year’s tax as increased by the provisional tax uplift factor within the income year.

8.9 The new PAYG instalments system that will replace the company instalment and provisional tax systems is contained in the PAYG Bill. Schedule 10 to this Bill will insert some new provisions affecting quarterly instalment payers who are entitled to choose to calculate their instalments using GDP-adjusted notional tax and make various amendments to the PAYG instalments system consequential upon the insertion of those new provisions. Schedule 16 to this Bill will make various consequential amendments which arise because of PAYG instalments.

Explanation of the amendments – amendments to Division 45 to give GDP-adjusted notional tax payers a better variation mechanism

8.10 The amendments at items 5, 14 and 18 in Part 1 of Schedule 10 to this Bill will insert new provisions which provide a better way for quarterly instalment payers who are entitled to choose to pay on the basis of GDP-adjusted notional tax to vary the amount of their instalment. The amendments at items 4, 6 to 13 and 15 to 17 in Part 1 of Schedule 10 are all amendments of a consequential nature arising from the provisions inserted by items 5, 14 and 18.
Giving GDP-adjusted notional tax payers a better variation mechanism

**Amount of instalment for quarterly payer who pays on the basis of GDP-adjusted notional tax**

8.11 *Item 5* will repeal subsections 45-112(1) and (2) and substitute **new subsections 45-112(1), (2) and (3)**.

8.12 Subsection 45-112(1) will specify the amount of an instalment payable by an individual who chooses to pay on the basis of GDP-adjusted notional tax. (The circumstances in which a person can choose to pay on the basis of GDP-adjusted notional tax are set in section 45-125. They were discussed in the Explanatory Memorandum to the PAYG Bill.)

8.13 Generally, the amount payable is the amount worked out by the Commissioner under Subdivision 45-L (which was discussed in the Explanatory Memorandum to the PAYG Bill) and notified to the taxpayer. [Paragraph 45-112(1)(a)]

**An individual may vary by estimating benchmark tax**

8.14 However, an individual may vary the amount of an instalment, by estimating his or her benchmark tax for the income year and working out the amount payable under **new Subdivision 45-M [paragraph 45-112(1)(b)]**. Item 18 of Schedule 10 to this Bill will insert Subdivision 45-M. (The meaning of the term *benchmark tax* is discussed in the Explanatory Memorandum to the PAYG Bill.)

8.15 If an individual chooses to work out an earlier instalment on the basis of an estimate of his or her benchmark tax (and is satisfied that the estimated benchmark tax is still appropriate) the amount payable as the instalment will be the amount worked out by the Commissioner under Subdivision 45-M based on that estimate. The Commissioner will notify the person of the amount of the instalment worked out under that Subdivision. [Paragraph 45-112(1)(c)]

8.16 **New subsection 45-112(2)** requires an individual who has calculated an instalment on the basis of his or her estimated benchmark tax under paragraph 45-112(1)(b) to notify the Commissioner, in the approved form, of the estimated amount before the due date for the instalment.

8.17 **New subsection 45-112(3)** acknowledges that an instalment is due on or before the 21st day after the day on which notice of the amount payable is given by the Commissioner, if the Commissioner has given notice of the amount payable after the end of the instalment quarter. This means that the instalment will not be payable on the 21st day after the end of the instalment quarter as it otherwise would be. This subsection does not apply if the individual works out the amount of the instalment under Subdivision 45-M.
**Working out the amount of the instalment after estimating the benchmark tax**

8.18 When an individual who chooses to pay quarterly instalments on the basis of GDP-adjusted notional tax also chooses to vary the amount of the instalment that is payable by estimating his or her benchmark tax, the amount actually payable is worked out under Subdivision 45-M.

8.19 **Item 18 of Schedule 10** to this Bill will insert **new Subdivision 45-M**. Subdivision 45-M comprises **new sections 45-410, 45-415 and 45-420**.

8.20 **New section 45-410** sets out how the amount payable for a particular instalment is worked out when an individual:

- is estimating his or her benchmark tax for a particular instalment during an income year under paragraph 45-112(1)(b); or
- has estimated his or her benchmark tax for an instalment for the income year and the Commissioner is working out the amount payable for a later instalment under paragraph 45-112(1)(c).

Section 45-410 is dependent for its operation on an individual’s estimate of his or her benchmark tax for the income year. The estimate of the benchmark tax must be made on or before the 21st day after the end of the instalment quarter for which the instalment is payable. *[Subsection 45-415(1)]*

8.21 The benchmark tax that an individual estimates in calculating the instalment for a particular quarter cannot be changed for that instalment once notified to the Commissioner. *[Subsection 45-415(2)]*

8.22 The Commissioner will use the estimated benchmark tax to work out the amount payable for any subsequent instalments an individual is liable to pay for that income year. However an individual may choose to estimate a new benchmark tax for any subsequent instalment. *[Subsection 45-415(3)]*

**General rule for working out amount payable**

8.23 For an individual who estimates his or her benchmark tax, **new subsection 45-410(1)** states that the amount payable as an instalment is the amount worked out under subsection (2), (3), (4) or (5) as appropriate to the instalment, if that amount is positive. If it is not positive, no amount is payable. This reflects the fact that an individual’s variation may result in no amount being payable for a particular quarter.
Amount payable when varying first instalment

8.24 New subsection 45-410(2) will apply to work out the amount of the instalment if an individual is varying for the first instalment for the income year for which the individual is liable. The amount payable is 25% of the estimated benchmark tax.

Amount payable when varying second instalment

8.25 Subsection 45-410(3) will apply to work out the amount of the instalment if an individual is varying for the second instalment for the income year for which the individual is liable. The amount payable is 50% of the estimated benchmark tax less the amount payable for the previous instalment.

Amount payable when varying third instalment

8.26 Subsection 45-410(4) will apply to work out the amount of the instalment if an individual is varying for the third instalment for the income year for which the individual is liable. The amount payable is 75% of the estimated benchmark tax less the amount payable for the previous instalments. But any credit claimed for the previous instalment under section 45-420 (which is discussed at paragraphs 8.28 to 8.30) must be added back to that amount. (Note: This step is not necessary in subsection 45-410(3) because the second instalment, i.e. the instalment to which that subsection applies, is the first instalment in respect of which a variation credit can be claimed.)

Amount payable when varying fourth instalment

8.27 Subsection 45-410(5) will apply to work out the amount of the instalment if an individual is varying for the fourth instalment for the income year for which the individual is liable. The amount payable is the estimated benchmark tax less the amount payable for the previous instalments. But any credit claimed under section 45-420 must be added back to that amount.

Claiming a credit for earlier instalments

8.28 The amount of an instalment is nil if the amount worked out under subsection 45-410(2), (3), (4) or (5) is not positive. [Subsection 45-410(1)]

8.29 A negative amount indicates that an individual has paid more than is required for the year to date. The individual will be entitled to claim a credit whenever the amount calculated under those subsections is negative. The amount of the credit is the negative amount expressed as a positive. [Subsection 45-420(1)]

8.30 A claim for a credit must be made in the approved form on or before the day the instalment is due. [Subsection 45-420(2)] Any credit claimed will be credited to the individual’s RBA and will be applied by
the Commissioner according to Division 3 of Part IIB of the TAA 1953.
[Note to Section 45-420]

**Liability to penalty if estimated benchmark tax is too low**

8.31 **Item 14 of Schedule 10** to this Bill will insert a new provision under which a penalty may be imposed on an individual who pays quarterly instalments on the basis of GDP-adjusted notional tax and who chooses to vary the amount of the instalment that is payable by estimating benchmark tax. The individual will be liable to pay GIC in relation to an instalment if the estimated benchmark tax is less than 85% of the benchmark tax worked out by the Commissioner under section 45-365.

[Subsection 45-232(1)] (Note: Section 45-365 is discussed in the Explanatory Memorandum to the PAYG Bill.)

**Amount on which GIC is imposed**

8.32 GIC will be imposed on the amount worked out by the Commissioner using the following formula (if the amount is positive):

\[
\text{Acceptable amount of the instalment} - \text{Actual amount}
\]

[Subsection 45-232(2)]

8.33 For the purposes of the above formula, the *acceptable amount* of an instalment is worked out under subsection 45-232(3). The *acceptable amount* of an instalment is:

- if the individual has not varied that instalment, or an earlier instalment, for the income year – the amount of the instalment notified by the Commissioner under paragraph 45-112(1)(a); or
- if the individual has varied that instalment, or an earlier instalment, for the income year - the amount worked out using the table to subsection 45-232(3).

8.34 The table is used to calculate the amount on which the GIC will be imposed. GIC is imposed separately for each instalment which is the subject of the variation penalty. The table contains 4 items, one for each instalment. The method of calculation has been designed to ensure that the amount on which the penalty is imposed cannot exceed the amount which would have been payable if the individual had based his or her instalments on the lesser of the:

- GDP-adjusted notional tax notified by the Commissioner; or
- benchmark tax worked out by the Commissioner under section 45-365.

8.35 For the purposes of the formula in subsection 45-232(2), the *actual amount* is either the actual amount of the instalment payable by the
Period for which GIC is imposed

8.36 The amount worked out under subsection 45-232(2) is subject to GIC for each day in the period that:

- starts at the beginning of the due date for the instalment that is the subject of the penalty; and

- finishes at the end of the due date for payment of the assessed tax for the variation year, or the date of payment of the assessed tax if that is earlier.

Commissioner must notify individual of penalty

8.37 The Commissioner must give the individual written notice of the amount of penalty payable. The notice must give the individual 14 days to pay that penalty.

GIC is imposed on any unpaid variation penalty

8.38 If the penalty is not paid by the due date, the amount unpaid will be subject to the GIC for each day it remains unpaid. The GIC applies both to the unpaid amount and to any GIC on the unpaid amount.

Adjustment to the amount on which the GIC is imposed

8.39 There will be circumstances in which the penalty imposed under section 45-232 will be too high. This can occur, for example, when an individual estimates his or her benchmark tax for a particular instalment and uses a higher estimate for a later instalment. In that case, the later instalment will catch-up some of the earlier underpayment because of the way in which the amount of an instalment is worked out under Subdivision 45-M.

8.40 Therefore, item 14 of Schedule 10 to this Bill will also insert new section 45-233 which will reduce the amount on which GIC is imposed under section 45-232 (subsection 45-233(1) calls that amount the shortfall) in relation to the instalment payable for an instalment quarter in which an individual estimated his or her benchmark tax. The reduction occurs if, for a later instalment quarter of the same income year the amount worked out using the following formula is a negative amount:

\[
\text{Acceptable amount of the instalment for the later instalment quarter} - \text{Actual amount of that instalment}
\]
That amount, expressed as a positive number, is called the top up. [Subsection 45-233(1)]

8.41 For the purposes of the formula in the previous paragraph, the actual amount of the instalment for the later quarter is either:

- the amount of the instalment for that quarter as worked out under section 45-112; or
- the amount of any credit claimed for that quarter, expressed as a negative amount.

[Subsection 45-233(2)]

8.42 The shortfall is reduced by the top up calculated under the formula. But the shortfall cannot be reduced below nil. [Subsection 45-233(3)]

8.43 As the top up may exceed the amount of a particular instalment, any amount not applied under subsection 45-233(3), can be applied to another later instalment of the same income year. [Subsection 45-233(4)]

8.44 The reduction has effect for each day in the period that:

- starts on due date for payment of the later instalment; and
- ends on the due date for payment of the assessed tax, or the date of payment of the assessed tax if that is earlier.

[Subsection 45-233(5)]

Example 8.1: Effect of sections 45-232 and 45-233

An individual’s instalments for quarters 1 and 2 of an income year are $10,500, being based on a GDP-adjusted notional tax of $42,000. The later instalments would also have been $10,500 but, at the end of quarter 2, the individual estimates her benchmark tax to be $28,000 and pays her instalment accordingly.

For quarter 3 the Commissioner notifies the individual of the amount payable based on her estimated benchmark tax.

At the end of the quarter 4, she realises that her estimated benchmark tax is too low and estimates a new benchmark tax of $32,000.

Subsequently, the Commissioner works out that the benchmark tax for the income year is $40,000. As both estimates are less than 85% of the benchmark tax worked out by the Commissioner, GIC may be imposed in relation to quarters 2, 3 and 4.
### Instalment amounts

<table>
<thead>
<tr>
<th></th>
<th>Quarter 1</th>
<th>Quarter 2</th>
<th>Quarter 3</th>
<th>Quarter 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Instalments based on</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDP-adjusted notional tax</td>
<td>$10,500</td>
<td>(25% of $42,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimated benchmark tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$3,500</td>
<td></td>
<td>$7,000</td>
<td>$11,000</td>
</tr>
<tr>
<td></td>
<td>(50% of $28,000 - $10,500)</td>
<td></td>
<td>(75% of $28,000 - $14,000)</td>
<td>(100% of $32,000 - $21,000)</td>
</tr>
</tbody>
</table>

### Amount on which GIC is imposed

<table>
<thead>
<tr>
<th></th>
<th>Quarter 1</th>
<th>Quarter 2</th>
<th>Quarter 3</th>
<th>Quarter 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amount based on</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDP-adjusted notional tax</td>
<td>$10,500</td>
<td>(25% of $42,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimated benchmark tax less previous acceptable amount(s)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$9,500</td>
<td></td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td>(50% of $40,000 - $10,500)</td>
<td></td>
<td>(75% of $40,000 - $10,500 - $9,500)</td>
<td>(100% of $40,000 - $10,500 - $9,500 - $10,000)</td>
</tr>
<tr>
<td>Acceptable amount</td>
<td>$10,500</td>
<td>$9,500</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td><strong>Shortfall</strong></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>$6,000</td>
<td></td>
<td>$3,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>($9,500 - $3,500)</td>
<td></td>
<td>($10,000 - $7,000)</td>
<td>($10,000 - $11,000)</td>
</tr>
<tr>
<td><strong>Top up</strong></td>
<td></td>
<td></td>
<td></td>
<td>$1,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>($10,000 - $11,000)</td>
</tr>
</tbody>
</table>

**Penalty for Quarter 2:**

GIC will be imposed on $6,000 for the period from 21 January to 21 July.

GIC will be imposed on $5,000 ($6,000 less top up of $1,000) for the period from 21 July to the due date for payment of the assessed tax, or the date the assessed tax is paid if earlier.

**Penalty for Quarter 3:**

GIC will be imposed on $3,000 from 21 April to the due date for payment of the assessed tax, or the date the assessed tax is paid if earlier. The shortfall is not reduced because the top up from quarter 4 was completely absorbed in reducing the GIC for quarter 2.

**Penalty for Quarter 4:**

No GIC will be imposed. The amount worked out under subsection 45-232(2) is negative.
Amendments consequential upon the insertion of the provisions to provide a better variation mechanism to GDP-adjusted notional tax payers

8.45 As stated in paragraph 8.10, *items 5, 14 and 18 in Part 1 of Schedule 10* to this Bill will insert new provisions which provide a better way for quarterly instalment payers who are entitled to choose to pay on the basis of GDP-adjusted notional tax to vary the amount of their instalment. *Items 4, 6 to 13, and 15 to 17 in Part 1 of Schedule 10* to this Bill are all amendments of a consequential nature arising from the provisions inserted by items 5, 14 and 18.

**Item 4**

Provision being amended

8.46 *Item 4* will amend section 45-20 which requires PAYG instalments payers to notify the Commissioner of its instalment income for a period. Paragraph 45-20(3)(a) states that an individual does not need to notify the Commissioner of his or her instalment income if the individual calculates the amount of an instalment using GDP-adjusted notional tax.

Amendment will

8.47 Amend paragraph 45-20(3)(a) to add a reference to estimated benchmark tax.

Reason for amendment

8.48 The amendment will ensure that an individual who chooses to pay GDP-adjusted notional tax and to vary the amount of the instalment by estimating his or her benchmark tax is not required to notify the Commissioner of his or her instalment income. The Commissioner does not need to know the individual’s instalment income as that is not the basis on which the instalments are calculated.

**Item 6**

Provision being amended

8.49 *Item 6* will amend section 45-125 which outlines the circumstances in which an individual is entitled to choose to pay quarterly instalments on the basis of GDP-adjusted notional tax. Subsection 45-125(2) specifies that the individual must notify the Commissioner of his or her choice before the due date for the first instalment for an income year for which he or she is liable.

Amendment will

8.50 Consequentially amend subsection 45-125(2) for the insertion of subsection 45-112(3) by item 5.
Reason for amendment

8.51 Subsection 45-112(3) extends the due date for payment of an instalment for which the amount payable is the amount notified by the Commissioner, that is, where the amount of the instalment is worked out under paragraph 45-112(1)(a) or (c). The extension of time occurs if the Commissioner fails to notify the individual of the amount payable before the end of the instalment quarter for which the instalment is payable. Subsection 45-125(2) will be amended to state that the individual must notify the Commissioner of his or her choice to use GDP-adjusted notional tax by the due date regardless of the extension.

Items 7 and 8

Provision being amended

8.52 Items 7 and 8 will also amend section 45-125 which sets out the circumstances in which an individual may choose to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax.

Amendments will

8.53 Repeal the note to subsection 45-125(3) and insert a new subsection 45-125(4) which will require an individual to make the choice in every year in which the individual chooses to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax.

Reason for amendments

8.54 Subsection 45-125(4), combined with the amendments at items 9 and 10, will ensure that an individual cannot choose to change the basis on which his or her instalments are calculated during an income year. See also the discussion of items 9 and 10 immediately below which explains the rationale for this rule.

Items 9 and 10

Provision being amended

8.55 Items 9 and 10 will amend section 45-130. Paragraph 45-130(1)(a) sets out what happens when an individual chooses not to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax. One of its effects, is to allow an individual to choose to pay quarterly PAYG instalments on the basis of GDP-adjusted notional tax for a particular income year and then vary the amount of the instalments by choosing to calculate instalments for the same income year using the ‘instalment rate times instalment income’ method.

Amendments will

8.56 Repeal paragraph 45-130(1)(a) and thereby remove an individual’s ability to choose to swap between the GDP-adjusted notional
tax method of calculating his or her quarterly instalments and the ‘instalment rate times instalment income’ method within one income year.

**Reason for amendments**

8.57 Those individuals who choose to pay their quarterly instalments on the basis of GDP-adjusted notional tax will be provided with a better variation mechanism. They will be able to estimate their benchmark tax and calculate their instalments as a percentage of that amount rather than the GDP-adjusted notional tax figure calculated by the Commissioner. The existing variation mechanism will be deleted as it will unnecessarily complicate the law and the systems required to administer the law by allowing some individuals 2 methods of varying the amount of their instalments. Items 5, 14 and 18 give effect to the improved variation mechanism.

**Item 11**

**Provision being amended**

8.58 Item 11 will amend section 45-135 which sets out what happens when an individual who chooses to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax is notified that his or her notional tax exceeds $8,000 during an income year.

**Amendment will**

8.59 Repeal section 45-135.

**Reason for amendment**

8.60 The combined effect of the amendments at items 7, 8, 9 and 10 is that an individual’s choice to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax applies for the whole of an income year and an individual cannot be required to pay instalments using the ‘instalment income times instalment rate’ method simply because he or she is later notified that his or her GDP-adjusted notional tax exceeds $8,000. As this makes section 45-135 redundant, it will be repealed.

**Item 12**

**Provision being amended**

8.61 Item 12 will amend section 45-215 which sets out how to calculate a variation credit.

**Amendment will**

8.62 Amend step 2 of the method statement in paragraph 45-215(1)(c) by adding a reference to section 45-420. Section 45-420 is being inserted by item 18 of Schedule 10 to this Bill.
Reason for amendment

8.63 Step 2 of the method statement for calculating the variation credit for a particular instalment takes account of any previous variation credits for the income year. The amendment ensures that a variation credit claimed under new section 45-420, by an individual who chooses to pay quarterly instalments on the basis of GDP-adjusted notional tax and an estimate of his or her benchmark tax, is taken into account. The amendment ensures that the variation credit is calculated correctly for an individual who is required, under section 45-130, to swap between the GDP-adjusted notional tax method and the 'instalment rate times instalment income' method within an income year. This can occur, for example, because the individual becomes registered for GST.

Item 13

Provision being amended

8.64 Item 13 will amend the heading to section 45-230. That section sets out the liability to GIC for an entity that uses a varied instalment rate to calculate its quarterly instalments.

Amendment will

8.65 Repeal the existing heading and substitute a new heading to section 45-230.

Reason for amendment

8.66 Section 45-230 will be given a new heading to make it clear that it applies to an entity that has varied its instalment rate. This will contrast with new section 45-232 which will apply to an individual who has chosen to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax and his or her estimated benchmark tax. (Section 45-232 is being inserted by item 14.)

Item 15

Provision being amended

8.67 Item 15 will amend section 45-240 which allows the Commissioner to remit the GIC imposed for a variation that is too low.

Amendment will

8.68 Add a reference to subsection 45-232(2) which imposes GIC in respect of an instalment calculated by reference to an individual’s estimated benchmark tax where the amount of the estimated benchmark tax is too low.
Reason for amendment

8.69 The addition of subsection 45-232(2) will ensure that the Commissioner has the power to remit the GIC imposed in respect of the variation.

Item 16

Provision being amended

8.70 Item 16 will amend section 45-355 which sets out the circumstances in which the Commissioner works out the benchmark instalment rate and benchmark tax of an entity. Both are used in working out the variation penalty payable by an entity whose instalments have been too low as a result of a variation.

Amendment will

8.71 Insert a new subsection 45-355(1A).

Reason for amendment

8.72 New subsection 45-355(1A) will make it clear that the Commissioner will work out the benchmark tax of an individual who has chosen to pay his or her quarterly instalments on the basis of GDP-adjusted notional tax. The benchmark tax will be used to determine whether an individual who has varied his or her quarterly instalment by estimating his or her benchmark tax is liable to a variation penalty and to work out the amount on which GIC is imposed.

Item 17

Provision being amended

8.73 Item 17 will amend section 45-400 which states how the Commissioner works out the amount of the instalment payable by an individual who chooses to pay quarterly instalments on the basis of GDP-adjusted notional tax.

Amendment will

8.74 Omit the reference to section 45-112 and substitute a reference to paragraph 45-112(1)(a).

Reason for amendment

8.75 As a result of the amendment at item 5, Subdivision 45-L, which includes section 45-400, is only used to work out the amount of a quarterly instalment when an individual who chooses to pay on the basis of GDP-adjusted notional tax does not seek to vary his or her instalment. As such, the cross-reference to paragraph 45-112(1)(a) is more precise.
Explanation of the amendments consequential upon the introduction of the PAYG instalments system

8.76  **Schedule 16** to this Bill contains a series of amendments to various Acts which are consequential upon the introduction of the PAYG instalments system.

Amendment of Crimes (Taxation Offences) Act 1980

**Item 1**

**Provision being amended**

8.77  **Item 1** will amend the definition of *income tax* in subsection 3(1), which is the definition section of the Act.

**Amendment will**

8.78  Insert a new paragraph in the definition of *income tax*, which will ensure that it includes amounts payable under the PAYG instalments system under Division 45 in Schedule 1 to the TAA 1953.

**Reason for amendment**

8.79  The definition of *income tax* currently includes amounts payable under both the company instalment system under Division 1C of Part VI of the ITAA 1936 and the provisional tax system under Division 3 of Part VI of the ITAA 1936. As PAYG instalments will replace both of those systems, it is appropriate to add a reference to amounts payable under the PAYG instalments system.

Amendment of Higher Education Funding Act 1988

**Item 2**

**Provision being amended**

8.80  **Item 2** will amend section 106U which explains how the ITAA 1936 applies in collecting the amounts payable under HECS.

**Amendment will**

8.81  Add a *new subsection 106U(5)* which will mirror the effect of subsection 106U(4) for PAYG instalments.

**Reason for amendment**

8.82  Subsection 106U(4) facilitates the collection of amounts payable under HECS through the provisional tax system. *New subsection 106U(5)* will allow amounts payable under HECS to be collected under the PAYG instalments system which is replacing provisional tax.
Amendment of Income Tax Assessment Act 1936

Item 3

Provision being amended

8.83 Item 3 will amend subsection 6(1), the general definition section of the ITAA 1936.

Amendment will

8.84 Insert a new definition – full self-assessment taxpayer – which will list all of the entities who are currently full self-assessment taxpayers under the income tax laws. It will replicate the definition of instalment taxpayer currently found in Division 1C of Part VI of the ITAA 1936.

Reason for amendment

8.85 Several provisions of the ITAA 1936 are currently expressed to apply, or in some cases not to apply, in respect of taxpayers who are instalment taxpayers as defined for the purposes of the company instalment provisions of Division 1C of Part VI of the ITAA 1936. That Division applies to entities that are treated as full self-assessment taxpayers, ie. taxpayers who are liable to self-assess their own taxable income (or net income for those who are not assessed on taxable income) and the tax payable on that taxable income (or net income).

8.86 As Division 1C of Part VI of the ITAA 1936 will apply, for the last time, to instalments payable for the 1999-2000 income year, it is inappropriate to continue to rely on the definition of instalment taxpayer in Division 1C. A complementary amendment will be made to insert new subsection 221AZJA(2) which will ensure that an entity cannot be an instalment taxpayer in relation to an income year within the meaning of Division 1C of Part VI if it is not liable to pay an instalment under that Division for that income year. [Item 15]

Items 4 and 5

Provisions being amended

8.87 Items 4 and 5 will amend subsections 102AAM(12) and (13A) of the ITAA 1936. Section 102AAM requires taxpayers to pay interest on distributions from certain non-resident trust estates. Subsection 102AAM(12) requires the Commissioner to assess the interest payable by a taxpayer that is not an instalment taxpayer, whereas subsection 102AAM(13A) requires an instalment taxpayer to self-assess the interest payable.

Amendments will

8.88 Add appropriate references to full self-assessment taxpayer to each of subsections 102AAM(12) and (13A).
Reason for amendment

8.89 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *instalment taxpayer*.

**Item 6**

Provision being amended

8.90 **Item 6** will amend the note to paragraph 102AAM(13A)(c) of the ITAA 1936 which contains a reference to paragraph 221AZS(c) of that Act.

Amendment will

8.91 Add, to the note, a reference to new section 161AA.

Reason for amendment

8.92 The note to paragraph 102AAM(13A)(c) acknowledges that paragraph 221AZS(c) requires an *instalment taxpayer* to state the amount of any interest payable on distributions from non-resident trusts in its return. New section 161AA (which is being inserted by item 7) will perform the same function as section 221AZS in respect of *full self-assessment taxpayers*.

**Item 7**

Provision being amended

8.93 **Item 7** will insert new section 161AA of the ITAA 1936.

Amendment will

8.94 **New section 161AA** will specify the information that a *full self-assessment taxpayer* must include in its tax return for an income year. It will require a *full self-assessment taxpayer* to specify in a return, its taxable income (or net income if it is assessed on the basis of net income), the tax payable on its taxable income (or net income) and the amount of any interest payable under section 102AAM of the ITAA 1936.

Reason for amendment

8.95 Section 221AZS currently requires an *instalment taxpayer* to specify certain information in its tax return for an income year. It forms part of the scheme of provisions that gives effect to the full self-assessment regime that applies to entities other than individuals and certain trustees. Section 161AA will perform the same function for those taxpayers who fall within the definition of *full self-assessment taxpayer*.
**Items 8 and 9**

Provisions being amended

8.96 **Items 8 and 9** will amend paragraphs 163A(1)(a) and 163B(1)(a) of the ITAA 1936. Sections 163A and 163B impose a late lodgment penalty for *instalment taxpayers* and non-instalment taxpayers respectively who fail to lodge their returns on time.

Amendments will

8.97 Add appropriate references to *full self-assessment taxpayer* to each of the paragraphs 163A(1)(a) and 163B(1)(a).

Reason for amendment

8.98 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *instalment taxpayer*.

**Item 10**

Provision being amended

8.99 **Item 10** will amend section 166A of the ITAA 1936 which deems an assessment to have been made in respect of returns lodged by *instalment taxpayers*. It is the main operative provision in the scheme of provisions that gives effect to the full self-assessment regime that applies to entities other than individuals and certain trustees.

Amendment will

8.100 Insert a *new subsection 166A(3)* which will deem an assessment to be made by the Commissioner in respect of returns lodged by *full self-assessment taxpayers*.

Reason for amendment

8.101 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *instalment taxpayer*.

**Items 11 and 12**

Provision being amended

8.102 **Items 11 and 12** will amend paragraph 170AA(4)(a) of the ITAA 1936. Section 170AA requires taxpayers to pay interest where an assessment is amended to increase a taxpayer’s liability to tax. Subsection 170AA(4) specifies how the interest is calculated, including the period for which it is payable.
Amendments will

8.103 Add an appropriate reference to a **full self-assessment taxpayer** to subparagraph 170AA(4)(a)(i) and insert a **new subparagraph 170AA(4)(a)(ic)** which will specify when the period for which interest is payable begins.

Reason for amendment

8.104 As with the other subparagraphs of paragraph 170AA(4)(a), subparagraph 170AA(4)(a)(ic) will specify when the period for which interest is payable by a **full self-assessment taxpayer** commences. It will commence on the day on which the tax became due and payable under the first assessment in respect of the income of the taxpayer for the income year.

**Item 13**

Provision being amended

8.105 **Item 13** will amend section 170AA of the ITAA 1936 which requires taxpayers to pay interest where an assessment is amended to increase a taxpayer’s liability to tax.

Amendment will

8.106 Insert a **new subsection 170AA(7B)** which will replicate the effect of subsection 170AA(7A).

Reason for amendment

8.107 Subsection 170AA(7A) is one of a series of machinery provisions which are needed to establish the period for which the interest imposed under section 170AA is calculated. It applies when no tax is payable in relation to an original return lodged by an **instalment taxpayer**. Subsection 170AA(7B) will perform the same function when no tax is payable in relation to an original return lodged by a **full self-assessment taxpayer**.

**Item 14**

Provision being amended

8.108 **Item 14** will amend section 204 of the ITAA 1936 which is the general provision which specifies when a taxpayer’s assessed tax (and any additional tax) is payable.

Amendment will

8.109 Insert a **new subsection 204(1A)** which will specify when a full self-assessment taxpayer’s assessed tax is payable.
Reason for amendment

8.110 Section 221AZT of the ITAA 1936 currently specifies when an instalment taxpayer’s assessed tax is payable. It forms part of the scheme of provisions that gives effect to the full self-assessment regime that applies to entities other than individuals and certain trustees. Subsection 204(1A) will perform the same function for those taxpayers who fall within the definition of full self-assessment taxpayer.

Item 15

Provision being amended

8.111 Item 15 will amend section 221AZJA which closes down Division 1C of Part VI of the ITAA 1936. It ensures that a taxpayer is not liable to pay instalments under that Division for the 2000-2001 income year or a later year.

Amendment will

8.112 Insert a new subsection 221AZJA(2), which will limit the operation of the definition of instalment taxpayer.

Reason for amendment

8.113 This amendment complements the adoption of the new defined term full self-assessment taxpayer (as discussed at paragraphs 8.83 to 8.86) and the other amendments being made to maintain the effect of the full self-assessment regime. Subsection 221AZJA(2) will ensure that an entity cannot satisfy the definitions of instalment taxpayer and full self-assessment taxpayer for the same income year.

Items 16 and 17

Provisions being amended

8.114 Items 16 and 17 will amend the section 222A definition of taxation officer statement and section 222 of the ITAA 1936. Section 222A is the definition section for Part VII of the ITAA 1936 which deals with penalty tax. Section 222 imposes a penalty for failure to furnish a return.

Amendments will

8.115 Add references to new section 161AA.

Reason for amendments

8.116 The paragraphs being amended currently contain references to returns lodged in accordance with section 221AZS which applies to instalment taxpayers. Section 161AA is the equivalent of that section for full self-assessment taxpayers.
Amendment of Income Tax Assessment Act 1997

Item 18

Provision being amended

8.117 Item 18 will amend item 1 of subsection 3-5(3). Section 3-5 is part of the guide to the ITAA 1997. It states that income tax is payable each year by individuals, companies and some other entities and that most entities have to pay instalments of income tax before the income tax they are actually liable to pay for a year is worked out. Item 1 of subsection 3-5(1) refers readers of the guide to section 750-1 of the ITAA 1997 to find out what instalments of income tax they must pay.

Amendment will

8.118 Substitute a reference to Schedule 1 to the TAA 1953 in place of the reference to section 750-1 of the ITAA 1997.

Reason for amendment

8.119 As stated in the Explanatory Memorandum to the PAYG Bill, the PAYG withholding and instalment systems provisions have been placed in the TAA 1953 rather than the ITAA 1997 as the first step towards putting the collection, recovery and administration rules for all the Acts administered by the Commissioner in one place. In particular, Division 6 of Schedule 1 to the TAA 1953 contains a guide to the operation of the PAYG withholding and PAYG instalments systems.

Item 19

Provision being amended

8.120 Item 19 will amend item 4 of subsection 3-5(3). Section 3-5 is part of the guide to the ITAA 1997. It states that income tax is payable each year by individuals, companies and some other entities and that most entities have to pay instalments of income tax before the income tax they are actually liable to pay for a year is worked out. Item 4 of subsection 3-5(1) refers readers of the guide to section 750-20 of the ITAA 1997 to find out what happens when their income tax is less than the instalments of income tax they have paid.

Amendment will

8.121 Substitute a reference to Division 3A of Part IIB in place of the reference to section 750-20 of the ITAA 1997.

Reason for amendment

8.122 Refunds of instalments are now payable under the RBA provisions of the TAA 1953. In particular, Division 3A of Part IIB of that Act sets out how the Commissioner will refund surpluses and credits in
the RBA. Further, Part 4-5 of the ITAA 1997, which includes section 750-20, will be repealed by item 7 of Part 2 of Schedule 1 to the PAYG Bill.

Amendment of Taxation (Interest on Overpayments and Early Payments) Act 1983 (T(IOEP)A 1983)

Item 20

Provision being amended

8.123 Item 20 will amend subsection 3(1) of the T(IOEP)A 1983, which is the definition section of the Act.

Amendment will

8.124 Insert a new definition of full self-assessment taxpayer.

Reason for amendment

8.125 Several provisions of the T(IOEP)A 1983 are currently expressed to apply, or in some cases not to apply, in respect of taxpayers who are instalment taxpayers as defined for the purposes of the company instalment provisions of Division 1C of Part VI of the ITAA 1936. That Division applies to entities that are treated as full self-assessment taxpayers, i.e. taxpayers who are liable to self-assess their own taxable income (or net income for those who are not assessed on taxable income) and the tax payable on that taxable income (or net income).

8.126 As Division 1C of Part VI will apply, for the last time, to instalments payable for the 1999-2000 income year, it is inappropriate to continue to rely on the definition of instalment taxpayer. As discussed at paragraphs 8.83 to 8.86, a new definition, full self-assessment taxpayer, will be inserted in the ITAA 1936 and will be used instead of the term instalment taxpayer. Similar amendments are therefore being made to this Act.

Items 21 and 22

Provision being amended

8.127 Items 21 and 22 will amend subsection 8B(1) of the T(IOEP)A 1983, which defines the period for which the interest that is payable under section 8A is to be paid.

Amendments will

8.128 Add appropriate references to full self-assessment taxpayer to paragraphs 8B(1)(a) and (b) in addition to the current references to instalment taxpayer.
Reason for amendments

8.129 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *instalment taxpayer*.

**Items 23 and 24**

**Provision being amended**

8.130 *Items 23 and 24* will amend section 8E of the T(IOEP)A 1983 which requires the Commissioner to pay interest to a person whose assessment gives rise to a refund and the refund is not paid within a specified period of lodgment of the person’s return. The section does not apply to a person who is a full self-assessment taxpayer.

Amendments will

8.131 Add appropriate references to *full self-assessment taxpayer* to paragraphs 8E(1)(a) and (2)(a) in addition to the current references to *instalment taxpayer*.

**Reason for amendment**

8.132 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *instalment taxpayer*.

**Items 25, 26 and 27**

**Provision being amended**

8.133 *Items 25, 26 and 27* will amend section 8G of the T(IOEP)A 1983 which, like section 8E, requires the Commissioner to pay interest to a person whose assessment gives rise to a refund and the refund is not paid within a specified period of lodgment of the person’s return. However, section 8G applies to a person who is a full self-assessment taxpayer.

Amendments will

8.134 Items 25 and 27 will add appropriate references to *full self-assessment taxpayer* to paragraphs 8G(1)(a) and (2)(a) in addition to the current references to *instalment taxpayer*.

8.135 Item 26 will repeal existing paragraphs 8G(1)(e) and (f) and substitute *new paragraphs 8G(1)(e) and (f)*.
Reason for amendments

8.136 Items 25 and 27 are necessary to take account of the adoption of the term *full self-assessment taxpayer* as discussed at paragraphs 8.83 to 8.86.

8.137 Item 26 is necessary because paragraphs 8G(1)(e) and (f) define the period in which the Commissioner should give the relevant credit or refund by reference to the *final instalment day*, which is the due date for the final instalment payable by *installment taxpayers* under Division 1C of Part VI of the ITAA 1936. The substituted paragraphs 8G(1)(e) and (f) will also contain references appropriate to *full self-assessment taxpayers* who pay PAYG instalments.

**Items 28 and 30**

Provision being amended

8.138 *Items 28 and 30* will amend section 8H of the T(IOEP)A 1983 which defines the period for which the interest that is payable under section 8G is to be paid.

Amendments will

8.139 Add appropriate references to *full self-assessment taxpayer* to the heading to section 8H and subsections 8H(1) and (2) in addition to the current references to *installment taxpayer*.

Reason for amendments

8.140 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *installment taxpayer*.

**Items 29, 31 and 32**

Provision being amended

8.141 *Items 29, 31 and 32* will also amend section 8H of the T(IOEP)A 1983 which defines the period for which the interest that is payable under section 8G is to be paid to a person who is a full self-assessment taxpayer.

Amendment will

8.142 Insert *new subsections 8H(1A) and (2A)* and substitute a *new paragraph 8H(3)(d)* for the existing paragraph 8H(3)(d) which will define the periods for which the section 8G interest is payable. The new provisions will contain references appropriate to *full self-assessment taxpayers* who pay PAYG instalments.
Reason for amendment

8.143 Subsections 8H(1) and (2) and paragraph 8H(3)(d) define the periods for which the section 8G interest is payable by reference to the final instalment day, i.e. the day on which the final instalment payable by instalment taxpayers under Division 1C of Part VI of the ITAA 1936 is due. That is because the final instalment payable under the company instalment system comprises the excess of the assessed tax over the amounts previously payable for the year.

8.144 Under the PAYG instalments system, the final instalment does not require the payment of a person’s assessed tax. Therefore, it is necessary to insert new rules to define the period for which the interest will be payable by a full self assessment taxpayer. The new rules for full self-assessment taxpayers will be defined by reference to the due date for payment of the assessed tax.

Item 33

Provision being amended

8.145 Item 33 will amend section 12A of the T(IOEP)A 1983 which requires the Commissioner to pay interest to a person who has effectively overpaid an amount because the Commissioner has exercised a power to remit or refund all or part of certain amounts.

Amendment will

8.146 Add a reference to section 45-240 in Schedule 1 to the TAA 1953 to subparagraph 12A(1)(a)(i).

Reason for amendment

8.147 Subparagraph 12A(1)(a)(i) contains a reference to section 8AAG of the TAA 1953 which allows the Commissioner to remit GIC. It also deals with the GIC imposed in relation to the incorrect variation of instalments payable under the company instalment and provisional tax systems. Section 45-240 is being added because it also deals with the remission of GIC imposed for incorrect variations under the PAYG instalments system.

Item 34

Provision being amended

8.148 Item 34 will also amend section 12A of the T(IOEP)A 1983 which requires the Commissioner to pay interest to a person who has effectively overpaid an amount because the Commissioner has exercised a power to remit or refund all or part of certain amounts.
Amendment will

8.149 Add references to sections 45-230, 45-232 and 45-235 in Schedule 1 to the TAA 1953, each of which imposes GIC in respect of incorrect variations.

Reason for amendment

8.150 Subparagraph 12A(1)(a)(i) contains a reference to sections 221AZP and 221YDB of the ITAA 1936 which impose GIC in relation to the incorrect variation of instalments payable under the company instalment and provisional tax systems. References to sections 45-230, 45-232 and 45-235 are being added because they impose GIC for incorrect variations under the PAYG instalments system.

Item 35

Provision being amended

8.151 Item 35 will also amend section 12A of the T(IOEP)A 1983 which requires the Commissioner to pay interest to a person who has effectively overpaid an amount because the Commissioner has exercised a power to remit or refund all or part of certain amounts.

Amendment will

8.152 Insert a new subparagraph 12A(1)(a)(iia) to deal with cases where the Commissioner applies or refunds the whole or part of an amount in respect of a credit under section 45-215 or 45-420 of Schedule 1 to the TAA 1953.

Reason for amendment

8.153 The credits that a taxpayer may claim under section 45-215 and 45-420 of the PAYG instalments system are of a similar nature to the other credits listed in the paragraph 12A(1)(a).

Item 36

Provision being amended

8.154 Item 36 will amend subsection 13(4) of the T(IOEP)A 1983 which states how the Commissioner applies any interest payable under the Act to an instalment taxpayer.

Amendment will

8.155 Add to subsection 13(4) appropriate references to full self-assessment taxpayer in addition to the current references to instalment taxpayer.
Reason for amendments

8.156 As discussed at paragraphs 8.83 to 8.86, the term *full self-assessment taxpayer* will be used instead of the term *instalment taxpayer*.

**Item 37**

8.157 The amendments made by Schedule 16 to this Bill apply to the 2000-2001, and later income years.

List of Issues to be Addressed Later

8.158 The following issues are under consideration:

- how the Commissioner should determine the instalment rate of trustees and how trustees should determine the instalment income on which they are liable to pay an instalment;

- whether a specific or general anti-avoidance provision is needed for the PAYG instalments system is being considered as part of the review of the general anti-avoidance provision (Part IVA of the ITAA 1936);

- the effect of an amendment of the 1999-2000 income year assessment on the transitional deferral arrangements for an entity that is a company instalment payer.
Overview

9.1 The amendment in Schedule 17 to this Bill will make a technical correction to the provisional tax provisions of the ITAA 1936. The correction will ensure that the savings rebate, which was abolished with effect from (and including) the 1999-2000 income year, is not taken into account in the calculation of provisional tax for that income year.

9.2 Abbreviations used throughout this Chapter are summarised in the glossary following the Table of contents for this Explanatory Memorandum.

Purpose of the amendment

9.3 The correction will ensure that, in the 1999-2000 income year, there is no reduction in the amount of provisional tax payable on account of the savings rebate. The rebate was abolished and does not apply in that, and later, income years.

Background

9.4 The A New Tax System (Income Tax Laws Amendment) Act 1999 abolished the savings rebate (technically known as the savings tax offset) with effect from, and including, the 1999-2000 income year. The Act also sought to amend the provisional tax provisions of the ITAA 1936 to ensure that the savings rebate was not taken into account in calculating provisional tax in the 1999-2000 year. The amendments of the provisional tax provisions were not fully effective.

9.5 Provisional tax is generally calculated by applying current tax rates and Medicare levy to an amount worked out using the formula:

\[
\text{Adjusted preceding year’s tax} \quad \text{less} \quad \text{qualifying reductions}
\]

9.6 Qualifying reductions include a rebate or offset that was available in the preceding year (unless specifically excluded). While the savings rebate was available in the 1998-1999 income year, it was not specifically excluded from the meaning of qualifying reductions for the purpose of calculating provisional tax for the following income year. Thus, provisional tax for 1999-2000 would be reduced by the amount of
the savings rebate even though the rebate is not available in that year. That was not intended.

9.7 Schedule 17 to this Bill will amend the definition of qualifying reductions in subsection 221YCAA(2) of the ITAA 1936 to exclude the rebate from that definition [Item 1]. The amendment will apply for working out amounts of provisional tax for the 1999-2000 and later income years [Item 2].