Glossary

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

Abbreviation	*Definition*
ACCU	Australian carbon credit unit
Commissioner	Commissioner of Taxation
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
PRRTAA	*Petroleum Resource Rent Tax Assessment Act 1987*
REU	Registered emissions unit
SES	Senior Executive Service
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SISAA	*Superannuation Industry (Supervision) Amendment Act 2010*
TAA	*Taxation Administration Act 1953*
TASA	*Tax Agent Services Act 2009*
TIES	Tax Issues Entry System

Chapter #
Miscellaneous amendments

Outline of chapter

1.1 Schedule # to this Bill makes a number of miscellaneous amendments to the taxation and superannuation laws. These amendments are part of the Government's commitment to the care and maintenance of the taxation and superannuation systems.

Context of amendments

1.2 Miscellaneous amendments to the taxation and superannuation laws such as those contained in Schedule # are periodically made to remove anomalies and correct unintended outcomes. Progressing such amendments gives priority to the care and maintenance of the tax system, a process supported by a 2008 recommendation from the Tax Design Review Panel.

1.3 Industry input is collected through the Tax Issues Entry System (TIES). Part 1 of Schedule # addresses two TIES issues:

- ensuring that taxpayers are not inappropriately denied automatic roll-over relief for balancing adjustments in relation to certain depreciating assets (TIES reference number 005/2011); and
- allowing corporate limited partnerships to effectively return capital to partners without anomalous tax outcomes (TIES issue 0009/2014).

Summary of new law

1.4 These miscellaneous amendments address technical deficiencies and legislative uncertainties within several taxation and superannuation provisions.

1.5 Schedule # contains the following Parts:

- Part 1: Main Amendments to Principal Acts
- Part 2: Suspending or revoking endorsements for tax concessions
- Part 3: Other Amendments and Corrections to Previous Amending Acts

Detailed explanation of new law

Part 1: Main Amendments to Principal Acts

Harmonisation of the self-actuating system for indirect taxes with the self-assessment system for income tax

1.6 The *Indirect Tax Laws Amendment (Assessment) Act 2012* harmonised the self-actuating system for goods and services tax, luxury car tax, wine equalisation tax and fuel tax credits with the self-assessment system for income tax. Minor technical amendments are made to ensure that the legislation achieves the intended policy outcomes.

1.7 Prior to the amendments in this Part, section 17-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provided that a taxpayer's net amount for a tax period was calculated from the information provided in their GST return. This outcome is now achieved through the assessment making process in section 155-15 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). Therefore, section 17-15 of the GST Act is removed as it is redundant. ***[Schedule #, item 1, section 17-15 of the GST Act]***

1.8 The repeal of section 17-15 applies to tax periods starting after the day the Bill receives Royal Assent. ***[Schedule #, item 2]***

1.9 Before the amendments, section 93-15 of the GST Act denied an input tax credit where the GST had "ceased to be payable". The term "ceased to be payable" is used in section 105-50 of Schedule 1 to the TAA. This section sets a four year time limit on recovery by the Commissioner by stating that an unpaid amount "ceases to be payable four years after it became payable by you".

1.10 Section 105-50 does not apply to tax periods starting on or after 1 July 2012 and is repealed on 1 January 2017 (Schedule 1 Part 2 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*). No other

provisions in the GST Act or the TAA use the words "ceases to be payable".

1.11 This amendment updates the terminology in section 93-15 so that it does not use the term "ceased to be payable". The new wording makes it clear that an entitlement to an input tax credit ceases when the Commissioner is no longer able to amend an assessment of the assessable amount relating to the GST. ***[Schedule #, item 4, section 93-15 of the GST Act]***

1.12 The amendment applies to creditable acquisitions for which the GST on the related supply is attributable to tax periods starting after the day the Bill receives Royal Assent. ***[Schedule #, item 5]***

1.13 Before the amendments, the time limit for objecting to a private indirect tax ruling for tax periods starting on or after 1 July 2012 was the later of:

- 60 days after the ruling was made; or
- four years from the day after the notice of assessment was given for the tax period to which the ruling relates.

1.14 This time limit posed two difficulties. Firstly, it allowed taxpayers who did not receive a notice of assessment an unlimited objection period. Secondly, it resulted in the time limit for objecting to private indirect tax rulings differing from the time limit for objecting to other private rulings that do not relate to indirect tax. This is inconsistent with the intention of applying rules for indirect taxes that are consistent with the self-assessment system for income tax.

1.15 This amendment ensures that taxpayers who do not receive a notice of assessment do not have an unlimited period to lodge an objection, and aligns the time limit for objecting to private indirect tax rulings with the time limit for objecting to other tax rulings. It sets the time limit for objecting to a private indirect tax ruling as the later of:

- 60 days after the ruling was made; or
- four years after the last day that a return can be lodged concerning the assessment of the assessable amount to which the ruling relates.

[Schedule #, item 35, paragraph 14ZW(1AAC)(b) of the TAA]

1.16 The amendment to the time limit for objecting to a private indirect tax ruling applies to tax periods starting after the day the Bill receives Royal Assent. It also applies to payments or refunds that do not

correspond to any tax period, but relate to liabilities or entitlements that arise after the day the Bill receives Royal Assent. ***[Schedule #, item 36]***

Updates to the section references in the Excise Act 1901

1.17 Section 5 of the *Excise Act 1901* states that offences against the Act are punishable by a penalty which does not exceed the penalty specified in the section that was contravened. Before the amendments, section 5 included the words "(except as provided by sections 129 to 132, inclusive)" to allow for more serious penalties in certain circumstances.

1.18 The words in brackets are now redundant as the penalty provisions in sections 129 to 132 have been repealed. Accordingly, this amendment deletes the words in brackets. ***[Schedule #, item 6, section 5 of the Excise Act 1901]***

1.19 Prior to the amendments, subsection 116(2) of the *Excise Act 1901* provided for goods sold or offered for sale in breach of paragraph 120(iiia) to be forfeited to the Crown. However, there is no paragraph 120(iiia) in the *Excise Act 1901*.

1.20 This amendment corrects the section reference in section 116 so that it refers to paragraph (iiia) of subsection 120(1), rather than paragraph 120(iiia). ***[Schedule #, item 7, subsection 116(2) of the Excise Act 1901]***

Clarification of the corporate limited partnership provisions (TIES issue 0009/2014)

1.21 Division 5A of the *Income Tax Assessment Act 1936* (ITAA 1936) operates to, broadly, treat certain limited partnerships as companies for income tax purposes. The Division operates so that, so far as is relevant, any payment made by a corporate limited partnership to its partners that is paid or credited against profits or in anticipation of profits is deemed to be a dividend paid out of profits (section 94L). As a result, the payment is assessable to the partner as a dividend under section 44.

1.22 Section 44 was amended in 2010 as a consequence of changes to the meaning of a dividend in the *Corporations Act 2001*. The effect of the amendment to section 44 is to treat a dividend paid out of an amount other than profits to be a dividend paid out of profits for the purposes of the income tax law (subsection 44(1A)).

1.23 Prior to the introduction of subsection 44(1A), a distribution made by a corporate limited partnership paid or credited against partnership capital would not have been assessable under section 44 as it was not deemed to be a dividend paid out of profits.

1.24 When subsection 44(1A) was introduced, there was no intention to change the circumstances in which section 94L operates to deem a distribution made by a corporate limited partnership to be a dividend paid out of profits.

1.25 This miscellaneous amendment clarifies that subsection 44(1A) does not operate for the purposes of determining whether a payment made by a corporate limited partnership is taken to be a dividend under section 94L. ***[Schedule #, item 8, section 94L of the ITAA 1936]***

1.26 The amendment applies in relation to dividends paid on or after 28 June 2010 – that is, from the date of effect of subsection 44(1A). ***[Schedule #, item 9]***

1.27 In this regard, the amendment is beneficial to taxpayers and allows corporate limited partnerships to effectively return capital to partners.

Incorrect Cross-Reference to International Agreements Act

1.28 Subsection 160ZZVB(2) of the ITAA 1936 relates to the application of provisions regarding Australian branches of offshore banks.

1.29 The provision provides that, where a bank is subject to an international agreement, they may elect that the Part (Part IIIB of the ITAA 1936) does not apply.

1.30 In incorporating the defined term 'agreement', the provision refers to the *Income Tax (International Agreements) Act 1953,* which has been renamed the *International Tax Agreements Act 1953*.

1.31 The amendment corrects the reference. ***[Schedule #, item 10, subsection 160ZZVB(2) of the ITAA 1936]***

Updates to the list of tax offsets

1.32 Section 13-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) is a guide that lists a number of tax offsets. The Government has identified a number of tax offsets that are not included in the list. These amendments add two new offsets to the list. ***[Schedule #, items 12 and 13, section 13-1 of the ITAA 1997]***

Clarification of description of certain CGT roll-over restrictions (TIES reference number 005/2011)

1.33 Section 40-340 of the ITAA 1997 provides for a roll-over on disposal of a depreciating asset in circumstances in which the CGT provisions would provide a roll-over (see for example, item 1 of the table

in subsection 40-340(1), which provides a roll-over on disposal of an asset to a wholly-owned company if that disposal would have attracted a CGT roll-over under Subdivision 122-A of the ITAA 1997).

1.34 Subsection 40-340(2) of the ITAA 1997 instructs the taxpayer to disregard some provisions in deciding if a CGT roll-over would have been available for the purposes of the rollover for depreciating assets, allowing rollovers for depreciating assets in circumstances where they would not be available for the purposes of CGT.

1.35 Paragraph 40-340(2)(b) of the ITAA 1997 instructs you to disregard subsection 122-25(3), which effectively excludes roll-over relief for 'precluded assets', including depreciating assets. Paragraph 40-340(2)(b) of the ITAA 1997 describes subsection 122-25(3) as excluding roll-overs under Division 122-A. While not inaccurate, the present wording is slightly misleading as 'precluded assets' are also excluded from accessing a number of other CGT roll-overs.

1.36 These amendments revise paragraph 40-340(2)(b) to make clear that subsection 122-25(3) has more general application. ***[Schedule #, item 14, paragraph 40-340(2)(b) of the ITAA 1997]***

Deductions for amounts contributed to superannuation funds

1.37 An amendment is made to correct the section reference in item 2B of the table that sets out other deductions for superannuation funds in subsection 295-490 of the ITAA 1997.

1.38 Item 2B relates to situations where a taxpayer gives a deduction notice to a successor fund in respect of a contribution to their original fund, and then gives a variation notice to vary their concessional contributions. It may also apply to a mandatory transfer of members under a MySuper transfer.

1.39 Prior to the amendment, the successor fund was only entitled to the deduction if the fund included the contribution as assessable income under item 2A of the table in subsection 295-490(1). A successor fund would never be able to satisfy this requirement because item 2A only applies when a deduction notice is given to the original fund, not the successor fund.

1.40 The intention was for the deduction in item 2B to be available where the superannuation fund included the contribution in assessable income at the time they received the deduction notice. This ensures that the successor fund is compensated for including in assessable income, an additional amount that would not have been included if the fund member

had initially contributed the correct amount and did not issue a variation notice.

1.41 Accordingly, this amendment corrects the section reference so that the deduction for superannuation funds in item 2B operates in the way intended. ***[Schedule #, item 16, table item 2B at subsection 295-490(1) of the ITAA 1997]***

1.42 The amendment applies to notices given to a superannuation fund to deduct a personal contribution under section 290-170 of the ITAA 1997 on or after the day following Royal Assent. ***[Schedule #, item 17, paragraph (a)]***

1.43 It also applies to notices of variation given under section 290-180 of the ITAA 1997 after the day of Royal Assent. This is irrespective of whether the notice being varied was given before, on or after the day of Royal Assent. ***[Schedule #, item 17, paragraph (b)]***

Consequential amendments to delegation provisions for designated infrastructure projects

1.44 Division 415 of the ITAA 1997 sets out special rules for the tax treatment of the losses and bad debts of 'designated infrastructure projects'.

1.45 Under Division 415, the Infrastructure CEO (as established under section 27 of the *Infrastructure Australia Act 2008* – formerly the Infrastructure Co-ordinator) may exercise a number of powers and functions, including designating projects as designated infrastructure projects.

1.46 Section 415-95 allows the Infrastructure CEO to delegate any of the office's powers or functions under Subdivision 415-C (designating infrastructure projects) to a Senior Executive Service (SES) (or acting SES) employee of Infrastructure Australia who is a member of the staff assisting the Infrastructure CEO under section 39 of the *Infrastructure Australia Act 2008*.

1.47 Following amendments made by the *Infrastructure Australia Amendment Act 2014*, there will no longer be staff to whom this provision can apply.

1.48 These amendments revise section 415-95 to allow the delegation of powers or functions by the Infrastructure CEO under Subdivision 415-C to SES and acting SES staff engaged by or seconded to Infrastructure Australia. ***[Schedule #, item 18, section 415-95 of the ITAA 1997]***

1.49 This will preserve the current scope for delegation under the new employment arrangement for the staff of the Infrastructure CEO established by the *Infrastructure Australia Amendment Act 2014*.

Acquisition cost of Australian Carbon Credit Units

1.50 Prior to the amendments, there was no mechanism for determining the acquisition cost of Australian carbon credit units (ACCUs) purchased on the Registry. These units do not fall within the scope of subsections 420-60(3) of the ITAA 1997 as they are not issued under the Carbon Farming Initiative. Before the amendments, these units did not fall under subsection 420-60(4) of the ITAA 1997 as the subsection did not apply to any ACCUs.

1.51 A method for determining the acquisition cost for all registered emission units is needed as units are accounted for using the rolling balance method. This method involves taxpayers subtracting the acquisition cost of a registered emissions unit from its value at year end, and bringing the difference to account as assessable income or a deduction at the end of the first income year that they held the units.

1.52 This amendment provides for the acquisition cost of ACCUs purchased on the Registry to be calculated in the same way as other registered emission units.

1.53 Accordingly, the acquisition cost of an ACCU purchased on the registry is determined by totalling the expenditure incurred in becoming the holder of the unit, such as the price paid for the unit, brokerage fees and other transaction costs. Expenditure cannot be included in the acquisition cost if it is not deductible under section 420-15 of the ITAA 1997. ***[Schedule #, item 19, subsection 420-60(4) of the ITAA 1997]***

1.54 The amendment applies in relation to income years starting on or after the day following Royal Assent. ***[Schedule #, item 20]***

1.55 The Schedule also repeals the transitional rules for determining the acquisition cost for units acquired prior to the commencement of Division 420 of the ITAA 1997. These transitional rules are redundant as there are no new transactions that fall within the scope of the rules and the *Acts Interpretation Act 1901* protects previous transactions that relied on the rules. ***[Schedule #, item 21, Subdivision 420-B of the Income Tax (Transitional Provisions) Act 1997]***

1.56 The repeal of the transitional rules applies on or after the day following Royal Assent.

Conditions in the Petroleum Resource Rent Tax Assessment Act 1987 for transferring expenditure from loss companies to profit companies

1.57 Loss companies may transfer expenditure on a project to a profit company if they satisfy the conditions in clause 31 of Schedule 1 to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA). One of these conditions applies when the expenditure is indirectly incurred through another entity. This condition refers to the section in the PRRTAA that sets out the rules for determining which company made the payment.

1.58 The *Tax Laws Amendment (2013 Measures No. 2) Act 2013* amended the rules for determining which company made a payment and changed the section numbers. However, it did not make a consequential amendment to change the reference in the condition in clause 31.

1.59 Accordingly, this item amends the condition so that it refers to the correct paragraph in the PRRTAA. ***[Schedule #, item 22, subparagraph 31(1)(b)(ii) of Schedule 1 to the PRRTAA]***

1.60 The amendment applies retrospectively so that it operates to allow transfer of expenditure to profit companies from the same time as the amendments in the *Tax Laws Amendment (2013 Measures No. 2) Act 2013.* It has no adverse effect on companies as it simply corrects a reference and ensures that the amendments apply as intended to allow the transfer of expenditure. ***[Schedule #, item 23]***

General administration of provisions in the Retirement Savings Accounts Act 1997

1.61 Section 3 of the *Retirement Savings Accounts Act 1997* provides for the general administration of the Act.

1.62 Subparagraph 3(1)(e)(ii) says the Commissioner has the general administration of subsection 144(1A). The Act does not have this subsection. The subparagraph should refer to subsection 144(2A).

1.63 This amendment corrects the reference. ***[Schedule #, item 24, subparagraph 3(1)(e)(ii) of the Retirement Savings Accounts Act 1997]***

Repeal of spent provisions

1.64 Subsection 32C(4A) of the *Superannuation Guarantee (Administration) Act 1992* provides that employer contributions to the Public Sector Superannuation Accumulation Plan comply with the choice of fund requirements. The subsection ceased to have effect from 1 July 2006.

1.65 This amendment repeals the subsection. ***[Schedule #, item 27, subsection 32C(4A) of the Superannuation Guarantee (Administration) Act 1992]***

1.66 The *Superannuation Act 2005* and the *Superannuation (Productivity Benefit) Act 1988* also contain references to the subsection. This amendment removes those references. ***[Schedule #, items 25, 26, and 31, subparagraph 14(4)(a)(iv) and paragraph 18(3)(d) of the Superannuation Act 2005, subparagraph 3AB(1)(b)(iii) Superannuation (Productivity Benefit) Act 1988]***

Definition of business real property in the Superannuation Industry (Supervision) Act 1993

1.67 This amendment re-inserts a reference to the definition of 'business real property' in paragraph 71(1)(g) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

1.68 The *Superannuation Industry (Supervision) Amendment Act 2010* (SISAA) removed the reference to the definition of 'business real property' contained in subsection 66(5). The EM did not explain the reason for the removal and simply noted that the amendment was consequential to the amendments made by the SISAA.

1.69 The removal may have created uncertainty as to the meaning of business real property for the purposes of paragraph 71(1)(g) of the SIS Act.

1.70 For this reason, this amendment re-inserts the reference in paragraph 71(1)(g) to the definition of 'business real property', as defined in subsection 66(5), effective from when the reference was removed by the SISAA. ***[Schedule #, items 28 and 29, paragraph 71(1)(g) of the SIS Act]***

Definition of "assessable amount" in the TAA

1.71 This amendment inserts a definition of 'assessable amount' into the TAA. The term "assessable amount" is used in subsections 14ZY(1B) and 14ZW(1AAC) of the TAA, but it has not been included in the definition section.

1.72 The definition provides that the term has the meaning given by subsection 155-5(2) of Schedule 1 to the TAA. ***[Schedule #, item 32, subsection 2(1) of the TAA]***

Commissioner's reporting obligations in section 3B of the Taxation Administration Act 1953

1.73 Section 3B of the TAA requires the Commissioner to prepare an annual report and provide it to the Minister.

1.74 Prior to the amendments, the Commissioner was required to include details about foreign currency transfers that breached subsection 14C(2) of the TAA in the annual report. However, section 14C of the TAA ceased to have effect on and from 18 September 2009. Accordingly the Commissioner's obligation to report on breaches of subsection 14C(2) is repealed as it is redundant. ***[Schedule #, item 33, paragraph 3B(1AA)(a) of the TAA]***

1.75 The amendments to the Commissioner's reporting obligations have effect from the day following Royal Assent.

Repeal redundant definitions from the TAA

1.76 Sections 14ZZK and 14ZZO of the TAA grant taxpayers the right to challenge an assessment on the basis that it is excessive or otherwise incorrect. Historically, the sections listed the assessments to which a taxpayer could object but the list of assessment was removed when the sections were rewritten in 2013.

1.77 There are now no substantive sections in the TAA that refer to a 'franking assessment'. Therefore, the definition of 'franking assessment' in the dictionary section in the TAA is repealed, as terms that are not used in the Act do not need to be defined. ***[Schedule #, item 34, section 14ZQ of the TAA]***

1.78 This amendment applies from the day following Royal Assent.

Definition of tax-related liability for Subdivision 284-B

1.79 Item 37 clarifies that subsection 284-75(3) of the TAA does not apply to a tax-related liability arising under the Excise Acts (as defined in section 4 of the *Excise Act 1901*). This subsection imposes an administrative penalty where you fail to give a notice or document to the Commissioner, and that notice is necessary to determine a tax-related liability. A tax-related liability is defined as one that is imposed under a 'taxation law'. Ordinarily this includes the Excise Acts because the Commissioner has general power of administration of those Acts. However, throughout Subdivision 284-B, wherever 'taxation law' is mentioned, the Excise Acts are specifically excluded. To clarify that subsection 284-75(3) is consistent with the remainder of Subdivision 284-B, this amendment specifically excludes from the definition of 'tax-related liability', liabilities arising under the Excise Acts. ***[Schedule #, item 37, subsection 284-75(3) of Schedule 1 to the TAA]***

1.80 This amendment applies in relation to documents required to be given to the Commissioner on or after the day following Royal Assent. ***[Schedule #, item 38]***

Disclosure of Protected Information to Public Officers of Companies and Trusts

1.81 It is a requirement that companies and certain trusts have an individual appointed as their 'public officer' (sections 252 and 252A of the ITAA 1936). The purpose of the public officer is to facilitate the administration of the tax laws. In this regard, a public officer is answerable for all things done by the company or the trust under the tax laws. Everything done in the capacity of public officer is deemed to be done by the company or trust.

1.82 Division 355 of Schedule 1 to the TAA regulates the disclosure, by taxation officers, of protected information collected from taxpayers under the tax laws. The law does not currently allow the disclosure of protected information to public officers.

1.83 Current administrative practice, therefore, relies on another exception, found in paragraph 355-25(2)(g), for disclosure to nominated individuals. This requires the entity to nominate the public officer in an approved form to act on the entity's behalf. As the public officers are able to complete the form and nominate themselves, the practice imposes unnecessary compliance costs.

This amendment allows taxation officers to disclose protected information about an entity to the entity's public officer, and allows public officers to on-disclose the information, regardless of whether the public officer is nominated under paragraph 355-25(2)(g). ***[Schedule #, item 39, paragraph 355-25(2)(ba) of Schedule 1 to the TAA]***

1.84 The amendment applies to records or disclosures made on or after the day following Royal Assent (whenever the information was acquired). ***[Schedule #, item 40]***

Disclosure of Protected Information to Legal Practitioners

1.85 This amendment clarifies that taxation officers can make disclosures of taxpayer information to a legal practitioner representing an entity in relation to affairs under one or more tax laws, and not just the income tax laws. Ordinarily, taxation officers may make disclosures of taxpayer information to 'covered entities', which includes 'a legal practitioner representing the primary entity in relation to the primary entity's tax affairs'. 'Tax affairs' was defined as affairs relating to 'tax', and 'tax' was defined as income tax imposed by the ITAA 1936. This technically did not include legal practitioners if they represented an entity in relation to matters other than income tax, or if they represented an entity on a range of tax matters. ***[Schedule #, item 39, paragraph 355-25(2)(b) of Schedule 1 to the TAA]***

1.86 The amendment applies to records or disclosures made on or after the day following Royal Assent (whenever the information was acquired). ***[Schedule #, item 40]***

Updating references to the Crime and Misconduct Commission of Queensland

1.87 Effective from 1 July 2014, Queensland's Crime and Misconduct Commission was renamed the Crime and Corruption Commission (the Commission). Accordingly, item 41 updates the reference in the TAA to reflect this. ***[Schedule #, item 41, section 355-70 of Schedule 1 to the TAA]***

1.88 To remove doubt that the exemption from the secrecy provisions continues to apply to the renamed Commission, item 42 makes it clear that this amendment applies from 1 July 2014, to align with the change in name. ***[Schedule #, item 42]***

Style, spelling, grammatical and typographical errors

1.89 The following amendments are made to correct minor style, spelling and typographical errors:

Table 1.1: Style, spelling, grammatical and typographical errors

Item(s)	*Provision(s) Affected*
Schedule #, item 3	Paragraph 63-27(1)(b) of the GST Act
Schedule #, item 11	Subsection 272-87(3) of Schedule 2F to the ITAA 1936
Schedule #, item 15	Subsections 165-115AA(2) and (3) of Schedule 1 to the ITAA 1997
Schedule #, item 30	Note 3 to section 253 of the *Superannuation Industry (Supervision) Act 1993*

Part 2: Suspending or revoking endorsements for tax concessions

1.90 Schedule # to this Bill amends section 426-55 in Schedule 1 to the TAA to ensure that the Commissioner can revoke endorsement for access to certain tax concessions in relation to past periods of non-compliance regardless of whether such non-compliance is present at the time a decision to revoke endorsement happens. ***[Schedule #, items 46 to 48, and items 50 to 52, section 426-55 in Schedule 1 to the TAA]***

1.91 This Bill also proposes amending section 426-55 to make it clear that the Commissioner's revocation has effect for either a day specified by the Commissioner as set out in the section, or in relation to a period specified by the Commissioner. This will clarify that the Commissioner can revoke endorsement in relation to a prior period of non-compliance and need not revoke endorsement indefinitely from a particular day, that is, the Commissioner may suspend endorsement as opposed to revoking endorsement. ***[Schedule #, item 49, subsection 426-55(2) in Schedule 1 to the TAA]***

1.92 Consequential changes are made elsewhere in the taxation law. ***[Schedule #, items 43 to 45, and item 53, the note to subsection 30-228(1) of the ITAA 1997, and sections 426-1, 426-40 and 426-60 in Schedule 1 to the TAA]***

1.93 Section 426-55 in Schedule 1 to the TAA gives the Commissioner the power to revoke the endorsement of an entity to access a tax concession (e.g., a charity endorsed to access an income tax exemption) if certain circumstances are present. The primary circumstance is where the entity is not entitled to be endorsed because of non-complying behaviour. The revocation of endorsement happens from the day specified by the Commissioner. The objective of the endorsement regime is to ensure that before an entity accesses certain tax concessions, there is an assessment of the entity's entitlement by the Commissioner. The regime is then structured in a manner consistent with the self-assessment regime in that an entity has an obligation to advise the Commissioner if they are no longer entitled to endorsement so that the Commissioner can take necessary action to revoke endorsement. Similarly, the Commissioner may by way of audit, identify an entity was not entitled to endorsement in relation to a prior period, and can revoke endorsement retrospectively.

1.94 In the case of *Cancer and Bowel Research Association Inc v Commissioner of Taxation*[1], the Federal Court of Australia identified a defect in the revocation provisions in that the Commissioner would not be able to revoke endorsement in a situation in which he or she has identified (through audit) that the entity is no longer entitled to be endorsed but at the time the Commissioner makes a decision to revoke endorsement, the entity changes its behaviour to be entitled to endorsement on that day.

1.95 The consequence of this defect is that non-complying entities can frustrate the Commissioner's actions to revoke endorsement (because of non-complying behaviour over an extended period), by changing its behaviour when it gets notice of an audit or compliance action.

1 [2013] FCAFC 140.

1.96 The amendments correct the defect and ensure the Commissioner can take appropriate action in relation to past periods of non-compliance, identified by way of audit, by either suspending or revoking endorsement in relation to those periods of non-compliance where such action is appropriate given the circumstances of the taxpayer concerned.

1.97 The amendments made by Part 2 apply to decisions to revoke or suspend endorsements where the decision is made on or after the day after this Bill receives Royal Assent (regardless of when the endorsement took effect). ***[Schedule #, item 54].***

Part 3: Other Amendments and Corrections to Previous Amending Acts

1.98 Part 3 of Schedule # makes a number of corrections to previous amending Acts to ensure that the amendments made under the earlier Acts are effective.

1.99 The amendments in this Part to previous amending Acts commence immediately following the commencement of the provisions they amend. This retrospectivity is necessary to ensure the amending Acts operate as intended.

Classes of expenditure in the PRRTAA

1.100 The PRRTAA sets out ten categories of deductible expenditure, including "Class 2 augmented bond rate general expenditure" in section 34A and "Class 1 GDP factor expenditure" in section 35. Each of the ten categories of expenditure in the PRRTAA was designed to be mutually exclusive.

1.101 "Class 2 augmented bond rate general expenditure" *excludes* expenditure incurred more than five years before the earlier of the day specified in the production licence and the day the production licence was issued.

1.102 Before this amendment, "Class 1 GDP factor expenditure" *included* expenditure incurred more than five years before the production licence came into force.

1.103 Therefore, before this amendment, there was a potential for petroleum project expenditure to satisfy the definition of both "Class 2 augmented bond rate general expenditure" and "Class 1 GDP factor expenditure" if the day specified in the production licence was earlier than the day the licence was issued and came into force. For example, project expenditure incurred on 1 May 2009 would have satisfied the definition of both classes of expenditure if the production licence was issued (and came

into force) on 1 June 2014 but the day specified in the licence was 1 April 2014.

1.104 The unintended overlap between the two classes of expenditure arose when the relevant date for "Class 2 augmented bond rate general expenditure" was amended by the *Petroleum Resource Rent Tax Assessment Amendment Act 2012*, but a consequential amendment was not made to amend the date for "Class 1 GDP factor expenditure".

1.105 This item amends the qualifying dates for "Class 1 GDP factor expenditure" so that they are the same as the dates for "Class 2 augmented bond rate general expenditure". This removes the unintended overlap between the two classes of expenditure. ***[Schedule #, item 55, paragraph 35(1)(a) of the PRRTAA]***

1.106 The amendment applies retrospectively from the day that the *Petroleum Resource Rent Tax Assessment Amendment Act 2012* commenced. It is a technical amendment to the definition of "Class 1 GDP factor expenditure" and corrects a drafting error. The amendment does not alter the intention of the law or the way the section is administered. It is not expected that any taxpayers will be adversely affected by the retrospective operation of the amendment.

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012 – References to the Commissioner

1.107 Items 22, 23 and 46 of Schedule 4 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* amended subsections 299TA(1) and 299TB(1) of the *Superannuation Industry (Supervision) Act 1993*, and subsection 143B(1) of the *Retirement Savings Accounts Act 1997* to insert the abbreviation 'Commissioner' for the Commissioner of Taxation.

1.108 This amendment ensures that the abbreviation is only inserted once in each subsection. ***[Schedule #, items 56, 57 and 59, items 22, 23 and 46 of Schedule 4 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012]***

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012 – Cross-referencing Error

1.109 Subitem 30(2) of Schedule 4 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* referred to a regulation made for the purposes of subsection 45S(1) of the *Retirement Savings Accounts Act 1997*.

1.110 This amendment corrects the incorrect subsection reference to subsection 45R(1). ***[Schedule #, item 58, subitem 30(2) of Schedule 4 to the***

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012]

Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

1.111 Sections 29QB and 29QC of the SIS Act were inserted by item 42 of Schedule 3 to the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*. Item 42 misdescribed where they were to be added: it provided for the sections to be added at the end of Division 6 of Part 2B, but that Division was repealed before the item was enacted.

1.112 This amendment corrects the error in the 2012 amending Act and provides that the provisions are to be located in a new Division 5 of Part 2B of the SIS Act. ***[Schedule #, items 60 and 61, item 42 of Schedule 30 to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012]***

1.113 The misdescribed amendments contained regulation-making powers. These amendments therefore contain provisions to ensure the validity of regulations made in reliance on the amendments. ***[Schedule #, item 62]***

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

1.114 Item 11 of Schedule 1 to the *Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013* was intended to include "documentary" in the definition section at subsection 995-1(1) of the ITAA 1997. The entry for "documentary" was to refer to the definition in section 376-25 of the ITAA 1997.

1.115 Prior to this miscellaneous amendment, item 11 did not take effect as the drafting direction ("insert") was omitted.

1.116 This amendment inserts the drafting direction into the amending Act so that item 11 takes effect. ***[Schedule #, item 63, item 11 of Schedule 1 to the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013]***

Tax Laws Amendment (2013 Measures No.2) Act 2013

1.117 Schedule 2 to *Tax Laws Amendment (2013 Measures No. 2) Act 2013* introduced a tax incentive for entities that carry on nationally significant designated infrastructure projects. The tax incentive (which is contained in Division 415 of the ITAA 1997):

- uplifts the value of carry forward tax losses by the long term bond rate; and

- exempts the losses from the continuity of ownership, same business, trust loss and bad debt deduction tests.

1.118 Item 34 of that Schedule made a minor consequential amendment to section 719-265 of the ITAA 1997 relating to the operation of the tax incentive for consolidated groups.

1.119 These miscellaneous amendments amend item 34 of Schedule 2 to *Tax Laws Amendment (2013 Measures No. 2) Act 2013* to correct the location of commas. ***[Schedule #, items 64 and 65, item 34 of Schedule 2 to Tax Laws Amendment (2013 Measures No. 2) Act 2013]***