

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2012 Measures**
3 **No. 2) Bill 2012: Companies’**
4 **non-compliance with PAYG withholding**
5 **and superannuation guarantee**
6 **obligations**
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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	
4. Schedule 3, Part 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day the <i>Pay As You Go Withholding Non-compliance Tax Act 2012</i> receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 3, Part 3, Division 1	The day after this Act receives the Royal Assent.	
6. Schedule 3, Part 3, Division 2	Immediately after the commencement of the provision(s) covered by table item 3.	

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Schedule 3—Companies' non-compliance with PAYG withholding and superannuation guarantee obligations

Part 1—Recovery of penalties

Division 1—Amendments applying to future and undischarged penalties

Taxation Administration Act 1953

1 At the end of section 8AAZL

Add:

- (4) Furthermore, the Commissioner does not have to treat an amount using either of those methods if:
- (a) doing so would require the Commissioner to apply the amount against a tax debt; and
 - (b) the tax debt is a penalty that is due and payable under section 269-20 in Schedule 1 (penalties for directors of non-complying companies).

2 Subsections 269-35(1) to (4) in Schedule 1

Repeal the subsections, substitute:

Illness

- (1) You are not liable to a penalty under this Division if, because of illness or for some other good reason, it would have been unreasonable to expect you to take part, and you did not take part, in the management of the company at any time when:
- (a) you were a director of the company; and
 - (b) the directors were under the relevant obligations under subsection 269-15(1).

All reasonable steps

- (2) You are not liable to a penalty under this Division if:
- (a) you took all reasonable steps to ensure that one of the following happened:

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- 1 (i) the directors caused the company to comply with its
2 obligation;
- 3 (ii) the directors caused an administrator of the company to
4 be appointed under section 436A, 436B or 436C of the
5 *Corporations Act 2001*;
- 6 (iii) the directors caused the company to begin to be wound
7 up (within the meaning of that Act); or
- 8 (b) there were no reasonable steps you could have taken to
9 ensure that any of those things happened.

- 10 (3) In determining what are reasonable steps for the purposes of
11 subsection (2), have regard to:
- 12 (a) when, and for how long, you were a director and took part in
13 the management of the company; and
14 (b) all other relevant circumstances.

15 *When you can rely on this section*

- 16 (4) For the purposes of:
- 17 (a) proceedings in a court to recover from you a penalty payable
18 under this Division; or
- 19 (b) proceedings in a court against you in relation to a right
20 referred to in paragraph 269-45(2)(b) (directors jointly and
21 severally liable as guarantors);
- 22 subsection (1) or (2) of this section does not apply unless you
23 prove the matters mentioned in that subsection.

- 24 (4A) For the purpose of the Commissioner recovering from you a
25 penalty payable under this Division (other than as mentioned in
26 subsection (4)), subsection (1) or (2) does not apply unless:
- 27 (a) you provide information to the Commissioner during the
28 period of 60 days starting on the day the Commissioner:
- 29 (i) in the case of the Commissioner recovering the penalty
30 under section 260-5 (Commissioner may collect
31 amounts from third party)—gives you a notice under
32 subsection 260-5(6) in relation to the penalty; or
- 33 (ii) otherwise—notifies you in writing that he or she has
34 recovered any of the penalty; and
- 35 (b) the Commissioner is satisfied of the matters mentioned in
36 subsection (1) or (2) of this section on the basis of that
37 information.

38 **3 After section 269-50 in Schedule 1**

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1 Insert:

2 **269-52 Copies of notices**

3 (1) If:

4 (a) the Commissioner gives you a notice under section 269-25 in
5 accordance with section 269-50; and

6 (b) you have given the address of a *registered tax agent to the
7 Commissioner as your address for service for the purposes of
8 any *taxation law;

9 the Commissioner may also give you a copy of the notice.

10 (2) The Commissioner may do so by leaving the copy at, or posting
11 the copy to, the address of the *registered tax agent.

12 (3) To avoid doubt, this section does not affect:

13 (a) whether the Commissioner has given you the actual notice; or

14 (b) how the Commissioner may give you the actual notice.

15 **4 Application of amendments**

16 The amendments made by this Division apply to penalties that are:

17 (a) payable under Subdivision 269-B in Schedule 1 to the
18 *Taxation Administration Act 1953* (including penalties in
19 relation to which subitem 65(4) of Schedule 1 to the *Tax*
20 *Laws Amendment (Transfer of Provisions) Act 2010* applies);
21 and

22 (b) due:

23 (i) at or after the commencement of this item; or

24 (ii) before the commencement of this item, to the extent the
25 penalties are not paid, remitted or discharged before the
26 commencement of this item.

27 Note: Subitem 65(4) of Schedule 1 to the *Tax Laws Amendment (Transfer of Provisions) Act*
28 2010 applies in relation to penalties that were payable under Division 9 of former
29 Part VI of the *Income Tax Assessment Act 1936*.

30 **Division 2—Penalties for new directors**

31 ***Taxation Administration Act 1953***

32 **5 Paragraph 269-20(3)(b) in Schedule 1**

33 Omit “14 days”, substitute “30 days”.

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1 **6 Subsection 269-20(4) in Schedule 1**

2 Omit “14th day”, substitute “30th day”.

3 **7 Application of amendments**

4 The amendments made by this Division apply to you, in relation to an
5 obligation under section 269-15 in Schedule 1 to the *Taxation*
6 *Administration Act 1953*, if you:

- 7 (a) become a director of the relevant company; and
8 (b) begin to be under the obligation;
9 on or after the commencement of this item.

10 **Division 3—Remission of penalties**

11 *Taxation Administration Act 1953*

12 **8 Section 269-30 in Schedule 1**

13 Repeal the section, substitute:

14 **269-30 Effect on penalty of directors’ obligation ending before end**
15 **of notice period**

- 16 (1) Subject to subsection (2), a penalty of yours under this Division is
17 remitted if the directors of the company stop being under the
18 relevant obligation under section 269-15:
19 (a) before the Commissioner gives you notice of the penalty
20 under section 269-25; or
21 (b) within 21 days after the Commissioner gives you notice of
22 the penalty under that section.

23 (2) The following table has effect:
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The amendment made by this Division applies, in relation to a penalty under Division 269 in Schedule 1 to the *Taxation Administration Act 1953*, if the directors of the relevant company stop being under the relevant obligation under section 269-15 in that Schedule on or after the commencement of this item.

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1 Part 2—Credits

2 *Income Tax Assessment Act 1997*

3 **10 Subsection 86-40(2) (note 2)**

4 Omit “and PAYG credits (see Subdivisions 16-C and 18-A”, substitute
5 “, PAYG credits and PAYG withholding non-compliance tax (see
6 Subdivisions 16-C, 18-A and 18-D”.

7 **11 Subsection 995-1(1)**

8 Insert:

9 *PAYG withholding non-compliance tax* means the Pay as you go
10 withholding non-compliance tax imposed under the *Pay As You Go*
11 *Withholding Non-compliance Tax Act 2012*.

12 *Taxation Administration Act 1953*

13 **12 Subsection 8AAB(4) (after table item 38)**

14 Insert:

38A	18-150 in Schedule 1	<i>Taxation Administration Act</i> <i>1953</i>	PAYG withholding non-compliance tax
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15 **13 At the end of section 18-5 in Schedule 1**

16 Add:

17 Note: See also Subdivision 18-D (PAYG withholding non-compliance tax,
18 which can reverse the economic benefit of a credit of a director, or an
19 associate of a director, of a company that does not comply with its
20 obligations under subsection 16-70(1)).

21 **14 At the end of Division 18 in Schedule 1**

22 Add:

23 **Subdivision 18-D—Directors etc. of non-complying companies**

24 **Table of sections**

25 **Object of Subdivision**

26 18-120 Object of Subdivision

27 **PAYG withholding non-compliance tax**

28 18-125 Directors of non-complying companies

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1	18-130	Directors of non-complying companies—tax reduced in certain
2		circumstances
3	18-135	Associates of directors of non-complying companies
4	18-140	Notices
5	18-145	When PAYG withholding non-compliance tax must be paid
6	18-150	General interest charge payable on unpaid PAYG withholding
7		non-compliance tax
8	18-155	Validity of decisions and evidence
9	18-160	Rights of indemnity and contribution

10 Credits for later compliance

11	18-165	Credits for later compliance—scope
12	18-170	Credits for later compliance—Commissioner must give notice in certain
13		circumstances
14	18-175	Credits for later compliance—Commissioner may give notice
15	18-180	Effect of earlier credits

16 Other provisions

17	18-185	When Commissioner may give notice
18	18-190	Review of decisions

19 Object of Subdivision

20 18-120 Object of Subdivision

21 The object of this Subdivision is to reverse the economic benefit of
22 a credit under section 18-15 (Tax credit for recipient of
23 withholding payment) of a director, or an *associate of a director,
24 of a company if:

- 25 (a) the company does not comply with its obligations under
26 subsection 16-70(1) (obligation to pay amounts withheld to
27 the Commissioner); and
- 28 (b) the credit is attributable to *amounts withheld from
29 *withholding payments made by the company to the director
30 or associate;

31 until the company complies with its obligations.

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1 PAYG withholding non-compliance tax

2 18-125 Directors of non-complying companies

3 *Liability to pay PAYG withholding non-compliance tax*

- 4 (1) An individual must pay *PAYG withholding non-compliance tax in
5 relation to a company for an income year of the individual if:
6 (a) the individual is or has been a director (within the meaning of
7 the *Corporations Act 2001*) of the company; and
8 (b) the company was required to pay to the Commissioner under
9 subsection 16-70(1) in this Schedule amounts:
10 (i) the company withheld from *withholding payments the
11 company made to any entities during the income year of
12 the individual; and
13 (ii) to which subsection (2) applies; and
14 (c) the company did not pay the total of those amounts to the
15 Commissioner on or before the last day (the ***non-compliance***
16 ***day***) on or before which the company was required to pay
17 any of those amounts to the Commissioner in accordance
18 with subsection 16-70(1); and
19 (d) a credit to which the individual is entitled under
20 section 18-15 is attributable to an extent to *amounts
21 withheld by the company under Division 12 from
22 withholding payments made to the individual during the
23 income year of the individual.

24 Note: For the purposes of paragraph (1)(d), it does not matter whether
25 the company pays the amounts withheld from the withholding
26 payments made to the individual to the Commissioner under
27 subsection 16-70(1).

- 28 (2) This subsection applies to *amounts withheld that the company was
29 required to pay to the Commissioner on or before a particular day
30 (the ***payment day***) under subsection 16-70(1), if:
31 (a) both of the following subparagraphs apply:
32 (i) the individual was a director (within the meaning of the
33 *Corporations Act 2001*) of the company on the payment
34 day;
35 (ii) the company did not pay the total of those amounts to
36 the Commissioner in accordance with subsection
37 16-70(1) on or before the payment day; or
38 (b) all of the following subparagraphs apply:

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- 1 (i) the individual became a director of the company after
2 the payment day;
3 (ii) the individual was still a director of the company 30
4 days after becoming a director;
5 (iii) the company did not pay the total of those amounts to
6 the Commissioner in accordance with subsection
7 16-70(1) on or before the last of those 30 days.

8 *Amount of tax*

- 9 (3) The amount of the *PAYG withholding non-compliance tax the
10 individual must pay is the lesser of:
11 (a) the extent of the credit mentioned in paragraph (1)(d); and
12 (b) the total amount the company did not pay to the
13 Commissioner as mentioned in paragraph (1)(c).

14 **18-130 Directors of non-complying companies—tax reduced in**
15 **certain circumstances**

- 16 (1) The amount of the *PAYG withholding non-compliance tax the
17 individual must pay as mentioned in section 18-125 is reduced if
18 the Commissioner gives a notice to the individual under this
19 section.

20 *Notice*

- 21 (2) The Commissioner must give a written notice to the individual on a
22 day (the **reduction notice day**) (whether before, on or after the day
23 (if any) the Commissioner gives the individual the relevant notice
24 under section 18-140), if the Commissioner is satisfied that:
25 (a) because of illness or for some other good reason, it would
26 have been unreasonable to expect the individual to take part,
27 and the individual did not take part, in the management of the
28 company at any time during the period:
29 (i) starting on a day on or by which the company was
30 required to pay any of the total mentioned in paragraph
31 18-125(1)(c) to the Commissioner under subsection
32 16-70(1); and
33 (ii) ending on the reduction notice day; or
34 (b) the individual took all reasonable steps to ensure that one of
35 the following happened:
36 (i) the directors (within the meaning of the *Corporations*
37 *Act 2001*) of the company caused the company to pay

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1 the total of the amounts mentioned in paragraph
2 18-125(1)(c) to the Commissioner;
3 (ii) the directors caused an administrator of the company to
4 be appointed under section 436A, 436B or 436C of the
5 *Corporations Act 2001*;
6 (iii) the directors caused the company to begin to be wound
7 up (within the meaning of that Act);
8 or there were no reasonable steps the individual could have
9 taken to ensure that any of those things happened.

- 10 (3) In determining what are reasonable steps for the purposes of
11 paragraph (2)(b), the Commissioner must have regard to:
12 (a) when, and for how long, the individual was a director and
13 took part in the management of the company; and
14 (b) all other relevant circumstances.

15 *Amount of reduction*

- 16 (4) The amount of the reduction is the amount stated in the notice.
17 (5) In determining the amount to state in the notice, the Commissioner
18 must have regard to:
19 (a) in a case to which paragraph (2)(a) applies—when, and for
20 how long, the individual could not have been expected to
21 take part, and did not take part, in the management of the
22 company; and
23 (b) in a case to which paragraph (2)(b) applies—when, and for
24 how long, the individual was a director and took part in the
25 management of the company; and
26 (c) in either case—what is fair and reasonable in the
27 circumstances.

28 *Effect of reduction*

- 29 (6) The amount of the *PAYG withholding non-compliance tax the
30 individual must pay is treated as always having been that amount
31 as reduced under this section.

32 **18-135 Associates of directors of non-complying companies**

33 *Liability to pay PAYG withholding non-compliance tax*

- 34 (1) An individual must pay *PAYG withholding non-compliance tax in
35 relation to a company for an income year of the individual if:

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- 1 (a) at a time when another individual (the *director*) was a
2 director (within the meaning of the *Corporations Act 2001*)
3 of the company, the first individual was an *associate of the
4 director; and
- 5 (b) the company was required to pay to the Commissioner under
6 subsection 16-70(1) in this Schedule amounts:
- 7 (i) the company withheld from *withholding payments the
8 company made to any entities during the income year of
9 the individual; and
- 10 (ii) to which subsection (2) of this section applies; and
- 11 (c) the company did not pay the total of those amounts to the
12 Commissioner on or before the last day (the *non-compliance*
13 *day*) on or before which the company was required to pay
14 any of those amounts to the Commissioner in accordance
15 with subsection 16-70(1); and
- 16 (d) subsection (3) or (6) of this section applies; and
- 17 (e) a credit to which the individual is entitled under
18 section 18-15 is attributable to an extent to *amounts
19 withheld by the company under Division 12 from
20 withholding payments made to the individual during the
21 income year of the individual.

22 Note: For the purposes of paragraph (1)(e), it does not matter whether
23 the company pays the amounts withheld from the withholding
24 payments made to the individual to the Commissioner under
25 subsection 16-70(1).

- 26 (2) This subsection applies to *amounts withheld that the company was
27 required to pay to the Commissioner on or before a particular day
28 (the *payment day*) under subsection 16-70(1), if:
- 29 (a) all of the following subparagraphs apply:
- 30 (i) the director was a director (within the meaning of the
31 *Corporations Act 2001*) of the company on the payment
32 day;
- 33 (ii) the individual was an *associate of the director on the
34 payment day;
- 35 (iii) the company did not pay the total of those amounts to
36 the Commissioner in accordance with subsection
37 16-70(1) on or before the payment day; or
- 38 (b) all of the following subparagraphs apply:
- 39 (i) the director became a director of the company after the
40 payment day;
- 41 (ii) the director was still a director of the company 30 days
42 after becoming a director;
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- 1 (iii) the individual was an *associate of the director
2 throughout that 30 day period;
- 3 (iv) the company did not pay the total of those amounts to
4 the Commissioner in accordance with subsection
5 16-70(1) on or before the last of those 30 days.
- 6 (3) This subsection applies if the Commissioner is satisfied that:
- 7 (a) because of:
- 8 (i) the individual's relationship with the director; or
9 (ii) a relationship of the individual with the company;
10 the individual knew, or could reasonably have been expected
11 to know, of the company's failure to pay the total of the
12 amounts mentioned in paragraph (1)(c) to the Commissioner;
13 and
- 14 (b) none of the following subparagraphs applies:
- 15 (i) the individual took all reasonable steps to influence the
16 director to cause the company to notify the
17 Commissioner under Subdivision 18-C of the relevant
18 *amounts withheld;
- 19 (ii) the individual took all reasonable steps to influence the
20 director to cause one of the events mentioned in
21 subsection (4) to happen, or there were no reasonable
22 steps the individual could have taken to influence the
23 director to cause any of those events to happen;
- 24 (iii) the individual reported the company's non-payment to
25 the Commissioner or to another authority with
26 responsibilities relevant to the operation of the
27 company.
- 28 Example: Other authorities with responsibilities relevant to the operation of
29 the company could include the Minister, the police, the
30 Australian Securities and Investments Commission or the
31 Building and Construction Industry Commissioner.
- 32 (4) The following are the events:
- 33 (a) the company pays the total of the amounts mentioned in
34 paragraph (1)(c) to the Commissioner;
- 35 (b) an administrator of the company is appointed under
36 section 436A, 436B or 436C of the *Corporations Act 2001*;
- 37 (c) the company begins to be wound up (within the meaning of
38 that Act).
- 39 (5) In determining what are reasonable steps for the purposes of
40 paragraph (3)(b), have regard to:
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- 1 (a) when, and for how long, the individual was an *associate of
2 the director; and
3 (b) when, and for how long, the director was a director and took
4 part in the management of the company; and
5 (c) all other relevant circumstances.

- 6 (6) This subsection applies if:
7 (a) the individual was an employee of the company; and
8 (b) the Commissioner is satisfied that the company treated the
9 individual more favourably than it treated other employees of
10 the company.

11 *Amount of tax*

- 12 (7) The amount of the *PAYG withholding non-compliance tax the
13 individual must pay is the lesser of:
14 (a) the extent of the credit mentioned in paragraph (1)(e); and
15 (b) the total amount the company did not pay to the
16 Commissioner as mentioned in paragraph (1)(c).

17 **18-140 Notices**

18 *Notices*

- 19 (1) The Commissioner must not commence proceedings to recover:
20 (a) the *PAYG withholding non-compliance tax an individual
21 must pay for an income year in relation to a company as
22 mentioned in section 18-125 or 18-135; or
23 (b) any related *general interest charge payable under
24 section 18-150;
25 unless, after the non-compliance day mentioned in section 18-125
26 or 18-135, the Commissioner gives a written notice to the
27 individual under this section.
- 28 (2) The Commissioner may only give the notice if the Commissioner
29 is satisfied, on the basis of information available to the
30 Commissioner, that it is fair and reasonable for the individual to
31 pay *PAYG withholding non-compliance tax in relation to the
32 company for the income year.
- 33 (3) The Commissioner must not give the notice on a day if, on that
34 day:
35 (a) the individual; or

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1 (b) in a case to which section 18-135 applies—the director
2 mentioned in that section;
3 is liable to pay to the Commissioner a penalty under Division 269
4 because the company has not complied with the obligation
5 mentioned in item 1 of the table in subsection 269-10(1) to pay to
6 the Commissioner an *amount withheld to which paragraph
7 18-125(1)(b) or 18-135(1)(b) applies.

- 8 (4) The notice must specify:
9 (a) the company; and
10 (b) the income year; and
11 (c) the amount of the *PAYG withholding non-compliance tax
12 the individual must pay.

13 *Effect of compliance between non-compliance day and notice day*

- 14 (5) Subsections (6) and (7) apply if:
15 (a) the company's liability to pay the total of the amounts
16 mentioned in paragraph 18-125(1)(c) or 18-135(1)(c) to the
17 Commissioner is discharged to any extent during the period:
18 (i) starting on the day after the non-compliance day; and
19 (ii) ending on the day before the day the Commissioner
20 gives the notice under this section to the individual; and
21 (b) had all discharges of the company's liability occurring during
22 that period occurred before the non-compliance day:
23 (i) the individual would not have been required to pay the
24 *PAYG withholding non-compliance tax in relation to
25 the company for the income year; or
26 (ii) the amount of PAYG withholding non-compliance tax
27 the individual would have been required to pay would
28 have been less than the actual amount of PAYG
29 withholding non-compliance tax.

- 30 (6) The amount of the *PAYG withholding non-compliance tax the
31 individual must pay is reduced:
32 (a) in a case to which subparagraph (5)(b)(i) applies—to nil; or
33 (b) otherwise—to the amount of PAYG withholding
34 non-compliance tax the individual would have been required
35 to pay as mentioned in subparagraph (5)(b)(ii).

- 36 (7) The amount of the *PAYG withholding non-compliance tax the
37 individual must pay is treated as always having been that amount
38 as reduced under subsection (6).

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18-145 When PAYG withholding non-compliance tax must be paid

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2 (1) The *PAYG withholding non-compliance tax an individual must
3 pay for an income year is due and payable at the earliest time any
4 of the income tax the individual must pay for the *financial year to
5 which the income year relates is due and payable.

6 Note: Division 5 of the *Income Tax Assessment Act 1997* explains how to
7 work out when to pay your income tax.

- 8 (2) For the purposes of subsection (1), if the individual is not required
9 to pay income tax for the *financial year:
10 (a) treat the individual as being required to pay income tax for
11 the financial year; and
12 (b) if the Commissioner has made an assessment that the income
13 tax the individual is required to pay is nil—treat that
14 assessment as being for an amount greater than nil.

15 Note: See Part 4-15 in this Schedule for collection and recovery provisions.

18-150 General interest charge payable on unpaid PAYG withholding non-compliance tax

16 If an amount of *PAYG withholding non-compliance tax that an
17 individual must pay to the Commissioner remains unpaid after the
18 time by which it is due to be paid, the individual is liable to pay
19 *general interest charge on the unpaid amount of tax for each day
20 in the period that:
21
22

- 23 (a) started at the beginning of the day by which the unpaid
24 amount of tax was due to be paid; and
25 (b) finishes at the end of the last day, at the end of which, any of
26 the following remains unpaid:
27 (i) the unpaid amount of tax;
28 (ii) general interest charge on any of the unpaid amount of
29 tax.

18-155 Validity of decisions and evidence

- 30
31 (1) Section 175 of the *Income Tax Assessment Act 1936* (validity)
32 applies to a decision of the Commissioner under section 18-140 in
33 this Schedule in the same way as it applies to an assessment.
34 (2) Section 177 of the *Income Tax Assessment Act 1936* (Evidence)
35 applies to a notice under section 18-140 in this Schedule in the
36 same way as it applies to a notice of assessment.

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18-160 Rights of indemnity and contribution

- 1
- 2 (1) This section applies if an individual must pay *PAYG withholding
3 non-compliance tax as mentioned in section 18-125 or 18-135
4 because a company did not pay an amount to the Commissioner as
5 mentioned in paragraph 18-125(1)(c) or 18-135(1)(c).
- 6 (2) The individual has the same rights (whether by way of indemnity,
7 subrogation, contribution or otherwise) against the company or
8 anyone else as if:
- 9 (a) the individual had made a payment equal to the amount of the
10 *PAYG withholding non-compliance tax under a guarantee
11 of the liability of the company to pay the amount to the
12 Commissioner; and
- 13 (b) under the guarantee:
- 14 (i) the individual; and
15 (ii) every individual to whom subsection (3) applies;
16 were jointly and severally liable as guarantors (but only, in
17 the case of an individual to whom subparagraph (ii) of this
18 paragraph applies, to the extent to which subsection (3)
19 applies to the individual); and
- 20 (c) any credit to which the individual mentioned in
21 subsection (1) is entitled under section 18-170 or 18-175 in
22 relation to the amount of PAYG withholding non-compliance
23 tax were a repayment of the payment mentioned in
24 paragraph (a) of this subsection.
- 25 (3) This subsection applies to an individual to the extent that:
- 26 (a) the individual was a director (within the meaning of the
27 *Corporations Act 2001*) of the company on the day (the
28 **payment day**) on or by which the company was required to
29 pay the amount mentioned in subsection (1) to the
30 Commissioner; or
- 31 (b) both of the following subparagraphs apply:
- 32 (i) the individual became a director of the company after
33 the payment day;
- 34 (ii) the individual was still a director of the company 30
35 days after becoming a director.
- 36 (4) However, subsection (3) does not apply to an individual to the
37 extent that the amount of the *PAYG withholding non-compliance
38 tax the individual must pay in relation to the company for the
39 income year as mentioned in section 18-125 is reduced under
40 section 18-130.
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1 Credits for later compliance

2 18-165 Credits for later compliance—scope

3 Sections 18-170, 18-175 and 18-180 apply if:

- 4 (a) an individual must pay *PAYG withholding non-compliance
5 tax in relation to a company for an income year because the
6 company did not pay to the Commissioner the total of the
7 amounts mentioned in paragraph 18-125(1)(c) or
8 18-135(1)(c); and
- 9 (b) the Commissioner gives to the individual a notice under
10 section 18-140 on a particular day (the *tax notice day*) in
11 relation to the PAYG withholding non-compliance tax the
12 individual must pay; and
- 13 (c) on or after the tax notice day, the company's liability to pay
14 the total of the amounts to the Commissioner is discharged to
15 any extent.

16 18-170 Credits for later compliance—Commissioner must give 17 notice in certain circumstances

18 *Commissioner must give notice to director or associate in certain
19 circumstances*

- 20 (1) The Commissioner must give a written notice to the individual on a
21 particular day (the *credit notice day*) if, had the discharge
22 mentioned in paragraph 18-165(c) (and all previous discharges of
23 the company's liability mentioned in that paragraph) occurred
24 before the tax notice day:
- 25 (a) the individual would not have been required to pay the
26 *PAYG withholding non-compliance tax in relation to the
27 company for the income year; or
- 28 (b) the amount of PAYG withholding non-compliance tax the
29 individual would have been required to pay would have been
30 less than the actual amount of PAYG withholding
31 non-compliance tax.

32 Note 1: Subsection 18-180(2) provides that the Commissioner must not give a
33 notice to the individual in certain circumstances.

34 Note 2: The amount of PAYG withholding non-compliance tax may be limited
35 by:

- 36 (a) the conditions in subsections 18-125(1) and (2) or 18-135(1) to
37 (6); or
- 38 (b) the limits on the amount of the tax in subsection 18-125(3) or
39 18-135(7).

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1 Note 3: In working out the actual amount of the tax for the purposes of
2 paragraph (1)(b), have regard to other credits to which the individual
3 is entitled under this section or section 18-175. See subsection
4 18-180(1).

5 *Director or associate entitled to credit if Commissioner gives*
6 *notice*

- 7 (2) The individual is entitled to a credit if the Commissioner gives a
8 written notice to the individual under subsection (1).
- 9 (3) The individual becomes entitled to the credit on the day the
10 Commissioner gives the notice to the individual.

11 *Amount of credit*

- 12 (4) The amount of the credit is the amount stated in the notice.
- 13 (5) In a case to which paragraph (1)(a) applies, the amount stated must
14 be the amount of the *PAYG withholding non-compliance tax.
- 15 (6) In any other case, the amount stated:
- 16 (a) must not exceed the amount of the *PAYG withholding
17 non-compliance tax; and
- 18 (b) must not exceed the amount of the discharge mentioned in
19 paragraph 18-165(c); and
- 20 (c) must not be less than the amount by which:
- 21 (i) the amount of the PAYG withholding non-compliance
22 tax; exceeds
- 23 (ii) the amount that would have been the amount of the
24 PAYG withholding non-compliance tax had the
25 discharge mentioned in paragraph 18-165(c) (and all
26 previous discharges of the company's liability
27 mentioned in that paragraph) occurred before the tax
28 notice day.
- 29 (7) In determining the amount to state in the notice in a case to which
30 paragraph (1)(a) does not apply, the Commissioner must have
31 regard to what is fair and reasonable in the circumstances.

32 **18-175 Credits for later compliance—Commissioner may give notice**

33 *Commissioner may give notice to director or associate*

- 34 (1) The Commissioner may give a written notice to the individual on a
35 particular day (the *credit notice day*).
-

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1 Note: Subsection 18-180(2) provides that the Commissioner must not give a
2 notice to the individual in certain circumstances.

3 *Director or associate entitled to credit if Commissioner gives*
4 *notice*

5 (2) The individual is entitled to a credit if the Commissioner gives a
6 written notice to the individual under subsection (1).

7 (3) The individual becomes entitled to the credit on the day the
8 Commissioner gives the notice to the individual.

9 *Amount of credit*

10 (4) The amount of the credit is the amount stated in the notice.

11 (5) The amount stated:

12 (a) must not exceed the amount of the *PAYG withholding
13 non-compliance tax; and

14 Note: In working out the amount of the tax for the purposes of
15 paragraph (5)(a), have regard to other credits to which the
16 individual is entitled under section 18-170 or this section. See
17 subsection 18-180(1).

18 (b) must not exceed the amount of the discharge mentioned in
19 paragraph 18-165(c).

20 *Commissioner's discretion*

21 (6) In determining:

22 (a) whether to give a notice under this section; or

23 (b) the amount to state in the notice;

24 the Commissioner must have regard to what is fair and reasonable
25 in the circumstances.

26 **18-180 Effect of earlier credits**

27 (1) A reference in section 18-170 or 18-175, or subsection (2) of this
28 section, to the amount of the *PAYG withholding non-compliance
29 tax is treated as being a reference to:

30 (a) the amount of the PAYG withholding non-compliance tax;
31 less

32 Note: The amount of the PAYG withholding non-compliance tax may,
33 in a case to which section 18-125 applies, be affected by
34 reductions under section 18-130.

35 (b) the total of any credits to which the individual is entitled in
36 relation to the amount of PAYG withholding non-compliance

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1 tax because of notices given to the individual under
2 section 18-170 or 18-175 before the credit notice day.

- 3 (2) The Commissioner must not give a written notice to the individual
4 under section 18-170 or 18-175 if, on the day before the credit
5 notice day, the amount of the *PAYG withholding non-compliance
6 tax is nil.

7 Other provisions

8 18-185 When Commissioner may give notice

9 The Commissioner may give a notice to the individual on a day
10 (the *notice day*) under section 18-130, 18-140, 18-170 or 18-175 if:

- 11 (a) on the notice day, the Commissioner has not given a notice of
12 assessment to the individual for the income year mentioned
13 in section 18-125 or 18-135; or
14 (b) if the notice would:
15 (i) in the case of a notice under section 18-130—result in
16 the individual being liable to pay *PAYG withholding
17 non-compliance tax or an increased amount of PAYG
18 withholding non-compliance tax; or
19 (ii) in the case of a notice under section 18-140—result in
20 the Commissioner being able to commence proceedings
21 to recover PAYG withholding non-compliance tax, or
22 an increased amount of PAYG withholding
23 non-compliance tax, from the individual; or
24 (iii) in the case of a notice under section 18-170 or 18-175—
25 reduce the amount of a credit or disentitle the individual
26 to a credit;

27 the Commissioner gives the notice no later than 2 years after
28 first giving a notice of assessment to the individual for the
29 income year mentioned in section 18-125 or 18-135; or

- 30 (c) if the notice would:
31 (i) in the case of a notice under section 18-130—result in
32 the individual being liable to pay no PAYG withholding
33 non-compliance tax, or a reduced amount of PAYG
34 withholding non-compliance tax; or
35 (ii) in the case of a notice under section 18-140—result in
36 the Commissioner no longer being able to commence
37 proceedings to recover PAYG withholding
38 non-compliance tax, or result in the Commissioner
39 being able to commence proceedings to recover a

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-
- 1 reduced amount of PAYG withholding non-compliance
2 tax, from the individual; or
- 3 (iii) in the case of a notice under section 18-170 or 18-175—
4 increase the amount of a credit or entitle the individual
5 to a credit;
- 6 the Commissioner gives the notice no later than 4 years after
7 first giving a notice of assessment to the individual for the
8 income year mentioned in section 18-125 or 18-135; or
- 9 (d) in any case—the Commissioner gives the notice:
- 10 (i) to give effect to a decision on a review or appeal; or
11 (ii) as a result of an objection made by the individual or
12 pending a review or appeal.

13 **18-190 Review of decisions**

14 An individual to whom the Commissioner gives a notice under
15 section 18-140 in relation to an amount of *PAYG withholding
16 non-compliance tax may object, under Part IVC of this Act, against
17 a decision of the Commissioner under section 18-130, 18-140,
18 18-170 or 18-175 in relation to the PAYG withholding
19 non-compliance tax if the individual is dissatisfied with the
20 decision.

21 **15 Subsection 250-10(2) in Schedule 1 (after table item 105)**

22 Insert:

110	PAYG withholding non-compliance tax	18-145 in Schedule 1	<i>Taxation Administration Act 1953</i>
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23 ***Taxation (Interest on Overpayments and Early Payments)*** 24 ***Act 1983***

25 **16 Subsection 3(1) (after paragraph (caa) of the definition of** 26 ***decision to which this Act applies*)**

27 Insert:

28 (cab) in a case where the expression is used in relation to relevant
29 tax of a kind referred to in item 91 of the table in section 3C
30 (Pay as you go withholding non-compliance tax)—a decision
31 of the Commissioner under section 18-130 in Schedule 1 to
32 the *Taxation Administration Act 1953*; or

33 Note: Section 18-130 in Schedule 1 to the *Taxation Administration Act*
34 *1953* requires the Commissioner to give a notice to a director of a
35 company if the Commissioner is satisfied of certain matters.

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1 **17 Subsection 3(1) (note at the end of the definition of**
2 ***income tax crediting amount*)**

3 Omit “Note”, substitute “Note 1”.

4 **18 Subsection 3(1) (at the end of the definition of *income tax***
5 ***crediting amount*)**

6 Add:

7 Note 2: For credits that arise under section 18-170 or 18-175 in Schedule 1 to
8 the *Taxation Administration Act 1953*, see subsection (3) of this
9 section.

10 **19 At the end of section 3**

11 Add:

12 *Credits under section 18-170 or 18-175 in Schedule 1 to the*
13 *Taxation Administration Act 1953*

- 14 (3) To avoid doubt, for the purposes of this Act, a credit of an
15 individual that arises under section 18-170 or 18-175 in Schedule 1
16 to the *Taxation Administration Act 1953* relates to the income tax
17 payable by the individual for the year of income in which the
18 individual becomes entitled to the credit.

19 Note: Subdivision 18-D in Schedule 1 to the *Taxation Administration Act*
20 *1953* provides that a director, or an associate of a director, of a
21 company that does not comply with its obligations under Part 2-5 (Pay
22 as you go (PAYG) withholding) must pay Pay as you go withholding
23 non-compliance tax in certain circumstances. Sections 18-170 and
24 18-175 entitle the director or associate to a credit if the company
25 subsequently complies with its obligations.

26 **20 Section 3C (after table item 90 of the definition of *relevant***
27 ***tax*)**

28 Insert:

91 Pay as you go withholding non-compliance tax

29 **21 Section 10**

30 Before “Interest payable”, insert “(1)”.

31 **22 At the end of section 10**

32 Add:

- 33 (2) For the purposes of subparagraph (1)(a)(i), if the decision to which
34 this Act relates is a decision of the Commissioner under
35 section 18-130 in Schedule 1 to the *Taxation Administration Act*
-

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1 1953 in relation to an amount of Pay as you go withholding
2 non-compliance tax, the notice of the decision in relation to which
3 that decision was made is the notice the Commissioner gives to the
4 person under section 18-140 in that Schedule in relation to that
5 amount of tax.

6 **23 Application of amendments**

7 The amendments made by this Part apply to an individual in relation to
8 amounts withheld by a company, if:

- 9 (a) the amounts are withheld during an income year of the
10 individual starting on or after 1 July 2011; and
11 (b) the company is required to pay the amounts withheld to the
12 Commissioner on or after the commencement of this item.
13

EXPOSURE-DRAFT

1 Part 3—Superannuation guarantee charge

2 Division 1—Estimates

3 *Corporations Act 2001*

4 **24 Paragraph 553AB(1)(a)**

5 After “superannuation guarantee charge”, insert “, or by way of a
6 liability to pay the amount of an estimate under Division 268 in
7 Schedule 1 to the *Taxation Administration Act 1953*”.

8 **25 Paragraph 553AB(1)(b)**

9 After “superannuation guarantee charge”, insert “or estimate liability”.

10 **26 Paragraph 553AB(3)(a)**

11 After “superannuation guarantee charge”, insert “, or by way of a
12 liability to pay the amount of an estimate under Division 268 in
13 Schedule 1 to the *Taxation Administration Act 1953*”.

14 **27 Paragraph 553AB(3)(b)**

15 After “superannuation guarantee charge”, insert “or estimate liability”.

16 **28 Paragraph 556(1)(e)**

17 Repeal the paragraph, substitute:

18 (e) subject to subsection (1A)—next:

- 19 (i) wages, superannuation contributions and
20 superannuation guarantee charge payable by the
21 company in respect of services rendered to the company
22 by employees before the relevant date; or
23 (ii) liabilities to pay the amounts of estimates under
24 Division 268 in Schedule 1 to the *Taxation*
25 *Administration Act 1953* of superannuation guarantee
26 charge mentioned in subparagraph (i);

27 **29 Before subsection 556(1A)**

28 Insert:

29 *Superannuation guarantee charge*

30 **30 After subsection 556(1AF)**

31 Insert:

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1 (1AG) Subsections (1AC) to (1AF) apply to a liability to pay the amount
2 of an estimate of superannuation guarantee charge for a quarter in
3 the same way as they apply to superannuation guarantee charge
4 payable for the quarter.

5 **31 Before subsection 556(1B)**

6 Insert:

7 *Leave amounts*

8 **32 Before subsection 556(1C)**

9 Insert:

10 *Retrenchment payments*

11 **33 Before subsection 556(2)**

12 Insert:

13 *Definitions*

14 **34 Subsection 588FGA(1)**

15 Repeal the subsection, substitute:

16 (1) This section applies if the Court makes an order under
17 section 588FF against the Commissioner of Taxation because of
18 the payment of an amount in respect of a liability:

19 (a) under any of the following provisions:

- 20 (i) former section 220AAE, 220AAM or 220AAR of the
21 *Income Tax Assessment Act 1936*;
- 22 (ii) former section 221F (except subsection 221F(12)),
23 former section 221G (except subsection 221G(4A)) or
24 former section 221P of the *Income Tax Assessment Act*
25 *1936*;
- 26 (iii) former subsection 221YHDC(2) of the *Income Tax*
27 *Assessment Act 1936*;
- 28 (iv) former subsection 221YHZD(1) or (1A) of the *Income*
29 *Tax Assessment Act 1936*;
- 30 (v) former subsection 221YN(1) of the *Income Tax*
31 *Assessment Act 1936*;
- 32 (vi) section 222AHA of the *Income Tax Assessment Act*
33 *1936*;

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1 (vii) Subdivision 16-B in Schedule 1 to the *Taxation*
2 *Administration Act 1953*; or

3 (b) to pay the amount of an estimate of unpaid superannuation
4 guarantee charge under Division 268 in Schedule 1 to the
5 *Taxation Administration Act 1953*.

6 *Superannuation Guarantee (Administration) Act 1992*

7 **35 At the end of section 63A**

8 Add:

9 *Estimates under the Taxation Administration Act 1953*

10 (3) For the purposes of this Part, an amount paid to the
11 Commonwealth is treated as being a payment of superannuation
12 guarantee charge:

13 (a) in respect of an employee or employees; and

14 (b) made by or on behalf of an employer;

15 to the extent that, as a result of the amount being paid to the
16 Commonwealth, a liability of the employer to pay superannuation
17 guarantee charge in respect of that employee or those employees is
18 discharged under subsection 268-20(3) in Schedule 1 to the
19 *Taxation Administration Act 1953*.

20 Note: Under Division 268 in that Schedule, the Commissioner may make an
21 estimate of the unpaid and overdue amount of an employer's
22 superannuation guarantee charge for a quarter.

23 (4) However, subsection (3) does not apply to the amount until the
24 Commissioner knows which employee or employees the liability to
25 pay the superannuation guarantee charge was in respect of.

26 *Taxation Administration Act 1953*

27 **36 Division 268 in Schedule 1 (heading)**

28 Repeal the heading, substitute:

29 **Division 268—Estimates and recovery of PAYG**
30 **withholding liabilities and superannuation**
31 **guarantee charge**

32 **37 Section 268-1 in Schedule 1**

33 Omit:

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1 This Division enables the Commissioner to make an estimate of
2 amounts not paid as required by Part 2-5 (Pay as you go (PAYG)
3 withholding), and to recover the amount of the estimate.

4 substitute:

5 This Division enables the Commissioner to make an estimate of:

6 (a) amounts not paid as required by Part 2-5 of this
7 Act (Pay as you go (PAYG) withholding); or

8 (b) unpaid superannuation guarantee charge;

9 and to recover the amount of the estimate.

10 **38 Section 268-1 in Schedule 1**

11 After “amounts required by Part 2-5”, insert “or the *Superannuation*
12 *Guarantee (Administration) Act 1992*”.

13 **39 Section 268-1 in Schedule 1**

14 After “that Part”, insert “or Act”.

15 **40 Section 268-5 in Schedule 1**

16 Repeal the section, substitute:

17 **268-5 Object of Division**

18 The object of this Division is to enable the Commissioner to take
19 prompt and effective action to recover:

20 (a) amounts not paid as required by Part 2-5 (Pay as you go
21 (PAYG) withholding); or

22 (b) unpaid superannuation guarantee charge that has not been
23 assessed.

24 **41 Subsection 268-10(1) in Schedule 1**

25 Repeal the subsection, substitute:

26 *Estimate*

27 (1) The Commissioner may estimate the unpaid and overdue amount
28 of a liability (the *underlying liability*) of yours:

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-
- 1 (a) under section 16-70 in this Schedule (requirement to pay to
2 the Commissioner amounts you have withheld under the Pay
3 as you go withholding rules); or
4 (b) to pay superannuation guarantee charge for a *quarter under
5 section 16 of the *Superannuation Guarantee (Administration)*
6 *Act 1992*, to the extent the superannuation guarantee charge
7 has not been assessed before the Commissioner makes the
8 estimate.

9 (1A) For the purposes of this Division, your superannuation guarantee
10 charge for a *quarter is treated as being payable on the day by
11 which you must lodge a superannuation guarantee statement for the
12 quarter under section 33 of the *Superannuation Guarantee*
13 *(Administration) Act 1992*, even if, on that day, the charge has not
14 been assessed under that Act.

42 Subsection 268-10(3) in Schedule 1 (example)

15 Repeal the example, substitute:

16 Example 1: In the case of an underlying liability under section 16-70 (requirement
17 to pay to the Commissioner amounts you have withheld under the Pay
18 as you go withholding rules), the Commissioner may have regard to
19 information about amounts you withheld under the Pay as you go
20 rules before the period in relation to which the underlying liability
21 arose.
22

23 Example 2: In the case of an underlying liability to pay superannuation guarantee
24 charge for a quarter, the Commissioner may have regard to
25 information about your contributions to RSAs and complying
26 superannuation funds for earlier quarters.

43 Subsection 268-75(1) in Schedule 1

27 Repeal the subsection, substitute:

- 28 (1) This section applies if:
29 (a) your liability to pay the amount of the estimate remains
30 undischarged at the end of 7 days after the Commissioner
31 gives you notice of the estimate; and
32 (b) the underlying liability is not a liability to pay superannuation
33 guarantee charge.
34

44 Subsection 268-90(2) in Schedule 1

35 Omit “The statutory”, substitute “In a case covered by paragraph
36 268-10(1)(a) (estimate of liability under requirement to pay to the
37 Commissioner amounts you have withheld under the Pay as you go
38 withholding rules), the statutory”.
39

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45 After subsection 268-90(2) in Schedule 1

Insert:

(2A) In a case covered by paragraph 268-10(1)(b) (estimate of liability to pay superannuation guarantee charge), the statutory declaration or affidavit must verify the following facts:

(a) your name and address;

(b) for each employee for whom you have an *individual superannuation guarantee shortfall for the relevant *quarter:

(i) the employee's name and postal address and, if the employee has *quoted the employee's *tax file number to you, the employee's tax file number; and

(ii) the amount of the shortfall;

(c) what has been done to comply with your obligation to pay the relevant superannuation guarantee charge to the Commissioner.

46 Saving provision—estimates

An estimate:

(a) made under section 268-10 in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) in force just before the commencement of this item;

has effect, from that commencement, as if it had been made under that section as amended by this Schedule.

47 Application of amendments

The amendments made by this Division apply to superannuation guarantee charge for a quarter if the day by which you must lodge a superannuation guarantee statement for the quarter occurs on or after the day this item commences.

Division 2—Penalties

Superannuation Guarantee (Administration) Act 1992

48 Subsection 63A(3)

After “subsection 268-20(3)”, insert “, or section 269-40,”.

Taxation Administration Act 1953

49 Section 269-1 in Schedule 1

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1 After “Division 268”, insert “in this Schedule and Part 3 of the
2 *Superannuation Guarantee (Administration) Act 1992* (obligation to
3 pay superannuation guarantee charge)”.

4 **50 Paragraph 269-5(a) in Schedule 1**

5 Repeal the paragraph, substitute:

6 (a) meets its obligations under:

7 (i) Subdivision 16-B (obligation to pay withheld amounts
8 to the Commissioner); and

9 (ii) Division 268 (estimates of PAYG withholding liabilities
10 and superannuation guarantee charge); and

11 (iii) Part 3 of the *Superannuation Guarantee*
12 *(Administration) Act 1992* (obligation to pay
13 superannuation guarantee charge); or

14 **51 Subsection 269-10(1) in Schedule 1 (table)**

15 Repeal the table, substitute:

Obligations that directors must cause company to comply with		
Item	Column 1	Column 2
	This Division applies if, on a particular day (the <i>initial day</i>), a company is a company registered under the <i>Corporations Act 2001</i>, and on the <i>initial day</i> ...	and the company is obliged to pay to the Commissioner on or before a particular day (the <i>due day</i>) ...
1	the company withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.
2	the company receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	the company provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
4	the company is given notice of an estimate under Division 268	the amount of the estimate.
5	a *quarter ends	superannuation guarantee charge for the quarter in accordance with the <i>Superannuation Guarantee (Administration) Act 1992</i> .

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52 At the end of section 269-10 in Schedule 1

Add:

Superannuation guarantee charge

- (3) For the purposes of this Division, the company's superannuation guarantee charge for a *quarter under the *Superannuation Guarantee (Administration) Act 1992* is treated as being payable on the day by which the company must lodge a superannuation guarantee statement for the quarter under section 33 of that Act, even if the charge is not assessed under that Act on or before that day.

53 Subsection 269-30(2) in Schedule 1 (table)

At the end of the table, add:

- | | | | |
|---|---|--------------|--|
| 3 | superannuation
guarantee charge for
a *quarter, | the due day, | (a) if the company, on or
before the last day
mentioned in column
2, lodges under
section 33 of the
<i>Superannuation
Guarantee
(Administration) Act
1992</i> a
superannuation
guarantee statement
for the quarter—the
extent (if any) to
which the sum
mentioned in
paragraph 35(1)(e) of
that Act is less than
the amount of the
superannuation
guarantee charge the
company is obliged
to pay for the quarter;
or
(b) otherwise—to any
extent. |
|---|---|--------------|--|

54 Subsection 269-30(2) in Schedule 1 (note)

Omit "Note", substitute "Note 1".

55 At the end of subsection 269-30(2) in Schedule 1

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Add:

- Note 2: The sum mentioned in paragraph 35(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* is the sum of:
- (a) the total of the company's individual superannuation guarantee shortfalls; and
 - (b) the company's nominal interest component; and
 - (c) the company's administration component;
- specified in the superannuation guarantee statement.

56 After subsection 269-35(3) in Schedule 1

Insert:

Superannuation guarantee charge—reasonably arguable position

- (3A) You are not liable to a penalty under this Division to the extent that the penalty resulted from the company treating the *Superannuation Guarantee (Administration) Act 1992* as applying to a matter or identical matters in a particular way that was *reasonably arguable, if the company took reasonable care in connection with applying that Act to the matter or matters.

57 Application of amendments

The amendments made by this Division apply to a company's liability to pay superannuation guarantee charge for a quarter if the day by which the company must lodge a superannuation guarantee statement for the quarter occurs on or after the day this item commences.