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EXPOSURE DRAFT

SHIPPING REFORM — TAXATION MEASURES

EXPLANATORY MATERIAL

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Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

The following abbreviations are used throughout this explanatory material.

Abbreviation	*Definition*
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
SR(TI) Exposure Draft	Shipping Reform (Tax Incentives) Exposure Draft
TAA 1953	*Taxation Administration Act 1953*

Chapter 1
Taxation incentives for the shipping industry

Outline of chapter

1.1 This chapter outlines:

- the background to shipping reform; and
- the key taxation elements of the reform.

1.2 The legislative references used throughout this explanatory material are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise specified.

Background to shipping reform

1.3 On 9 September 2011, the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, announced the Government's shipping policy reform, *Stronger Shipping for a Stronger Economy* (Media Release No. AA169/2011).

1.4 The reform package aims to make the Australian shipping industry more internationally competitive and facilitate Australian competition on international routes. It is also designed to reform and revitalise coastal shipping in Australia to create a competitive environment attractive to investors.

1.5 *Stronger Shipping for a Stronger Economy* delivers a tax and regulatory reform package to help remove barriers to investment in Australian shipping and to foster the global competitiveness of the shipping industry. The package consists of:

- the Coastal Trading Exposure Draft – which replaces Part VI of the *Navigation Act 1912* and establishes a new regulatory framework and licensing system for vessels engaged in coastal trading in Australian waters;
- the Shipping Reform (Tax Incentives) Exposure Draft (SR(TI) Exposure Draft) – which provides for the issue of

certificates for vessels as a first step in meeting the eligibility criteria for access to the tax exemption and other tax concessions;

- the tax measures contained in this exposure draft (and described in this explanatory material) – cognate legislation amending the ITAA 1997, the *Income Tax Assessment Act 1936* (ITAA 1936) and the *Taxation Administration Act 1953* (TAA 1953) to give effect to the income tax exemption and other tax concessions;
- the Coastal Trading (Consequential Amendments and Transitional Provisions) Exposure Draft and Australian International Shipping Register (Consequential Amendments and Transitional Provisions) Exposure Draft – which make consequential amendments to relevant existing legislation to ensure consistency with the new regime, and provide for transitional arrangements.

Shipping and the Australian industry

1.6 Shipping plays a central role in the global economy as it is responsible for the carriage of approximately 90 per cent of the volume of world trade. It is, by nature, a global industry. As such it is highly competitive, with relatively few barriers to entry, which leads to strong downward pressure on prices in most market sectors. While these competitive pressures benefit shipping customers through lower freight rates, they also encourage ship owners and operators to seek to minimise costs wherever possible. Investors therefore generally seek to operate and register their vessels in low cost regimes and to source crew from low cost countries.

1.7 The Australian shipping industry has been operating at a significant disadvantage compared to international operators who have access to beneficial regulatory, tax and employment arrangements. Despite the role of shipping internationally, Australia's shipping fleet has been declining, Australian companies' participation in international maritime trades is low, and there is a growing maritime skills shortage. The Australian shipping industry has been in decline for decades: in 1995 there were 55 Australian operated ships, but this has now dropped to 22.

The need for reform

1.8 The Minister for Infrastructure and Transport's announcement of the *Stronger Shipping for a Stronger Economy* package of reforms

represents the culmination of several years of significant consideration of the state of the shipping industry.

1.9 Given the competitive nature of the global industry and the difficulty Australian shipping companies have competing on the international stage, the Australian shipping industry needs a reform package to ensure its viability and long-term growth, and to position it to take advantage of opportunities presented by the burgeoning export market and increased domestic transport task. It is also anticipated that an effective regime for the taxation of shipping in Australia will deliver significant economic advantages. An effective reform package would allow Australian industry to compete in an industry distorted by international subsidies.

1.10 With this imperative, in 2008, the House of Representatives Standing Committee for Infrastructure, Transport, Regional Development and Local Government conducted a Parliamentary Inquiry into coastal shipping policy and regulation to advise on ways of revitalising Australia's shipping industry to make it more competitive and sustainable. The Committee released its report, *Rebuilding Australia's Coastal Shipping Industry*, in October 2008.

1.11 The Inquiry identified numerous issues with the industry, including:

- a significant cost disadvantage for Australian registered vessels and an absence of fiscal incentives to invest in Australian registered ships;
- a declining and ageing coastal fleet;
- a high level of transport industry competition; and
- an ageing workforce combined with insufficient recruitment and inadequate training, resulting in potential limits to Australia's capacity to service international and domestic trade efficiently.

1.12 The report confirmed the serious situation of the Australian shipping industry and highlighted the need to act quickly. In February 2009, the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, formed an advisory group of industry leaders to assist in implementing the recommendations contained in the report.

1.13 The Government committed to implementing reforms during the Federal election campaign in August 2010, and released a discussion paper outlining a framework for the proposed reforms public consultation

on 1 December 2010. The framework for reform outlined in the discussion paper was based around the objectives of:

- ensuring Australia has a viable shipping industry, able to provide adequate coastal shipping services at a reasonable price for customers/consumers, and which reinvests in its ships when they reach the end of their economic lives;
- ensuring Australian shipping maintains and potentially grows its share of the national transport system in order to meet the growing transport task efficiently, effectively, safely and with minimal environmental impact;
- providing opportunities to increase Australia's participation in international shipping, reflecting the significance of shipping to our trade base and the linkages between strong domestic and international sectors;
- creating employment and skills opportunities for Australian seafarers; and
- securing the maritime skills base necessary to provide regulatory and land-based maritime services as well as the sea-based services.

1.14 Three industry reference groups — a Taxation Reference Group, a Workforce Skills and Training Reference Group and a Regulation Reference Groups— were established to undertake a more detailed review of the implementation arrangements that might apply to the proposed reforms.

1.15 The Taxation Reference Group was chaired by a senior Treasury official and membership comprised of senior industry representatives with an interest in the structure of the proposed tax regime. Officers from the Treasury and the Australian Taxation Office provided technical support and officers from the Department of Infrastructure and Transport provided the secretariat.

1.16 The Taxation Reference Group met four times, and a number of papers were commissioned to further develop the Group's discussions. Underlying the Group's deliberations was the policy intent of creating a strong and viable Australian shipping industry and the aim of the Group was to deliver tax reforms which assist with that goal.

1.17 The Taxation Reference Group reported to the Government in mid-2011, prior to the Minister for Infrastructure and Transport's

announcement of *Stronger Shipping for a Stronger Economy* on 9 September 2011.

Interactions with the Shipping Reform (Tax Incentives) exposure draft

1.18 The taxation measures contained in this exposure draft will interact with the SR(TI) Exposure Draft, which will be administered by the Department of Infrastructure and Transport.

1.19 In particular, the SR(TI) exposure draft establishes a mechanism for the Minister for Infrastructure and Transport to certify compliance with certain qualifying conditions which must be met to obtain a certificate under that exposure draft. The qualifying conditions relate to matters such as location of the company, the company's management arrangements and training plans, and the nature of the business or commercial activities undertaken using the vessel. Receipt of a certificate under the SR(TI) Exposure Draft is the first step in meeting the eligibility requirements for the taxation elements of the Stronger Shipping for a Stronger Economy package.

1.20 The SR(TI) Exposure Draft also provides for an annual reporting mechanism, which will enable the Department of Infrastructure and Transport to collect data on the extent to which the tax concessions are being used.

Operation of existing law

1.21 Shipping companies are currently taxed in line with companies in other industries and are not afforded concessional tax treatment. As such:

- a shipping company pays tax at the company tax rate (currently 30 per cent);
- shipping vessels are depreciated based on an effective life of 20 years;
- a balancing adjustment arising from the disposal of a shipping vessel is assessed in full in the income year in which the income from disposal is received; and
- a company can claim salary, wages and allowances paid to seafarers as a tax deduction, but do not have access to refundable tax offset provisions.

Key elements

1.22 The key taxation elements of the shipping reform package are outlined under the subheadings below.

Income tax exemption

1.23 A new category of exempt income is created for ship operators under certain circumstances. The income tax exemption applies to all qualifying shipping income for eligible shipping vessels as defined in the SR(TI) exposure draft.

1.24 A vessel is an eligible shipping vessel if the ship operator has applied for and obtained a certificate from the Minister for Infrastructure and Transport which certifies that the company satisfies the qualifying conditions set out in the SR(TI) Exposure Draft.

1.25 Only income derived from certain shipping activities will qualify for the income tax exemption. A generous approach is taken to defining the activities that generate income eligible for the income tax exemption, ensuring that a substantial part of shipping activities are included.

Accelerated depreciation

1.26 The effective life of an eligible vessel is capped at 10 years for companies that have been issued with a certificate under the SR(TI) Exposure Draft in respect of the vessel. The decline in value of the depreciating asset (the vessel) will therefore be calculated over a shorter period of time, providing companies with a greater deduction in any one income year than is currently the case.

Roll-over relief

1.27 Payment of income tax on a balancing adjustment amount is payable in the second income year after the income year in which an existing vessel is disposed of. If another vessel is purchased within two years, then an amount is included in the taxpayer's assessable income but only to the extent that that amount exceeds the cost of the other vessel.

Seafarer tax offset

1.28 A company is eligible for a refundable tax offset (a seafarer tax offset) for salary, wages and allowances paid to Australian resident seafarers who are employed to undertake overseas voyages on qualifying

vessels, if the company employs the seafarer on such voyages for at least 91 days in the income year.

Royalty withholding tax exemption

1.29 From 1 July 2012, payments made for the lease of certain shipping vessels will be exempt from royalty withholding tax. This exemption will apply to payments made by Australian resident companies for the lease, on a bareboat basis, of qualifying vessels that are used commercially to ship cargo or passengers for consideration. This will reduce the costs for Australian shipping operators of securing vessels that may be crewed by Australian workers.

Chapter 2
Income tax exemption

Outline of chapter

2.1 Schedule 1 to this exposure draft amends the ITAA 1997 to create a new category of exempt income for ship operators under certain circumstances. The income tax exemption will apply to all qualifying shipping income for eligible shipping vessels as defined in the SR(TI) Exposure Draft.

2.2 A modified loss wastage rule will replace the existing treatment of the application of losses against net exempt income.

2.3 Schedule 5 outlines the amendments to the TAA 1953, enabling the Australian Taxation Office to give tax information to the Department of Infrastructure and Transport for the purpose of administering the SR(TI) Exposure Draft.

Context of amendments

Operation of existing law

2.4 Shipping companies are subject to the standard corporate tax arrangements. As such a shipping company pays tax at the company tax rate (30 per cent).

2.5 A taxpayer with qualifying exempt shipping income may also have income tax losses from prior years. A specific loss wastage rule for taxpayers that earn exempt income is provided in the current law. This requires taxpayers with tax losses to first reduce these losses by the value of their net exempt income before they can apply any remaining losses to assessable income.

2.6 The taxation law secrecy provisions in Division 355 of Schedule 1 to the TAA 1953 apply to protected information. Protected information is defined as information disclosed or obtained under or for the purposes of a taxation law (other than the *Tax Agent Services Act 2009*), which relates to the affairs of an entity (including but not limited to the entity's tax affairs), and which identifies, or is reasonably capable of being used to identify, that entity.

2.7 Division 355 permits a tax officer to disclose protected information for government purposes set out in tables 1 to 7 in section 355-65 of the TAA 1953.

Rationale for changes

2.8 Over recent years, Australia has observed a flight from its national shipping register to other jurisdictions, particularly to registers such as the United Kingdom, Singapore, Hong Kong and Canada that offer favourable tax regimes, such as a tonnage tax or very low rates of income tax for shipping businesses.

2.9 A tonnage tax sets up a new tax regime with a zero rate of tax that may be varied at some point in time. A tonnage tax was initially considered in the early stages of the Shipping policy reform, however an exemption was considered to be more favourable as it would be easier to understand and comply with, and provide greater taxpayer certainty.

2.10 An exemption from income tax for all qualifying shipping income would produce the same benefits as a tonnage tax but without the administration and compliance costs associated with introducing new taxation arrangements to define and codify a new tax regime in a new tax Act.

2.11 A key goal of the income tax exemption is to attract existing vessels and newer vessels to be registered in Australia.

Summary of new law

2.12 Schedule 1 to the exposure draft creates a new category of exempt income for ship operators under certain circumstances.

2.13 The income tax exemption applies to all qualifying shipping income for eligible shipping vessels as defined in the SR(TI) Exposure Draft.

2.14 A vessel is an eligible shipping vessel if the ship operator has applied for and obtained a certificate from the Minister for Infrastructure and Transport under the SR(TI) Exposure Draft certifying that the company satisfies the qualifying conditions set out in that exposure draft.

2.15 Only certain shipping activities qualify for the income tax exemption. A generous approach to defining qualifying activities is adopted, ensuring that a substantial part of shipping activities are included.

2.16 The current loss wastage rule that applies to net exempt income is modified to reduce a ship operator's tax losses at a slower rate than would otherwise occur under the current loss wastage rule in respect of net exempt income from qualifying shipping activities.

2.17 Schedule 5 to the exposure draft permits the ATO to disclose protected information to the Secretary of the Department of Infrastructure and Transport for the purposes of administering the SR(TI) Exposure Draft.

Comparison of key features of new law and current law

New law	*Current law*
Ordinary and statutory income from qualifying shipping activities using an eligible vessel is exempt from income tax.	Ordinary and statutory income from shipping activities is subject to income tax.
A qualifying shipping company can disregard 90 per cent of so much of their net exempt income that directly relates to that exempt income.	Before a qualifying shipping company can deduct tax losses, they must first reduce them by all of their net exempt income.
A taxation officer may disclose protected information to the Secretary of the Department of Infrastructure and Transport for the purpose of administering the SR(TI) Exposure Draft.	There is no provision allowing a taxation officer to disclose protected information to the Secretary of the Department of Infrastructure and Transport for the purpose of administering the shipping reform.

Detailed explanation of new law

2.18 Currently Australian shipping operating companies pay tax at the company tax rate. This measure will enable shipping operating companies who meet certain criteria will be entitled to an income tax exemption on income obtained from the use of eligible vessels as defined in the SR(TI) Exposure Draft.

2.19 The SR(TI) Exposure Draft outlines the qualifying conditions for companies to obtain a shipping exempt income certificate from the Minister for Infrastructure and Transport. This is the first step towards meeting the eligibility criteria for the income tax exemption.

2.20 Only income from certain shipping activities will qualify for the income tax exemption. A generous approach to defining qualifying

activities is applied, ensuring that a substantial part of shipping activities are included in the income tax exemption to make Australia competitive with the United Kingdom and other jurisdictions. The list of activities is described in paragraphs 2.25 to 2.46 in this explanatory material.

Shipping exempt income certificate

2.21 One of the criteria for access to the income tax exemption is receipt of a shipping exempt income certificate in relation to a particular vessel. ***[Schedule 1, item 4, paragraph 51-100(1)(a)]***

2.22 A shipping exempt income certificate is a certificate issued by the Minister for Infrastructure and Transport under clause 8 of the SR(TI) Exposure Draft. The certificate certifies that the company has met the relevant qualifying conditions under the SR(TI) exposure draft.

2.23 The shipping exempt certificate will include a statement of the days on which a company has satisfied the qualifying conditions.

Example 2.1

> On the 1 July2013, the Horizon Express applies to the Minister for Infrastructure and Transport for a shipping exempt certificate. The Minister for Infrastructure and Transport grants the certificate with effect from the 1 May 2013 to 30 June 2013, as in this period the Horizon Express satisfied the qualifying conditions. When the Horizon Express lodges its tax return for the 2012-2013 financial year, it will claim an exemption on its shipping related income for May and June for that income year.

2.24 A definition of ***shipping exempt income certificate*** as having the same meaning as in the SR(TI) Exposure Draft is added to the Dictionary in subsection 995-1(1) of the ITAA 1997. ***[Schedule 1, item 9, definition of shipping exempt income certificate in subsection 995-1(1)]***

Shipping activities

2.25 The exposure draft makes a key distinction between *core* and *incidental* shipping activities. ***[Schedule 1, item 4, section 51-105]***

2.26 The way in which a particular activity is categorised impacts upon eligibility for exemption from income tax on income from that activity. The following sections discuss the criteria for activities to qualify for the exemption under either core or incidental activities.

2.27 A definition of ***shipping activities*** is added to subsection 995-1(1) of the ITAA 1997, as the meaning of the term given

by clause 51-105. ***[Schedule1, item 7, definition of shipping activities in subsection 995-1(1)]***

Core shipping activities

2.28 A company's ***core shipping activities*** are activities directly involved in operating a qualifying vessel to carry shipping cargo or shipping passengers. ***[Schedule 1, item 4, subsection 51-100 (1)]***

2.29 'Shipping cargo' and 'shipping passengers' are defined terms in the SR(TI) exposure draft. ***[Schedule 1, items 8 and 10, definitions of shipping cargo and shipping passenger in subsection 995-1(1)]***

2.30 'Core shipping activities' carried on by a company in respect of a qualifying vessel that it operates may include:

- carrying the shipping cargo or shipping passengers on the vessel;
- crewing the vessel;
- carrying goods on board for the operation of the vessel (including for the enjoyment of shipping passengers);
- providing the containers that carry shipping cargo on the vessel; and
- loading shipping cargo onto, and unloading it from, the vessel.

[Schedule 1, item 4, subsection 51-110(2)]

2.31 The list is an inclusive list, with a regulation-making power to include other core activities. ***[Schedule 1 item 4, paragraph 51-110 (2)(r)]***

Example 2.2

The FedExpress is a medium sized 95,000 net ton bulk carrier, flagged Australian, owned and operated by Luxenburgs Ltd, an Australian company. The FedExpress carries bauxite from Gladstone to China. The FedExpress also provides the ship containers to carry the bauxite and operates a wide range of cargo handling equipment including a portainer crane, mobile cranes, and several forklifts for the purposes of loading and unloading the cargo. The income generated from carrying the bauxite to its destination is exempt from income tax. The income from the provision of containers and handling equipment facilitates the carriage of the bauxite and will also be exempt from income tax.

After several years, Luxenburgs Ltd decides that it no longer wishes to operate the FedExpress. Origins Ltd makes arrangements to contract to charter out its bulk carrier for a defined period to carry a quantity of bauxite between two countries at a daily rate. Luxenburgs Ltd believes that the daily rate may rise due to fluctuations in exchange rates and enters into an agreement with Rolls-Royce Marine to hedge against a possible increase in this daily rate during the charter period, assuming the same cargo, tonnage and destination.

Income from the hedging contract may be included as relevant shipping income and is exempt from income tax. This is on the understanding:

- that the agreements are used for hedging purposes only (that is, these agreements are entered into to hedge against rate fluctuations in exchange rates and not for speculative purposes); and
- that the agreements relate to contracts undertaken by the company using qualifying vessels.

[Schedule 1, item 4, section 51-110 (2)(q)]

2.32 There is also a regulation-making power to exclude certain activities from the definition of 'core shipping activities'. ***[Schedule 1, item 4, subsection 51-110(3)]***

2.33 The SR(TI) Exposure Draft outlines a list of excluded vessels in clause 10(4). Regardless of the activities in which a vessel of an excluded kind is engaged, income from such ships cannot qualify for the income tax exemption. Tugs and offshore activities are two specific examples of maritime activities that are excluded.

2.34 A definition of ***core shipping activities*** is added to subsection 995-1(1), as the meaning of the term given by clause 51-110. ***[Schedule 1, item 5, definition of core shipping activities in subsection 995-1(1)]***

Incidental shipping activities

2.35 ***Incidental shipping activities*** are activities that are incidental to core shipping activities. This category of income is very restricted in scope and deals with minor items of shipping-related income that do not fit comfortably into the core categories. ***[Schedule 1, item 4, section 51-115]***

2.36 A definition of ***incidental shipping activities*** is added to subsection 995-1(1), stating that the meaning of the term is given by clause 51-115. ***[Schedule 1, item 6, definition of incidental shipping activities in subsection 995-1(1)]***

Incidental shipping activities exceed 0.25 per cent

2.37 The income from such incidental activities may come within the exemption if the 'total incidental shipping income' does not exceed 0.25 per cent of the 'total core shipping income' in any one accounting period. ***[Schedule 1, item 4, subsection 51-100(2)]***

2.38 ***Total core shipping income*** includes an entity's ordinary income derived from core shipping activities relating to the vessel on a certified day. ***[Schedule 1, item 4, subsection 51-100(2)]***

2.39 It also includes any statutory income from those shipping activities. ***[Schedule 1, item 4, subsection 51-100(2)]***

2.40 Ordinary and statutory income are defined terms in sections 6-5 and 6-10.

2.41 The 'total core shipping income' must relate to the *certified days.* A shipping exempt income certificate issued under clause 8 of the SR(TI) exposure draft will specify the days from which the certificate will apply. ***[Schedule 1, item 4, paragraph51-100 (1)(b) and associated Note]***

2.42 ***Total incidental shipping income*** is an entity's ordinary income derived from incidental shipping activities relating to the vessel on a certified day and the statutory income from those activities on those days. ***[Schedule 1, item 4, subsection 51 -100(2)]***

2.43 It also includes any statutory income from those shipping activities. ***[Schedule 1, item 4, subsection 51-100(2)]***

2.44 If the income from the incidental activities does exceed the 0.25 per cent level, then no part of the income from those activities qualifies for the income tax exemption.

2.45 The phrase 'relating to the vessel' is to be interpreted broadly, consistent with the stated objective of relieving administrative burdens. However, the activities that generate the income must relate to core shipping income. ***[Schedule 1, item 4, subsection 51-100(2)]***

2.46 The following example illustrates a straightforward application of how the income from incidental shipping income does not exceed the 0.25 per cent level, and how that income qualifies for the income tax exemption.

Example 2.3: Incidental activities do not exceed 0.25 per cent

StarAlliance owns and operates the Australian flagged Diamond Lucy. StarAlliance generates income from core and incidental shipping

activities from the Diamond Lucy. Assume the income generated from the Diamond Lucy's consists of:

Core shipping activities: $5 million

Incidental shipping activities: $10,000

then the 0.25 per cent limit will be the total sum of the core activities multiplied by 0.25 per cent, as follows:

Total core shipping income × 0.25%

$5 million × 0.25% = $12,500

The 'incidental shipping activities' of $10,000 will be qualifying incidental income, and will be included in the company's shipping exempt income as it is less than the $12,500 limit.

However if the incidental shipping activities were $15,000, then this would not be part of the qualifying incidental income, as it is greater than $12,500. The $15,000 would be assessed under normal income tax rules.

Loss wastage rule

2.47 This measure inserts a modified loss wastage rule into the ITAA 1997 to reduce an entity's tax losses by net exempt income from shipping at a slower rate than what would occur under the existing provisions.

2.48 Under the current law if a shipping company has net exempt income in any year, it must reduce its tax losses by all of the company's net exempt income from all sources.

2.49 However, the modified loss wastage rule will disregard 90 per cent of a shipping companies net exempt income when calculating an entity's tax losses. ***[Schedule 1, item 2, subsection 36-10(5)]***

2.50 Similarly, the modified loss wastage rule will disregard 90 per cent of a shipping company's net exempt income when deducting a tax loss in a later income year. ***[Schedule 1, item 3, subsection 36-17(4A)]***

2.51 The following example illustrates how, for the purposes of sections 36-10 and 36-17, a company's net exempt income as it relates to shipping income is reduced by 90 per cent.

Example 2.4

In Year 1, the Sea Merchant has:

- assessable income of $100 million;
- deductions of $250 million;
- shipping net exempt income of $25 million; and
- a tax loss of $900 million from previous years.

To calculate its tax loss for Year 1, the Sea Merchant will first subtract its total assessable income from its total deductions for the income year as per subsections 36-10(1) and (2):

$100m - $250 m = $-150m

It will then subtract its net exempt income from this amount. The Sea Merchant will modify the amount of net exempt income by only including 10 per cent of this income.

$150m – ($25m × 10%) = $147.5m

The $147.5 million is the Sea Merchant's tax loss for the current income year, which is called a loss year as per subsection 36-10(3). This tax loss will be deducted in a later income year.

The Sea Merchant will also need to add their prior year losses of $900 million to their tax loss balance. Therefore the Sea Merchant can deduct $1,047.5 million in tax losses in a later income year.

In Year 2, the Sea Merchant has:

- assessable income of $100 million
- deductions of $48 million
- shipping net exempt income of $30 million; and
- prior year losses of $1,047.5 million

The Sea Merchant can deduct a tax loss of $1,047.5 million in Year 2 as follows:

Deduct a tax loss from its net exempt income (noting that only 10 per cent of their net exempt income will be taken into consideration)

($30m × 10%) - $1,047.5m = $1,044.5m

Deduct the amount obtained above from the excess of the part of the assessable income that exceeds deductions

($100m – $48m) – $1,044.5m = $992.5m

The Sea Merchant can carry forward $992.5 million to Year 3.

2.52 A consequential amendment is made to the income tax exemption list of ordinary or statutory income which is exempt from tax only if it is made by certain entities with income from shipping activities with a signpost to clause 51-100. ***[Schedule 1, item 1, section 11-15 (after the table item headed “resale royalty collecting societies”)]***

Disclosing protected information under section 355-65 of the Tax Administration Act 1953

2.53 Information may need to be exchanged from the Australian Taxation Office (ATO) and the Secretary of the Department of Infrastructure and Transport in certain circumstances.

2.54 This measure will ensure that the ATO can pass on taxpayer information collected under the taxation laws to the Department of Infrastructure and Transport for purposes consistent with the SR(TI) provisions, which the Minister may need to effectively administer the law. ***[Schedule 5, item 1, item 6A in the table in subsection 355-65(4) in Schedule 1 to the TAA 1953]***

2.55 The Minister may require taxpayer information for making an informed decision about granting or revoking a certificate.

Application of the income tax exemption

2.56 The income tax exemption is available in respect of shipping activities that take place on a qualifying day that occurs on or after 1July2012. ***[Schedule 1, Note to the Schedule]***

Chapter 3
Accelerated depreciation

Outline of chapter

3.1 Part 1 of Schedule 2 to this exposure draft amends the ITAA 1997 to insert a capped life of 10 years for the decline in value of a shipping vessel, where a certificate has been obtained under the SR(TI) Exposure Draft in relation to the vessel. This capped life will be the effective life of the shipping vessel where certain conditions are met.

Context of amendments

Operation of existing law

3.2 The capital allowances provisions allow a taxpayer a deduction equal to the decline in value of a depreciating asset during an income year, in recognition that the asset loses value over the time it is used or held. That decline in value is calculated with reference to the 'effective life' of the asset. Broadly, the effective life of an asset is the length of time over which a taxpayer could reasonably be expected to use the particular asset for taxable purposes or for the purpose of producing exempt income. Currently, a taxpayer may choose to use a 'safe harbour' effective life determined by the Commissioner of Taxation (Commissioner) under section 40-100, where there is one in force. Where a taxpayer chooses not to use a 'safe harbour' effective life, or where there is none in force, the taxpayer must self-assess the effective life of the asset.

3.3 Under the current capital allowances system, the Commissioner progressively reviews and updates determinations under section 40-100 of the 'safe harbour' effective lives used to calculate deductions for depreciating assets. The Commissioner's determinations are based on an estimate of the period the asset can be used by any entity for a taxable purpose or for the purpose of producing exempt income. The Commissioner cannot take into account national economic implications and the impact on affected industries. The Commissioner has determined the effective life of various shipping vessels to be between 15 and 30years as set out in the Schedule to Taxation Ruling TR 2011/2. For the purpose of this explanatory material, we have referred to the Commissioners determination as being 20 years.

3.4 For some assets, the law provides a statutory cap on the effective life. Where a statutory cap applying to an asset is shorter than the effective life determined by the Commissioner, the capped life will prevail. In the case of shipping vessels, there is currently no statutory cap for their decline in value.

Rationale for changes

3.5 A key goal of the accelerated depreciation arrangements is to support owners of older vessels to reinvest in newer vessels.

3.6 Prior to 1996, an amendment to the ITAA 1936 at section 57AM provided for accelerated depreciation of vessels over five years commencing in the year prior to the vessels' commissioning. During this time the average age of vessels in the Australian fleet was around 14 years. Since the scheme was withdrawn, the average age of the Australian coastal trading fleet has increased to 20 years, while the international average has fallen from 15 years to 12 years.

3.7 Introducing accelerated depreciation provides an incentive for a younger fleet, which would have the additional benefit of incorporating new enhancements in technology and a reduced environmental impact.

Summary of new law

3.8 The new law inserts a statutory cap of 10 years for shipping vessels to the table of assets in section 40-102(4) that are currently subject to a capped effective life.

3.9 In principle, taxpayers will continue either to use the 'safe harbour' effective life that the Commissioner has determined for shipping vessels or to self-assess their vessel's effective life. However, where the taxpayer chooses to apply the Commissioner's determination, and that determination provides for a life longer than the applicable statutory cap (as it currently does), the effective life of the vessel will be the capped life, that is, 10 years.

Comparison of key features of new law and current law

New law	***Current law***
To determine the effective life of a shipping vessel, qualifying Australian shipping companies may choose to either self-assess the effective life or use the Commissioners determination. However, as a statutory cap now applies to the shipping vessel and it is shorter than the effective life determined by the Commissioner, the capped life will prevail. In that case, qualifying Australian shipping companies will apply the 10 year capped life.	To determine the effective life of a shipping vessel, a company can choose to self-assess the effective life of the asset or use the effective life as determined by the Commissioner. The effective life of most vessels is 20 years as set out in the Schedule to Taxation Ruling TR 2011/2.

Detailed explanation of new law

Introduction of a statutory capped life for certain vessels

3.10 The effective life of eligible vessels is capped at 10 years for companies that have been issued with a certificate under the SR(TI) Exposure Draft in respect of their eligible vessels ***[Schedule 2, item 4, item 10 in the table in subsection 40-102(4)].*** The decline in value of the depreciating asset (the vessel) will therefore be calculated over a shorter period of time, providing companies with a greater deduction in any one income year than is currently the case.

3.11 The effective life of a shipping vessel will be the capped life of 10 years if the following conditions are satisfied.

3.12 In accordance with the existing law, the taxpayer will follow the following steps.

3.13 Firstly, the taxpayer must choose, under existing paragraph 40-95 (1)(a), to use an effective life determined by the Commissioner for the vessel.

3.14 The capped life will not apply where the taxpayer has chosen to self-assess the effective life of the vessel. This ensures that a taxpayer is still able to self-assess the vessel's effective life if that provides an effective life more appropriate to their circumstances of use.

3.15 Secondly, the taxpayer's choice to use an effective life determined by the Commissioner is limited to the effective life determination that was in force at the time mentioned in paragraph 40-95(2)(a) or (c).

3.16 Thirdly, there must be a capped life that applies to the depreciating asset which is in force at the relevant time.

Relevant time

3.17 Once a taxpayer has worked out that there is a capped life for an asset, it is necessary for them to establish that it is in force at the relevant time. The ***relevant time*** is generally the asset's start time (that is, when the asset is first used or installed ready for use for any purpose). However, the relevant time will be the time specified in existing paragraph 40-95(2)(a) if paragraph 40-95(2)(a) applied to the taxpayer's circumstances and either:

- the capped life in force at the time specified in paragraph 40-95(2)(a) is both different from and shorter than the capped life in force at the asset's start time; or
- there is no capped life in force at the asset's start time but there is a capped life in force at the time specified in paragraph 40-95(2)(a).

3.18 Fourthly, the capped life must be shorter than the Commissioner's determined effective life chosen by the company. The capped life of 10 years is added to the existing table for the capped life of certain depreciating assets in subsection 40-102 (4). This capped life is shorter than the current Commissioner's determined effective life for various shipping vessels. ***[Schedule 2, item 4, item 10 in the table in subsection 40-102(4)]***

3.19 The current Commissioner's Determination for the effective lives for trading ships is as follows: Bulk carriers 20 years; Cargo ships 20 years; Container ships 20 years; roll on/roll off ships 20 years; 20 years and 30 years for Oil and Chemical Tankers and LNG and LPG tankers; 20 and 15 years for coastal supply boats of longer than 10 metres and coastal boats not longer than 10 metres.

Example 3.1

OceanSky purchased a shipping vessel on 1 July 2012 and started using it immediately in their business. OceanSky chose to use the effective life determined by the Commissioner. The effective life as determined by the Commissioner is 20 years. As the capped effective

> life of the shipping vessel is shorter than the Commissioner's effective life, OceanSky must use the capped effective life of 10 years.

3.20 A taxpayer who receives a certificate under the SR(TI) Exposure Draft is eligible to apply for the capped life provision.

3.21 A taxpayer will not be able to apply a capped life in relation to a vessel if some of the income in relation to the vessel is exempt from income tax for the income year. The exempt income tax provisions are described in Chapter 1of this explanatory material. ***[Schedule 2, item 5, subsection 40-102(4A)]***

Example 3.2

> Bluewater Pty Ltd is the owner and operator of the Titanic. It can apply for a certificate under Part 2 of the SR(TI) Exposure Draft in respect of the capped life or in respect of a shipping exempt income certificate. However Bluewater Pty Ltd cannot apply for both.
>
> Bluewater Pty Ltd decides that it would like to benefit from the income tax exemption, as the vessel is 15 years old, and most of the depreciation expenses have already been claimed. Therefore Bluewater cannot also apply the capped life in relation to the Titanic.

3.22 A taxpayer will also not be able to apply the capped life in relation to the vessel if the taxpayer's associates derive ordinary income or have statutory income which is exempt under clause 51-100 in relation to the vessel.

3.23 This is to ensure that a related entity cannot receive the benefit of the income tax exemption at the same time as their associate is receiving the benefit of the capped life.

Determining the remaining effective life for shipping vessels

3.24 Certain provisions are needed to deal with a company's entry or exit from the statutory capped life provisions. There are no existing transitional rules in the ITAA 1997 allowing for companies to continue to depreciate an asset but at a different effective life.

3.25 This part of the explanatory material sets out the mechanics for taking depreciation expenses either out of or into the 10 year statutory effective life regime. When a company starts or ceases to apply the statutory capped life to a particular vessel, the effective life of the vessel changes accordingly; that is, a new effective life will apply. Whether or not the statutory cap has previously applied to the vessel or subsequently applies to the vessel does not matter. ***[Schedule 2, item 6, subsection 40-103(1)]***

3.26 The new effective life is the ***remaining effective life****,* and is calculated by applying the following formula:

Diagram 3.1

$$\text{Unadjusted remaining effective life} \times \frac{\text{Alternative effective life}}{\text{Unadjusted effective life}}$$

[Schedule 2, item 6, subsection 40-103(2)]

3.27 This formula calculates the decline in value of a depreciating asset for an income year using the prime cost method and must be adjusted for an income year in which the remaining effective life is calculated as outlined in paragraph 3.26. ***[Schedule 2, item 3, paragraph 40-75(2)(d)]***

Choice of methods to work out the decline in value

3.28 There are two methods of calculating the decline in value of a depreciating asset: the prime cost (or straight line) method and the diminishing value (or reducing balance) method.

3.29 If the company calculated the decline in value based on the diminishing value method, they do not need to apply the formula in Diagram 3.1. Using the prime cost method, the annual decline in value of a depreciating asset is calculated by allocating the cost of the asset evenly over its effective life. It assumes that an asset declines in value uniformly throughout its life. The cost includes the first element and the second element of cost of the asset.

3.30 Under the diminishing value method, the decline in value of a depreciating asset is assumed to be greatest in the first year and progressively smaller in each succeeding year. Unlike the prime cost method, the decline in value is calculated on a base value, which is the sum of the opening adjustable value for that year plus any second element cost. As the diminishing value is based on the actual written down value or opening adjustable value of the asset, there is no need to calculate the remaining effective life. However, the prime cost deductions are still based on the cost of the asset, and therefore the remaining effective life needs to be calculated.

3.31 The ***unadjusted effective life*** is the effective life that the company used prior to the transition to a different rate, that is, it is the effective life that the company is currently applying. ***[Schedule 2, item 6, subsection 40-103(2)]***

3.32 The ***unadjusted remaining effective life*** is the residual effective life just before the company transitions between the capped life provision and normal capital allowance rules. ***[Schedule 2, item 6, subsection 40-103(2)]***

3.33 Broadly, the ***alternative effective life*** is forward looking. It is the new effective life which is applied by the company as it transitions into either the capped life provision or normal capital allowance rules. It is also the effective life a company would be applying had they not been applying the current effective life. ***[Schedule 2, item 6, paragraphs 40-103(2)(a) and (b)]***

3.34 For example, if a company receives a certificate under the SR(TI) exposure draft and starts to apply the capped life, the alternative effective life is the new effective life that the company will begin to apply to its shipping vessel. This will be the 10 year statutory cap. The unadjusted effective life would be the former effective life applied by the company just before it started to apply the capped life provision. This is the safe harbour effective life determined by the Commissioner, which is currently 20 years.

3.35 The example below clarifies the definition of 'unadjusted remaining effective' life and illustrates how to calculate the 'remaining effective life.'

Example 3.3

BlueQueen recently purchased a new shipping vessel on 1 July 2012, called the Australian Liberty. BlueQueen also operates the Australian Liberty. BlueQueen applies and receives a certificate from the Minister for Infrastructure and Transport for the vessel. After 8 years, BlueQueen decides that it no longer wishes to claim the capped life, and instead it would like to apply for a shipping exempt income certificate to the Minister for Infrastructure and Transport. BlueQueen needs to revert to the normal capital allowance rules and in order to do this; it will need to calculate the 'remaining effective life' available on the Australian Liberty. BlueQueen applies the following formula to calculate the 'remaining effective life':

$$\text{Unadjusted remaining effective life} \times \frac{\text{Alternative effective life}}{\text{Unadjusted effective life}}$$

The 'alternative effective life' is the effective life had the BlueQueen not applied the capped life. We assume that the 'alternative effective life' of a vessel, such as the Australian Liberty has been determined by the Commissioner under section 40-100 to be 20 years. The 'unadjusted effective life' is the effective life applied by the BlueQueen just before the BlueQueen decided that it no longer desired the benefit of the capped life provision. This is 10 years.

The 'unadjusted remaining effective' life is two years, as the BlueQueen ceased to apply the capped life for the Australian Liberty on the 8th year. From this time on there are still two out of the 10 years remaining in the capped life provision.

Thus, the remaining effective life is: $2 \text{ years} \times \frac{20 \text{ years}}{10 \text{ years}}$

$= 4 \text{ years}$

Therefore the 'remaining effective life' on the Australian Liberty, for the purpose of calculating depreciation under the normal capital allowance rules, is four years. BlueQueen applies and receives a shipping exempt income certificate.

Example 3.4

Following from Example 3.3, BlueQueen decides to re-enter the statutory capped life provisions. After two years of claiming the benefit of an exemption for its qualifying shipping income, the BlueQueen decides that it would like to re-apply to the Minister for Infrastructure and Transport for a certificate in order to again apply the capped life provision. As the BlueQueen applied the prime cost method whilst in the income tax exemption, they will need to apply the following formula to calculate the remaining effective life:

$$\text{Unadjusted remaining effective life} \times \frac{\text{Alternative effective life}}{\text{Unadjusted effective life}}$$

At this time, the 'alternative effective life' of the Australian Liberty is 10 years and the 'unadjusted effective life' is 20 years. The 'unadjusted remaining effective life' is two years, as the BlueQueen only applied two of the four effective life years.

Thus, the remaining effective life is: $2 \text{ years} \times \frac{10 \text{ years}}{20 \text{ years}}$

$= \text{one year}$

Therefore the Australian Liberty's remaining effective life would be one year.

3.36 Provision is made to enable the ATO to share taxpayer information with the Department of Infrastructure and Transport in certain circumstances — refer to paragraphs 2.53 to 2.55 in Chapter 2 of this explanatory material.

3.37 A minor change is made to subsection 40-70(1) (which describes the diminishing value method) to add a Note to state that the effective life of a vessel can change in some cases. ***[Schedule 2, items 1 and 2, subsection 40-70(1)]***

Application provisions

3.38 The amendments to give effect to the statutory cap apply to a vessel that a taxpayer holds on or after 1 July 2012, and started to hold before that day, as if they started to hold the vessel on that date. ***[Schedule 2, subitems 9(1) and (2)]***

3.39 These amendments will also apply to a vessel that the taxpayer commences to hold on or after 1 July 2012. ***[Schedule 2, subitem 9(1)]***

Consequential amendments

3.40 The definition of ***effective life*** in subsection 995-1(1) is amended to include the effective life of certain vessels. This amendment ensures that an effective life can be recalculated when an owner of a shipping vessel transitions between the capped life and normal capital allowances provisions. ***[Schedule 2, item 7, definition of effective life in subsection 995-1(1)]***

3.41 The definition of ***remaining effective life*** in subsection 995-1(1) is amended to allow for an owner of a shipping vessel to calculate the remaining effective life of their shipping vessel when they choose to apply the capped life provision or when they cease to apply the capped life provision. ***[Schedule 2, item 8, definition of remaining effective life in subsection 995-1(1)]***

Chapter 4
Balancing adjustment and roll-over relief

Outline of chapter

4.1 Part 2 of Schedule 2 to this exposure draft amends the ITAA 1997 to provide roll-over relief for holders of shipping vessels covered by a certificate of the SR(TI) Exposure Draft. The balancing adjustment incurred can be rolled over, if circumstances giving rise to it are satisfied.

Context of amendments

Operation of existing law

4.2 In Australia, shipping companies are currently taxed in line with companies in other industries.

4.3 Division 40 contains rules that provide deductions for the decline in value of a depreciating asset and certain other capital expenditure, provided the asset is held by the taxpayer or capital expenditure is incurred for the purpose of producing taxable income.

4.4 Subdivision 40-D contains provisions that require a taxpayer, in certain circumstances, to make an adjustment to their taxable income if a balancing adjustment event is triggered. For example, when the taxpayer sells an asset.

4.5 The adjustment is generally based on the difference between the termination value of the asset and its adjustable value. A balancing adjustment is included in calculating a taxpayer's taxable income for that year if it is assessable (section 40-285(1)) or deductible (section 40-285(2)), subject to the application of roll-over relief under section 40-340.

4.6 Under this current framework, a balancing adjustment arising from the disposal of a shipping vessel would be assessed in full in the income year in which the income from disposal is received.

Rationale for changes

4.7 The objective of the roll-over relief incentive is to encourage Australian ship owners to update their ageing fleet to more modern vessels. The benefits of having a younger fleet include improvements in vessel safety and efficiency. Furthermore, newer vessels would incorporate enhancements in technology and reductions in environmental impacts during operation.

4.8 This incentive supplements the Statutory Capped Life provisions set out in Part 1 of Schedule 2 to this exposure draft in achieving the objective.

Summary of new law

4.9 Part 2 of Schedule 2 provides roll-over relief for holders of vessels covered by a certificate under the SR(TI) Exposure Draft. If eligible, the balancing adjustment amount arising from the disposal of the original vessel is rolled over to the second income year after the income year in which the vessel is disposed of.

4.10 Where roll-over relief is chosen, only the amount of the balancing adjustment amount that exceeds the cost of acquiring another vessel is included in the taxpayer's assessable income.

Comparison of key features of new law and current law

New law	*Current law*
A balancing adjustment amount is not included in a taxpayer's assessable income until the second income year after which the balancing adjustment event occurs.	No equivalent. A balancing adjustment amount is included in the taxpayer's assessable income in the income year in which the balancing adjustment event occurs, even if the depreciating asset is a shipping vessel.
A balancing adjustment amount is not included in the taxpayer's assessable income in full. It is included only to the extent that the balancing adjustment exceeds the cost of the new vessel if the roll over is chosen.	A balancing adjustment amount is included in the taxpayer's assessable income in full, if the balancing adjustment event relates to a shipping vessel.

Detailed explanation of new law

4.11 The amendments to Division 40 allow a company to roll- over a balancing adjustment amount that would otherwise be assessable in the income year upon which the disposal of a vessel occurs.

4.12 The amendments insert a new section to provide roll-over relief for holders of vessels covered by a certificate under the SR(TI) Exposure Draft ***[Schedule 2, item 12, section 40-362].*** Clause 10 of that Exposure Draft sets out the requirements for vessels. These are to be met in order for the taxpayer to be issued with a certificate by the Minister for Infrastructure and Transport in relation to that vessel.

4.13 Section 40-285 is amended to include a new paragraph that applies to a taxpayer, if the taxpayer stops holding a depreciating asset that is a vessel. The balancing adjustment amount in relation to that balancing adjustment event is not included in the taxpayer's assessable income in that income year, and is instead included in the second income year after the income year in which the balancing adjustment event occurs. ***[Schedule 2, item 11, paragraph 40-285(5)(a)]***

4.14 In addition to the requirement of holding a depreciating asset that is a vessel, the taxpayer must also hold a certificate on the day that the balancing adjustment event occurs. That certificate must apply to that day and it cannot be a shipping exempt income certificate. ***[Schedule 2, item 11, paragraph 40-285(5)(b)]***

4.15 The meaning of 'balancing adjustment event' is set out in section 40-295.

Example 4.1

Transtar Corp is an Australian shipping company and owns BlueQueen. Assume that the entity holds a certificate under the SR(TI) exposure draft in respect of this vessel.

On 15 July 2012, Transtar Corp sells BlueQueen and incurs a balancing adjustment amount equal to $10 million. Because Transtar Corp holds a valid certificate, this balancing adjustment amount that would have been included in Transtar Corp's 2012-13 tax return can now be deferred and included in their 2014-15 tax return.

4.16 A note to subsection 40-285(5) is inserted stating that the amount under subsection 40-285(1) will not be included in the taxpayer's assessable income if roll-over relief under clause 40-362 is chosen. ***[Schedule 2, item 11, note to new subsection 40-285(5)]***

4.17 The amendments also specify the rules governing how the choice to apply roll-over relief must be made. These rules are largely consistent with the existing provisions governing choices to apply roll-over relief in relation to other depreciating assets. The choice must:

- be in writing; and
- be made within six months after the end of the second income year after the income year in which the balancing adjustment event occurs.

[Schedule 2, item 12, subsection 40-362(2)]

4.18 The Commissioner may allow a longer period within which the taxpayer can make the choice to apply roll-over relief, and in this case the choice can be made within that longer period of time. ***[Schedule 2, item 12, paragraph 40-362(2)(b)]***

4.19 Clause 40-362 in the exposure draft provides that the taxpayer – the vessel owner (which would usually be a company) is eligible for roll-over relief if the following circumstances are satisfied:

- there is a balancing adjustment event under section 40-295 because the taxpayer ceases to hold the original vessel; and
- the taxpayer holds a certificate under of the SR(TI) Exposure Draft on the day that the balancing adjustment event occurs; and
- roll-over relief under section 40-340 has not been chosen in respect of the original vessel and the taxpayer chooses to apply roll-over relief under subclause 40-362(2) in this exposure draft; and
- on the day occurring two years after the day the taxpayer ceases to hold that original vessel, another depreciating asset that is a vessel (the other vessel) is held; and
- the taxpayer holds a certificate under the SR(TI) Exposure Draft that is not a shipping exempt income certificate, on the day of that choice for that other vessel.

[Schedule 2, item 12, paragraphs 40-362(1)(a) to (d)]

4.20 To accommodate commercial practices, the circumstances giving rise to roll-over relief under clause 40-362 of this exposure draft allows for timing discrepancies between when the original vessel ceases to be held and when the other vessel is held for taxable use. Provided the

vessel owner is the holder of the other vessel either within one year before the day the original vessel ceases to be held, or within two years after the day the original vessel ceases to be held, then the vessel owner is eligible for roll-over relief under this clause if all the above criteria are satisfied. ***[Schedule 2, item 12, paragraph 40-362(1)(e)]***

Example 4.2

Transtar Corp is an Australian shipping company and owns BlueQueen. On 15 July 2012, Transtar Corp sells BlueQueen for $20 million. The adjustable value of the vessel at the time of sale is $10 million. Transtar Corp has purchased another vessel, the Titanic, after selling BlueQueen and the vessel is ready for taxable use on 25 September 2013.

On 1 December 2014, Transtar Corp chooses to obtain that roll-over relief. Assume that the entity holds a certificate under the SR(TI) Exposure Draft in respect of the vessels on the day of the choice and on the day the vessel is sold.

All the criteria under section 40-362 are satisfied, therefore Transtar Corp is eligible to roll-over the balancing adjustment, equal to $10 million.

Example 4.3

Transtar Corp is an Australian shipping company and owns BlueQueen. On 30 July 2012, Transtar Corp purchases another vessel, the Titanic, with the intention that this vessel would replace BlueQueen from this date. On 15 January 2013, Transtar Corp sells BlueQueen for $20 million. The adjustable value of the vessel at the time of sale is $10 million.

- Scenario 1: Assume on 15 September 2013, Transtar Corp sells Titanic, for commercial reasons.

  In this scenario, despite the entity having held Titanic within a year before the BlueQueen was sold, the entity has failed to hold Titanic on 15 January 2015, which is the day occurring 2 years after the day BlueQueen ceased to be held. Therefore, Transtar Corp is not eligible to roll-over the balancing adjustment amount.

- Scenario 2: Assume instead, Transtar Corp holds Titanic for 10 years.

  In this scenario, the entity could make a choice in writing, either for its own record, or to the Commissioner stating that roll-over relief is chosen.

4.21 A certificate must apply to the day that the balancing adjustment event occurs and to the day the choice is made. ***[Schedule 2, item 12, paragraph 40-362(1)(b) and (d)]***

4.22 If a vessel owner makes a choice to apply roll-over relief under clause 40-362 of this exposure draft, then subsection 40-285(1) no longer applies in relation to the original vessel. ***[Schedule 2, item 12, paragraph 40-362(3)(a)]***

4.23 Despite subsection 40-285(1) no longer applying in certain circumstances, subsection 40-285(2) which deals with the tax treatment of a deductible balancing adjustment will continue to apply.

4.24 However, an amount is still included in the vessel owner's assessable income, to the extent the balancing adjustment amount exceeds the cost of the other vessel that is acquired. ***[Schedule 2, item 12, paragraph 40-362(3)(b)]***

4.25 That amount is included in the second income year after the income year in which the balancing adjustment event occurs. ***[Schedule 2, item 12, subsection 40-362(4)]***

Example 4.4

Assume that the facts from Example 4.2 hold. Furthermore, assume the cost of Titanic – the other vessel – is $8 million.

- The sale proceeds from BlueQueen ('termination value') = $20 million
- The cost of BlueQueen at the time it is sold ('adjustable value') = $10 million
- The cost of Titanic at the time of purchase = $8 million

Therefore, the amount included in Transtar Corp's assessable income is $2 million. It would be included in their 2014-15 tax return.

4.26 If the roll-over relief applies, then the cost of the other vessel is reduced by the amount of the balancing adjustment, which is the difference between the original vessel's termination value and its adjustable value at the point when the balancing adjustment event occurs, but only to the extent that that cost does not fall below zero. ***[Schedule 2, item 12, paragraph 40-362(3)(c)]***

Example 4.5

Transtar Corp is an Australian shipping company and owns BlueQueen. On 15 July 2012, Transtar Corp sells BlueQueen for

$20 million. The adjustable value of the vessel at the time of sale is $10 million. Transtar Corp has purchased another vessel, the Titanic, after selling BlueQueen.

- If the purchase price of Titanic is $30 million, then Transtar Corp will be able to roll-over the full balancing adjustment, which equates to $10 million. The adjusted cost of Titanic is $20 million and no amount is included in their assessable income.

- If the purchase price of Titanic is $8 million, then Transtar Corp will only be able to roll-over $8 million of the balancing adjustment. $2 million will be included in their assessable income and the adjusted cost of the vessel is zero.

4.27 The note in section 40-175 is amended to include new paragraph 40-362(3)(c) after subsection 40-90(2). The inclusion of paragraph 40-362(3)(c) acts to modify the first element of cost in relation to the other vessel. ***[Schedule 2, item 10, note to section 40-175]***

4.28 Provision is made to enable the ATO to share taxpayer information with the Department of Infrastructure and Transport in certain circumstances — refer to paragraphs 2.53 to 2.55 in Chapter 2 of this explanatory material.

Capital Gains Tax

4.29 Item 13 of Schedule 2 adds an additional circumstance to subsection 104-235(1A) for when capital gains tax event K7 does not apply. This is to ensure that capital gains tax does not apply in respect of a qualifying vessel, to the extent that vessel was used to produce exempt income under clause 51-100. This would include sale proceeds from the sale of that vessel, to the extent they relate to the use of that vessel in the income tax exemption. ***[Schedule 2, item 13, subsection 104-235(1AA)]***

Chapter 5
Seafarer tax offset

Outline of chapter

5.1 Schedule 3 to the Exposure Draft entitles a company to a refundable tax offset (a seafarer tax offset) for salary, wages and allowances paid to Australian resident seafarers who are employed to undertake overseas voyages on certified vessels, if the company employs the seafarer on such voyages for at least 91 days in the income year.

Context of amendments

Operation of existing law

5.2 Shipping companies are currently taxed in line with companies in other industries and can claim salary, wages and allowances paid to seafarers as a tax deduction.

Rationale for changes

5.3 The seafarer tax offset is designed to stimulate opportunities for Australian seafarers to be employed on overseas voyages and to gain maritime skills.

Summary of new law

5.4 A company is eligible to claim the seafarer tax offset – a refundable tax offset linked to withholding payments paid to Australian seafarers for overseas voyages – in certain circumstances. The overseas voyage must be made by a certified vessel, and the seafarer must be employed, by the company claiming the offset, on overseas voyages made by certified vessels for at least 91 days in the income year.

Comparison of key features of new law and current law

New law	*Current law*
A refundable tax offset is available to employers of Australian resident seafarers	No equivalent.

Detailed explanation of new law

5.5 Section 13-1, the list of tax offsets, is amended to include withholding payments made to Australian seafarers. ***[Schedule 3, item 1, section 13-1]***

5.6 The table in section 67-23 lists the tax offsets which are subject to the refundable tax offset rules is amended to include a new item 13 – the tax offset in relation to seafarers available under new Subdivision 61-N. Under the ITAA 1997, Division 67 must state that a particular tax offset is subject to the refundable tax offset rules. ***[Schedule 3, item 2, section 67-23]***

5.7 Subject to certain conditions, a company may be entitled to a refundable tax offset for payments made to Australian seafarers who are employed to undertake overseas voyages on certified vessels. ***[Schedule 3, item 3, section 61-695]***

5.8 The seafarer tax offset is designed to stimulate opportunities for Australian seafarers to be employed or engaged on overseas voyages and to gain maritime skills. ***[Schedule 3, item 3, section 61-700]***

Entitlement to the seafarer tax offset

5.9 In order to be eligible to claim the seafarer tax offset, a company must meet certain qualifying criteria and pay Australian seafarers to undertake qualifying employment.

Qualifying company

5.10 A company is eligible to apply for the seafarer tax offset for an income year if:

- the company is a corporation to which paragraph 51(xx) of the Constitution applies; and

- the company employs at least one individual in qualifying positions, on certified vessels, for qualifying overseas voyages for a minimum of 91 days in the income year.

[Schedule 3, item 3, subsection 61-705(1)]

5.11 Paragraph 51(xx) of the Constitution provides that the Parliament has the power to legislate for the peace, order, and good government of the Commonwealth with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

5.12 The company eligible for the seafarer tax offset is the company who is employing the individual seafarer. This may not necessarily be the company operating the certified vessel. If an individual is employed by a crew management company or through a labour hire arrangement, and is contracted to work on vessels operated by a third party, whichever company's payments to the individual incur a withholding obligation under section 12-35 or subsection 12-60(1) of Schedule 1 to the TAA 1953 is the company eligible for the seafarer tax offset. ***[Schedule 3, item 3, paragraph 61-705(2)(a)]***

Example 5.1

> Staffworks is a crew management company with a register of employees. Bluewater is a shipping company. Bluewater contracts with Staffworks to provide, Matthew, an engineer to undertake an overseas voyage on a certified vessel, the Harker. Staffworks pays Matthew to serve on Bluewater's vessel, and in doing so incurs a withholding obligation under subsection 12-60(1) of Schedule 1 of the TAA 1953.
>
> Assuming the other eligibility conditions are met, Staffworks is eligible to claim the seafarer tax offset on the relevant payments it makes to Matthew. In negotiating the labour hire arrangement, Bluewater provides Staffworks with a copy of its certificate for the Harker. Because Staffworks can claim the seafarer tax offset on relevant payments made to Matthew, Bluewater is therefore able to negotiate a lower price for Matthew's services.

5.13 For withholding payments to an individual seafarer to qualify for the seafarer tax offset, the individual must be in qualifying employment with the same company for 91 days or more in an income year. Therefore, a labour hire or crew management company can employ a seafarer to work on a number of different certified vessels operated by multiple companies and still pass the 91 day test as long as the labour hire company is still ultimately the employer of the seafarer. An individual is taken to be employed for the duration of a voyage if the individual is employed in a qualifying role on any day within the period:

- starting on the day on which cargo or passengers to be carried on the voyage (or on any part of the voyage) is first loaded into the vessel; and
- ending on the first day on which all cargo or passengers carried on the voyage (or any part of the voyage) has been completely unloaded from the vessel.

[Schedule 3, item 3, subsection 61-705(3)]

Example 5.2

The Harker is a vessel for which Bluewater has a certificate, travelling on an overseas voyage. The first piece of cargo is loaded on to the Harker on 13 February 2013 and the final piece is offloaded on 30 April 2013. Matthew was employed by Staffworks under a labour hire arrangement to serve as an engineer on the Harker during this period of 31 days. The 31 days count towards meeting the 91 days of qualifying employment requirement.

Staffworks later employs Matthew under another labour hire arrangement to undertake an overseas voyage as an engineer on the Eldison for which Ford Shipping holds a certificate. Matthew serves a further 65 days on this voyage. As Staffworks is still the company employing Matthew, and incurring the withholding obligation, Matthew's service on the Eldison also counts towards meeting the 91 days requirement.

Example 5.3

Eliot is employed directly by Bluewater to serve as a deck officer on the Harker for 46 days. He is later then employed directly by Ford Shipping to serve on the Eldison for 62 days. Although he has served more than 91 days in qualifying employment on certified vessels, he has not served more than 91 days with a single company and so no company is able to claim the seafarer tax offset for payments made in relation to Eliot's employment.

Qualifying employment

5.14 For withholding payments to an individual seafarer to be eligible under the seafarer tax offset, the payments must be made in respect of employment that meets certain conditions. Employment on a particular day qualifies if the seafarer:

- is an Australian resident for tax purposes; ***[Schedule 3, item 3, paragraph 61-705(2)(a)]***

- is employed as a master, engineer, integrated rating or deck officer and is employed to undertake an overseas voyage as outlined in paragraphs 5.15 and 5.16 of this chapter; ***[Schedule 3, item 3, paragraph 61-705(2)(b)]***

- undertakes the voyage on a ship for which a company holds a certificate under the SR(TI) exposure draft applying to that day. ***[Schedule 3, item 3, paragraph 61-705(2)(c)]***

5.15 For payments made to an individual seafarer to count for the purposes of the seafarer tax offset, they must be made in respect of a voyage where the vessel travels a route that includes an overseas voyage. As such, the vessel must travel between:

- a port in Australia, and
  - a port outside Australia; or
  - a place in the waters of the sea above the continental shelf of a country other than Australia; or
- a place in the waters of the sea above the continental shelf of Australia, and
  - a port outside Australia; or
  - a place in the waters of the sea above the continental shelf of a country other than Australia; or
- ports outside Australia; or
- places beyond the continental shelf of Australia.

[Schedule 3, item 3, paragraph 61-705(2)(d)]

5.16 Whether or not the vessel travels between two or more ports in Australia in the course of the voyage is irrelevant. ***[Schedule 3, item 3, paragraph 61-705(2)(d)]***

5.17 For an individual seafarer's employment to count for the purposes of the seafarer tax offset, it must be undertaken on a vessel for which the company operating the vessel has a certificate that applies to the days of the voyage under the SR(TI) Exposure Draft. A vessel will meet the requirements necessary to obtain a certificate under the SR(TI) Exposure Draft if it meets requirements relating to such things as tonnage, registration and usage in that exposure draft. ***[Schedule 3, item 3, paragraph 61-705(2)(c) and note 1 to subsection 61-705(2)]***

Example 5.4

Ian is an Australian resident, serving as a master on the Stirling, which is operated by Ford Shipping and undertaking an overseas voyage. Ford Shipping does not have a certificate for the Stirling. Therefore, Ian's employment does not count towards the 91 day employment requirement and Bluewater cannot claim the seafarer tax offset for any payments made to Ian for his service on that voyage.

Amount of the seafarer tax offset

5.18 The amount of the company's seafarer tax offset for the income year is calculated using the following formula:

$$\text{Gross payment amounts} \times 27\%$$

and is rounded up to the nearest whole dollar.

[Schedule 3, item 3, section 61-710]

5.19 ***Gross payment amounts*** means the total amount of withholding payments (salary, wages and allowances) payable by the company in an income year to individuals employed for 91 days or more within the income year in employment that qualifies for the offset, in respect of such employment. ***[Schedule 3, item 3, section 61-710]***

5.20 The 'gross payment amount' is calculated with reference to section 12-35 and subsection 12-60(1) of Schedule 1 to the TAA 1953. Section 12-35 defines those payments made to individuals that cause a company to incur a withholding obligation. Subsection 12-60(1) defines the same thing, for individuals employed under a labour hire arrangement.

5.21 The 'gross payment amount' can be calculated by summing any payments made by the company to an individual they employ in qualifying employment for more than 91 days:

- that incur a withholding obligation under section 12-35 or subsection 12-60(1) of Schedule 1 to the TAA 1953; and
- are made in relation to employment that qualifies for the offset.

Example 5.5

Ford Shipping pays Ian $30,000 in wages and a further $10,000 in bonuses for his work as a master on the Eldison. Ian has done three overseas voyages on the Eldison for Ford Shipping, for a total of

134 days of employment. Ford Shipping has a certificate for the Eldison for each day of Ian's employment.

Under section 12-35 of Schedule 1 of the TAA 1953, salary, wages, allowances and bonuses incur a withholding obligation. Ian's gross employment amount is therefore $30,000 + $10,000 = $40,000. Therefore, Ford Shipping can claim a total offset of $40,000 × 27% = $10,800.

Ford Shipping also pays Ian a further $10,000 for his work on the Stirling, for which Ford Shipping does not have a certificate. As this is not a qualifying voyage on a certified vessel, the payment does not count for the purposes of the seafarer tax offset. Ian's gross employment amount remains at $40,000 and Ford Shipping's offset remains $10,800.

5.22 Provision is made to enable the ATO to share taxpayer information with the Department of Infrastructure and Transport in certain circumstances — refer to paragraphs 2.53 to 2.55 in Chapter 2 of this explanatory material.

Application of the Seafarer Refundable Tax Offset

5.23 The Tax Offset is available in respect of qualifying days that occur after 30 June 2012. ***[Schedule 3, item 3, Note to subsection 61-705(2)]***

Chapter 6
Royalty withholding tax

Outline of chapter

6.1 Schedule 4 to the Exposure Draft amends the ITAA 1936 to provide an exemption from royalty withholding tax to non-resident lessors that lease qualifying vessels to Australian resident companies on a bareboat basis, where that vessel is used, or is available for use, in undertaking qualifying activities during the period of the lease.

Context of amendments

6.2 The income tax law defines a royalty to include payments made in consideration for the use of, or the right to use, any industrial, commercial or scientific equipment. Royalties paid to non-residents are generally subject to withholding tax.

6.3 Consistently with these rules, payments made to non-residents by Australian resident companies for the lease of shipping vessels on a bareboat basis constitute royalties and are subject to royalty withholding tax. However, payments for foreign vessels leased on a time charter basis do not constitute royalties and therefore attract no royalty withholding tax. Income associated with time-charter lease payments could still be taxable in accordance with domestic tax laws as well as Australia's tax treaty obligations.

6.4 Vessels leased on a 'bareboat' basis are provided without a captain or crew, whereas vessels leased on a 'time charter' basis come supplied with a captain and crew chosen by the lessor.

6.5 While the royalty withholding tax liability associated with leasing a vessel on a bareboat basis is imposed on the non-resident lessor, in practice the cost of this tax is effectively borne by the Australian shipping operator lessee through the inclusion of 'gross up' clauses in lease contracts that place this cost on the lessee.

6.6 The imposition of royalty withholding tax therefore makes it more expensive for Australian shipping operators to secure foreign vessels on a bareboat basis, especially when compared to the lease of vessels fully supplied with a captain and crew.

6.7 The new law will provide an exemption from royalty withholding tax for payments made by Australian resident companies for the lease of certain shipping vessels, on a bareboat basis, where those vessels are used commercially to transport passengers or cargo.

6.8 This change is expected to reduce the costs for Australian shipping operators of securing vessels on a bareboat basis, which in turn should increase the ability of Australian operators to crew those vessels with Australian workers.

Summary of the new law

6.9 The effect of the new law will be to exempt certain lease payments from royalty withholding tax.

6.10 The exemption from royalty withholding tax will only apply if the following criteria are fulfilled:

- the lessee must be an Australian resident company;
- the vessel must not be an 'excluded vessel' listed at clause 10(4) of the SR(TI) Exposure Draft;
- the vessel must be leased on a bareboat basis; and
- the vessel must be used, or available for use, wholly or mainly for business or commercial activities that involve shipping cargo or passengers for consideration.

Comparison of key features of new law and current law

Current Law	*New Law*
Except where limited by a bilateral tax treaty, payments for the use of or the right to use industrial, commercial or scientific equipment constitute royalties and are subject to royalty withholding tax at the rate of 30 per cent. This would capture payments for the lease of commercial vessels.	Lease payments made in respect of certain qualifying vessels will be exempted from royalty withholding tax. Vessels that are excluded from the new exemption, however, will remain subject to royalty withholding tax at the rate of 30 per cent unless this rate is altered by a bilateral tax treaty.
Where a tax treaty defines a royalty to include payments for the use of, or the right to use, industrial, commercial or	Lease payments made in respect of excluded vessels will remain subject to withholding tax in accordance with tax

Current Law	*New Law*
scientific equipment, such payments are subject to royalty withholding tax at the rate provided for in the tax treaty. This would capture payments for the lease of commercial vessels.	treaty rates, where a treaty defines a royalty to include payments for the use of, or the right to use, industrial, commercial or scientific equipment. Lease payments made in respect of certain qualifying vessels, however, will be exempted from royalty withholding tax.
Where a tax treaty does not define a royalty to include payments for the use of, or the right to use, industrial, commercial or scientific equipment, such payments are not subject to royalty withholding tax.	No change. Lease payments made in respect of both eligible and excluded vessels will not be subject to royalty withholding tax where a tax treaty does not define a royalty to include payments for the use of, or the right to use, industrial, commercial or scientific equipment.

Detailed explanation of the new law

6.11 The new law will have the effect, from 1 July 2012, of exempting certain payments for the lease of qualifying vessels on a bareboat basis from royalty withholding tax ***[Schedule 4, item 2]***.

6.12 This will be achieved by listing those payments amongst the exclusions from withholding tax set out in subsection 128B(3) of the ITAA 1936.

6.13 To be exempted from royalty withholding tax the lease payments must meet certain criteria ***[Schedule 4, item 1, paragraph 128B(3)(m)]***.

- The lessee must be an Australian resident company ***[Schedule 4, item 1, subparagraph 128B(3)(m)(i)]***.
  - Therefore, the liability for royalty withholding tax will remain in cases where the lessee is another type of entity or is a non-resident.
- The lease payment must not relate to a vessel listed at clause 10(4) of the SRTI Exposure Draft. The exemption will therefore apply to vessels other than:
  - recreational vessels;
  - fishing vessels and fishing fleet support vessels;

  – offshore industry vessels;

  – inland waterways vessels;

  – salvage vessels;

  – tugboats;

  – barges;

  – vessels operating wholly or mainly from a stationary position;

  – government vessels; and

  – vessels owned or operated by the Australian Defence Force or the defence force of another country ***[Schedule 4, item 1, subparagraph 128B(3)(m)(ii)]***.

- The payments must be for a vessel leased on a bareboat basis ***[Schedule 4, item 1, subparagraph 128B(3)(m)(iii)]***.

  – Therefore, the vessel must not come with a captain and crew.

- The vessel must be used, or be available for use, as mentioned in clause 8(1)(c) of the SR(TI) Exposure Draft ***[Schedule 4, item 1, subparagraph 128B(3)(m)(iv)]***.

  – Therefore, the vessel must be used, or be available for use, wholly or mainly for business or commercial activities involving shipping cargo or passengers for consideration.

6.14 Lease payments that fulfil these criteria will not be subject to withholding tax. Consequentially, there will also be no obligation on the Australian payer of the royalty to withhold any royalty withholding tax on these payments.

6.15 Where Australia's domestic law treats a payment as a royalty and Australia has concluded a tax treaty that does *not* treat that same payment as a royalty, the payment will not be subject to royalty withholding tax in accordance with subsection 17A(5) of the *International Tax Agreements Act 1953*. Some of Australia's tax treaties include a broader exemption from royalty withholding tax than is provided under this exposure draft. As such, certain payments that will not be excluded from royalty withholding tax under this exposure draft could nonetheless

remain excluded from withholding tax in accordance with their treatment under relevant tax treaties.

6.16 Lease payments that are exempted from royalty withholding tax under this exposure draft may nonetheless result in an Australian tax liability. For example, an Australian tax liability may arise if income associated with exempted lease payments has an Australian source or is attributable to an Australian permanent establishment of the non-resident lessor.

Example 6.1: Payments exempt from royalty withholding tax under this exposure draft

Blackbothom Co, an Australian resident company, is the lessee of a ship used for the transport of goods, from Captain Potts's Ship Trading Co, a Panamanian resident company that has no permanent establishment in Australia. The ship is leased on a bareboat basis and is used in commercial operations to transport goods.

Australia has no tax treaty with Panama, so there are no treaty limitations on Australia's right to tax royalties.

The payments for the lease of this ship would be considered a royalty under subsection 6(1) of the ITAA 1936. However, the payments for the lease of this ship would fulfil the requirements for an exemption from royalty withholding tax as:

- the payer and lessee is an Australian resident company;
- the lease is for a vessel on a bareboat basis;
- the vessel is not an excluded vessel under clause 10(4) of the SR(TI) Exposure Draft; and
- during the period of the lease the vessel is being used commercially to ship cargo for consideration.

Example 6.2: Payments not exempt from royalty withholding tax under this exposure draft or under a tax treaty

Blackbothom Co, an Australian resident company, is the lessee of a tugboat from Captain Potts's Ship Trading Co, a Panamanian resident company that has no permanent establishment in Australia. The tugboat is leased on a bareboat basis and is used in commercial tugboat operations.

Australia has no tax treaty with Panama, so there are no treaty limitations on Australia's right to tax royalties.

The payments for the lease of this tugboat would be considered a royalty under subsection 6(1) of the ITAA 1936 and would be subject to royalty withholding tax under section 128B of the ITAA 1936. Payments for the lease of this tugboat are not exempt from royalty withholding tax, because the vessel is an 'excluded vessel'. They would also not be exempt because during the period of the lease the vessel is not undertaking qualifying activities, nor is it available for use in undertaking qualifying activities.

Lease payments for this tugboat would be taxable in accordance with Australia's domestic law at the rate of 30 per cent.

Example 6.3: Payments exempt from royalty withholding tax under this exposure draft and under a tax treaty

Blackbothom Co, an Australian resident company, is the lessee of a ship from Shirkleton Shore Seaworthy Co, a New Zealand resident company that has no permanent establishment in Australia. The ship is leased on a bareboat basis and is used in commercial operations to transport goods.

Under this exposure draft, payments for the lease of this ship would fulfil the requirements for an exemption from royalty withholding tax as:

- the payer and lessee is an Australian resident company;
- the lease is for a vessel on a bareboat basis;
- the vessel is not an excluded vessel under clause 10(4) of the SR(TI) exposure draft; and
- during the period of the lease the vessel is being used commercially to ship cargo for consideration.

In this case, Australia's tax treaty with New Zealand would also operate to 'exempt' the payment from royalty withholding tax as the payment, being made for the use of commercial or industrial equipment, would not be considered a royalty under Article 12(3) of that treaty. The amount would therefore not be subject to withholding tax under Australia's domestic law in accordance with subsection 17A(5) of the *International Tax Agreements Act 1953*.

Example 6.4: Payments not exempt from royalty withholding tax under this exposure draft, payments are exempt under a tax treaty

Blackbothom Co, an Australian resident company, is the lessee of a vessel being a tugboat from Shirkleton Shore Seaworthy Co, a New Zealand resident company that has no permanent establishment in

Australia. The tugboat is leased on a bareboat basis and is used in commercial tugboat operations.

The payments for this tugboat would be considered a royalty under subsection 6(1) of the ITAA 1936 and would be subject to royalty withholding tax under section 128B of the ITAA 1936. Under this exposure draft, payments for the lease of this tugboat are not exempt from royalty withholding tax, because the vessel is an 'excluded vessel'. They would also not be exempt because during the period of the lease the vessel is not undertaking qualifying activities, nor is it available for use in undertaking qualifying activities.

However, payments for the lease of a tugboat would not be considered a royalty under Article 12(3) of Australia's tax treaty with New Zealand. Consequently, the amount would not be subject to withholding tax under Australia's domestic law provisions in accordance with subsection 17A(5) of the *International Tax Agreements Act 1953*.

6.17 Provision is made to enable the ATO to share taxpayer information with the Department of Infrastructure and Transport in certain circumstances — refer to paragraphs 2.53 to 2.55 in Chapter 2 of this explanatory material.

Application provisions

6.18 The exemption from royalty withholding tax for qualifying lease payments will apply to payments made on or after 1 July 2012. ***[Schedule 4, item 2]***