2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (2012 MEASURES No. 1) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

Table of contents

Glossary 1

General outline and financial impact 3

Chapter 1 Disallow deductions against rebatable benefits 7

Chapter 2 Limiting the trading stock exception for superannuation funds 15

Chapter 3 Tax exemption for ex-gratia payments to New Zealand non-protected special category visa holders 21

Chapter 4 Phasing out the dependent spouse tax offset 25

Chapter 5 Miscellaneous amendments to the taxation laws 35

Index 47

Glossary

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

Abbreviation	***Definition***
ATO	Australian Taxation Office
CGT	capital gains tax
CPI	consumer price index
FHSA	first home saver account
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
MIT	managed investment trust
MRRT	Minerals Resource Rent Tax
TAA 1953	*Taxation Administration Act 1953*

General outline and financial impact

Disallow deductions against rebatable benefits

Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* to implement the 2011-12 Budget measure to disallow deductions against government assistance payments from 1 July 2011.

Date of effect: These amendments apply from 1 July 2011.

To ensure taxpayers who incurred expenses in qualifying for a government assistance payment during the 2010-11 income year were not disadvantaged, the Government allowed these taxpayers to claim a deduction when they completed their 2010-11 tax return.

Proposal announced: This measure was announced in the 2011-12 Budget on 10 May 2011.

Financial impact: Nil.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.34 to 1.37.

Compliance cost impact: Nil.

Limiting the trading stock exception for superannuation funds

Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* to remove access to the trading stock exception to the capital gains tax primary code rule for certain assets (primarily shares, units in a trust and land) owned by a complying superannuation entity.

Date of effect: This measure applies after 7.30 pm (by legal time in the Australian Capital Territory) on 10 May 2011. Assets owned by a relevant entity and held as trading stock prior to that time can continue to be treated as trading stock of the entity.

These amendments apply retrospectively from the time of announcement to promote certainty regarding the appropriate tax treatment of certain assets owned by a complying superannuation entity.

Proposal announced: This measure was announced in the 2011-12 Budget on 10 May 2011.

Financial impact: This measure has these revenue implications:

2011-12	***2012-13***	***2013-14***	***2014-15***
Nil	$5m	$5m	$5m

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.17 to 2.20.

Compliance cost impact: Low overall, comprising a low implementation impact and a decrease in ongoing compliance costs.

Tax exemption for ex-gratia payments to New Zealand non-protected special category visa holders

Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* to exempt from income tax ex-gratia payments to New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in early 2012.

Date of effect: 6 February 2012.

Proposal announced: This measure has not previously been announced.

Financial impact: Nil.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 3, paragraphs 3.16 to 3.19.

Compliance cost impact: Nil.

Phasing out the dependent spouse tax offset

Schedule 4 to this Bill amends the *Income Tax Assessment Act 1936* (ITAA 1936) to phase out, from 1 July 2012, the dependent spouse tax offset for taxpayers who maintain a dependent spouse born on or after 1 July 1952.

This Schedule also amends the ITAA 1936 so a taxpayer eligible for an amount of offset in respect of an invalid or carer spouse is not also entitled to the equivalent amount of dependent spouse tax offset as a component of their zone, overseas forces or overseas civilian tax offset.

Date of effect: The provisions in this Schedule apply from various dates. Extending the phase out of the dependent spouse tax offset will apply from 1 July 2012.

Amendments to ensure that taxpayers who maintain a dependent spouse are not able to claim more than one offset in respect of the same spouse when calculating their zone, overseas forces or overseas civilian offset entitlement will apply from 1 July 2011.

As the zone, overseas forces and overseas civilian offsets are paid on assessment, no taxpayers are disadvantaged from these amendments.

Proposal announced: This measure was announced in the 2011-12 Mid-Year Economic and Fiscal Outlook on 29 November 2011.

Financial impact: This measure has a positive impact of $370 million over the forward estimates.

2011-12	***2012-13***	***2013-14***	***2014-15***
Nil	Nil	$180m	$190m

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.48 to 4.52

Compliance cost impact: This measure is expected to have a low over-all compliance cost, relative to the size of the affected group.

Miscellaneous amendments to the taxation laws

Schedule 5 makes miscellaneous amendments to the taxation laws as part of the Government's commitment to uphold the integrity of the taxation system.

Date of effect: Most of these amendments will commence on 1 July 2012. The other amendments either commence from Royal Assent, or from an as yet undetermined date (which is reliant on the enactment of other legislative provisions). These commencement dates are explained in Chapter 5 of this explanatory memorandum.

Proposal announced: These amendments were all foreshadowed by release in draft form on the Treasury website on 13 February 2012.

Financial impact: These amendments will have a negligible impact on revenue over the forward estimates.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 5, paragraphs 5.48 to 5.51.

Compliance cost impact: Negligible.

Disallow deductions against rebatable benefits

Outline of chapter

1.1 Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure that expenses incurred in gaining or producing a rebatable benefit are not deductible.

Context of amendments

1.2 Subsection 8-1(1) of the ITAA 1997 allows a taxpayer to deduct from assessable income any loss or outgoing to the extent that it is incurred in gaining or producing assessable income; or it is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.

1.3 Subsection 8-1(2) of the ITAA 1997 states that a loss or outgoing cannot be deducted if it is capital or is capital in nature; or private or domestic in nature; or it is incurred in gaining or producing exempt income or non-assessable non-exempt income.

1.4 In November 2010, the High Court of Australia held that individuals who incurred study expenses in gaining Youth Allowance (Student) were able to deduct the expenses from their assessable income. Because the entitlement to Youth Allowance (Student) requires an individual to satisfy an ongoing statutory activity test, such as undertaking full-time study, the expenses were held to be incurred in gaining or producing assessable income.

1.5 The High Court also considered the expenses were not private or domestic in nature as they were incurred in the retention of a statutory right to payment.

1.6 The Australian Taxation Office (ATO) indicated in its final decision impact statement that, in addition to Youth Allowance (Student), the High Court decision applied to a range of other taxable government assistance payments including ABSTUDY living allowance, Austudy living allowance, Newstart Allowance and Youth Allowance (Jobseeker). This is because the payments require the individual to satisfy regular and

ongoing statutory activity requirements in order to qualify for the payment.

1.7 The High Court decision represented a departure from the principle that study expenses unrelated to employment are not deductible. The decision means that individuals in like circumstances (such as students with the same income) have different tax obligations depending on the type of government assistance payment they receive, or whether they receive any government assistance payments at all.

1.8 In that sense, the decision has long-term implications for the integrity of basic tax principles; involves a cost to revenue; and introduces addititonal horizontal inequities into the tax system.

1.9 The Government announced in the 2011-12 Budget that it would disallow deductions against all 'government assistance payments' from 1 July 2011. Disallowing deductions going forward recognises that taxable government assistance payments are effectively tax-free and provides certainty as to the scope of eligible deductions.

1.10 Individuals are able to receive a deduction for expenses incurred in gaining a rebatable benefit for the 2010-11 and prior income years.

Summary of new law

1.11 This Schedule amends the ITAA 1997 to disallow deductions for expenses incurred in gaining or producing a rebatable benefit.

1.12 Section 160AAA of the *Income Tax Assessment Act 1936* (ITAA 1936) provides a rebate in respect of certain pensions and benefits.

1.13 From 1 July 2011, individuals will no longer be able to claim a deduction for expenses they incur in qualifying for a payment that is eligible for a rebatable benefit.

1.14 Disallowing a deduction for expenses incurred in gaining or producing a rebatable benefit recognises taxable government assistance payments are effectively tax-free and individuals should not be able to receive an additional benefit by way of a tax deduction against their assessable income for any expenses they incur in qualifying for the payment.

Comparison of key features of new law and current law

New law	***Current law***
Individuals will not be able to deduct a loss or outgoing they incur in gaining or producing a 'rebatable benefit' (as defined in section 160AAA of the ITAA 1936) even if the loss or outgoing is not considered private or domestic in nature. If an individual uses property in gaining or producing a rebatable benefit, the use of property is taken to not have been for the purpose of producing assessable income, and is not deductible.	Individuals may deduct a loss or outgoing they incur in gaining or producing a rebatable benefit, provided the loss or outgoing is not considered private or domestic in nature.

Detailed explanation of new law

1.15 These amendments disallow deductions for expenses incurred in gaining or producing a rebatable benefit from 1 July 2011.

1.16 These amendments give effect to the 2011-12 Budget measure to disallow deductions against government assistance payments. ***[Schedule 1, item 1, section 12-5, after item in the table headed 'rates and land taxes')***

1.17 Item 2 inserts a new section into the ITAA 1997 to disallow deductions for expenses incurred in gaining or producing a rebatable benefit. The provision will be included in Division 26. ***[Schedule 1, item 2, subsections 26-19(1) and (2)]***

Scope of rebatable benefit

1.18 A 'rebatable benefit' is defined in subsection 160AAA(1) of the ITAA 1936.

1.19 The effect of a beneficiary rebate is that taxable government assistance payments that are rebatable benefits are concessionally taxed. This means that government assistance payments that are taxable in law are in effect tax-free due to the rebate.

1.20 If an individual has no other income except their taxable government assistance payment, then the beneficiary rebate extinguishes their tax liability.

1.21 Taxpayers who have other assessable income, such as employment or investment income in addition to their taxable government assistance payment, still have the tax on their government assistance payment extinguished by the beneficiary rebate, but are taxed on any other assessable income at their marginal tax rate. These taxpayers can reduce their tax liability by claiming deductions.

1.22 Only taxpayers who have other assessable income in addition to their taxable government assistance payment are able to access the benefit conferred by the High Court decision. Taxpayers who receive a taxable government assistance payment, but have no other assessable income, are unable to benefit as the operation of the beneficiary rebate means they have no tax liability to claim deductions against.

1.23 A taxpayer receives the beneficiary rebate when they receive a taxable government assistance payment during a financial year.

1.24 Government assistance payments that are eligible for the beneficiary rebate include, but are not be limited to:

- Austudy living allowance;
- ABSTUDY living allowance;
- Newstart Allowance;
- Youth Allowance (Student); and
- Youth Allowance (Jobseeker).

1.25 The beneficiary rebate is only available to individuals that receive a taxable government assistance payment during a particular financial year. The beneficiary rebate is not available to individuals that receive a tax exempt government assistance payment, as the individuals pay no tax on these payments.

No deduction for losses or outgoings incurred in gaining or producing a rebatable benefit

1.26 Section 8-1 of the ITAA 1997 is the general deduction provision that allows an individual to deduct a loss or outgoing if it is incurred in gaining or producing assessable income unless a provision in the ITAA 1997 prevents them from deducting it (paragraph 8-1(2)(d) of the ITAA 1997).

1.27 Item 2 inserts a new section into the ITAA 1997 that will prevent an individual from deducting losses or outgoings they incur in gaining or producing a rebatable benefit. The new provision will be in Division 26 of the ITAA 1997. ***[Schedule 1, item 2, subsections 26-19(1) and (2)]***

1.28 Subsection (1) of item 2 will prevent an individual from claiming any loss or outgoing that is incurred in gaining or producing a rebatable benefit. ***[Schedule 1, item 2, subsection 26-19(1)]***

1.29 This will reinstate the original policy intent that deductions should not be allowable against taxable but effectively tax-free government assistance payments such as ABSTUDY living allowance, Austudy living allowance, Newstart Allowance or Youth Allowance.

Example 1.1

Nathan is looking for a job and receives the full amount of Newstart Allowance. Newstart Allowance is a taxable government assistance payment that is eligible for the beneficiary tax offset. During the income year, Nathan earned $890 in interest income.

To satisfy the statutory activity requirements, Nathan is required to regularly apply for jobs and attend interviews. As part of this requirement, Nathan travelled interstate to attend a job interview at a cost of $400. Nathan is unable to deduct the $400 travel cost because he is unable to deduct any loss or outgoing he incurs in gaining or producing a rebatable benefit (the beneficiary tax offset).

1.30 Subsection (2) of item 2 will preclude an individual from deducting a loss or outgoing for property under other provisions of the ITAA 1997 such as Division 40, which is concerned with the deductibility of capital expenditure. ***[Schedule 1, item 2, subsection 26-19(2)]***

1.31 The effect of subsection (2) of item 2 is that property is not considered to be for the purpose of providing assessable income if it was used in gaining or producing a rebatable benefit.

Example 1.2

Tanuja attends university full-time. She receives a part-rate amount of Youth Allowance (Student). During the income year, Tanuja receives $11,000 from her part-time job as a barista. Youth Allowance (Student) is a taxable government assistance payment and is eligible for the beneficiary tax offset.

During the income year, Tanuja purchases a laptop for $1,200 to assist her to complete her studies. The laptop is expected to have a useful life of three years, is used solely for her studies and is depreciated using the prime cost method, with a decline in value of $400 per year.

Tanuja is unable to claim a deduction for the depreciation cost of her laptop even though the laptop is used solely for her studies. Tanuja is unable to deduct the depreciation cost of the laptop as it is taken to not have been for the purpose of producing assessable income.

1.32 Item 3 will amend the note at the end of the definition of 'purpose of producing assessable income' in subsection 995-1(1) of the ITAA 1997 to make a reference to subsection 26-19 about using property in gaining or producing a rebatable benefit. ***[Schedule 1, item 3, note at the end of the definition of 'purpose of producing assessable income' in subsection 995-1(1)]***

Application and transitional provisions

1.33 These amendments apply to the 2011-12 income year and later income years. ***[Schedule 1, item 4]***

STATEMENT OF COMPATIBILTY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Disallow deductions against rebatable benefits

1.34 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

1.35 This Schedule amends the ITAA 1997 to ensure that expenses incurred in gaining or producing a rebatable benefit are not deductible.

Human rights implications

1.36 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

1.37 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury

Limiting the trading stock exception for superannuation funds

Outline of chapter

2.1 Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to remove access to the trading stock exception to the capital gains tax (CGT) primary code rule for certain assets (primarily shares, units in a trust and land) owned by a complying superannuation entity.

Context of amendments

2.2 The CGT primary code rule in section 295-85 ensures that gains and losses on most assets owned by complying superannuation entities are taxed according to the CGT provisions.

- A ***complying superannuation entity*** is defined in section 995-1 as a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust.

- Section 320-45 ensures that gains and losses on complying superannuation/first home saver account (FHSA) assets of a life insurance company are also taxed according to the CGT primary code rule.

2.3 There are a number of exceptions to the CGT primary code rule that ensure that gains and losses on certain assets are taxed on revenue account, where appropriate. One of those exceptions is trading stock held by a relevant entity.

2.4 The general industry practice, as set by large superannuation entities, is to tax gains and losses on share transactions according to the CGT provisions.

2.5 However, during the recent economic downturn, a number of superannuation entities sought, for the first time, to treat some of their shares as trading stock.

2.6 Some entities sought to treat some shares as trading stock in order to use losses made in relation to those shares against non-CGT income (such as dividends or interest), despite in earlier income years using the CGT provisions for shares where a gain was made in order to benefit from the CGT discount.

2.7 This practice creates potential uncertainty regarding the appropriate tax treatment of gains and losses made from the sale of shares owned by complying superannuation entities. This has created the need to amend the law to reduce the present ambiguity around the application of the trading stock provisions.

Summary of new law

2.8 These amendments remove access to the trading stock exception to the CGT primary code rule for certain assets (primarily shares, units in a trust and land) owned by a complying superannuation entity.

- This is consistent with CGT being the primary code for taxing gains and losses of complying superannuation entities.

2.9 This is achieved by excluding certain assets (primarily shares, units in a unit trust and land) from the definition of 'trading stock' for these entities.

Comparison of key features of new law and current law

New law	*Current law*
Complying superannuation entities cannot account for gains and losses on certain assets (primarily shares, units in a unit trust and land) on revenue account using the trading stock exception.	Complying superannuation entities account for gains and losses on any type of trading stock asset (including shares, units in a unit trust and land) on revenue account, using the trading stock exception.
Life insurance companies cannot account for gains and losses on certain complying superannuation/FHSA assets (primarily shares, units in a unit trust and land) on revenue account using the trading stock exception.	Life insurance companies that own certain complying superannuation/FHSA assets that are trading stock (including shares, units in a unit trust and land) account for gains and losses on these assets on revenue account, using the trading stock exception.

Detailed explanation of new law

2.10 These amendments remove access to the trading stock exception to the CGT primary code rule for certain assets (primarily shares, units in a trust and land) owned by a complying superannuation entity. ***[Schedule 2, item 4, subsection 70-10(2)]***

- These amendments apply in the same way to complying superannuation/FHSA assets of a life insurance company, to ensure that these assets continue to be taxed in the same way as assets of a complying superannuation entity.

2.11 This is achieved by modifying the definition of 'trading stock' in section 70-10 for complying superannuation entities to exclude all assets covered by section 275-105 ('covered assets'). The following assets are covered by section 275-105 and are subject to the managed investment trust (MIT) choice of capital treatment rules:

- a share in a company (including a share in a foreign hybrid company);
- a non-share equity interest in a company;
- a unit in a unit trust;
- land (including an interest in land); or
- a right or option to acquire or dispose of one of the assets listed directly above.

However, if one of these assets is a Division 230 financial arrangement or a debt interest, it is not a covered asset. ***[Schedule 2, items 1 to 4, subsection 70-10(2)]***

2.12 The modified definition of trading stock will also have the effect of excluding covered assets that are complying superannuation/FHSA assets of a life insurance company. ***[Schedule 2, item 4, subsection 70-10(2)]***

2.13 These changes ensure that complying superannuation entities and life insurance companies (for complying superannuation/FHSA assets) cannot access the trading stock exception to the CGT primary code rule in item 5 of subsection 295-85(4), in relation to these covered assets.

- A note is inserted to alert taxpayers accessing the CGT primary code rule in section 295-85 to the modification of the trading stock definition for complying superannuation entities and life insurance companies. ***[Schedule 2, item 5]***

2.14 These amendments will ensure that CGT treatment applies where a complying superannuation fund invests in covered assets or where a complying superannuation fund invests in a MIT which, in turn, invests in covered assets where the MIT has chosen to treat gains and losses on capital account under the capital treatment election rules.

Example 2.1

Smith Super Fund (Smith) is a self-managed superannuation fund. Between 1 July 2011 and 30 June 2012, Smith buys and sells a large volume of shares for the purpose of providing for the retirement of the fund's members.

To prepare Smith's income tax return for the 2011-12 income year, Smith works out whether there has been a capital gain or capital loss on each share that was disposed of during the year.

Smith does not need to consider whether the buying and selling of shares would qualify as being in the business of share trading, or whether the shares that were bought and sold during the income year would be trading stock.

Application and transitional provisions

2.15 This measure applies after 7.30 pm (by legal time in the Australian Capital Territory) on 10 May 2011. Assets owned by a relevant entity and held as trading stock prior to that time can continue to be treated as trading stock of the entity. ***[Schedule 2, item 6]***

2.16 These amendments apply retrospectively from the time of announcement to promote certainty regarding the appropriate tax treatment of certain assets owned by a complying superannuation entity.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Limiting the trading stock exception for superannuation funds

2.17 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview

2.18 This Schedule amends the ITAA 1997 to remove access to the trading stock exception to the CGT primary code rule for certain assets (primarily shares, units in a trust and land) owned by a complying superannuation entity.

Human rights implications

2.19 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

2.20 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury

Tax exemption for ex-gratia payments to New Zealand non-protected special category visa holders

Outline of chapter

3.1 Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to exempt from income tax ex-gratia payments to New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in early 2012.

Context of amendments

3.2 New Zealand citizens who arrived in Australia after 26 February 2001 are classified as non-protected special category visa holders and are not eligible for the Australian Government Disaster Recovery Payment.

3.3 The Australian Government Disaster Recovery Payment provides short-term financial assistance to individuals adversely affected by a major or widespread disaster, such as the floods that occurred in New South Wales and Queensland in early 2012.

3.4 In light of the hardship these recent floods may have caused New Zealand special category visa holders, the Government agreed to make ex-gratia payments to affected eligible New Zealand special category visa holders.

3.5 The ex-gratia payment provides financial assistance to New Zealand citizens living in Australia who hold a non-protected special category visa (subclass 444) and who are adversely affected by the flooding that began in January 2012 in the local government areas of New South Wales and Queensland where the Australian Government Disaster Recovery Payment has been made available from February 2012.

3.6 The ex-gratia payment reflects the Australian Government Disaster Recovery Payment rates of $1,000 for eligible adults and $400 for eligible children.

3.7 The ex-gratia payment is administered by the Department of Human Services, and can be claimed until and including 6 August 2012.

3.8 Exempting from income tax the ex-gratia payment to New Zealand special category visa holders who have been affected by the recent floods in New South Wales and Queensland ensures that the payment receives the same tax treatment as the Australian Government Disaster Recovery Payment made to eligible individuals.

3.9 It is also consistent with the exemption provided to New Zealand special category visa holders who received an ex-gratia payment because they were adversely affected by the floods that occurred in Australia during the 2010-11 summer, or Cyclone Yasi which devastated parts of Queensland in February 2011.

Summary of new law

3.10 This measure amends section 51-30 of the ITAA 1997 to list the assistance for New Zealand non-protected special category visa holders as exempt from income tax if it has been claimed after 5 February 2012 and before 7 August 2012.

Detailed explanation of new law

3.11 Section 11-15 of the ITAA 1997 lists income which is exempt from income tax. This list will be amended to include the assistance for New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in January, February and March 2012. ***[Schedule 3, item 1]***

3.12 Section 51-30 of the ITAA 1997 contains a table listing welfare payments that are exempt from income tax and any exceptions and special conditions that must be met to qualify for the exemption.

3.13 The amendment to section 51-30 will make the assistance for New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in January, February and March 2012 exempt from income tax. ***[Schedule 3, item 2]***

Application and transitional provisions

3.14 These amendments exempt from income tax ex-gratia payments made to New Zealand non-protected special category visa holders who were adversely affected by the floods that occurred in New South Wales and Queensland in January, February and March 2012, where these payments are made after 5 February 2012.

3.15 These amendments will be repealed on 1 July 2015, by which time the amendments would have become inoperative. ***[Schedule 3, items 3 and 4]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Tax exemption for ex-gratia payments to New Zealand non-protected special category visa holders

3.16 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

3.17 This Schedule amends the ITAA 1997 to exempt from income tax ex-gratia payments to New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in early 2012.

Human rights implications

3.18 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

3.19 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury

Phasing out the dependent spouse tax offset

Outline of chapter

4.1 Schedule 4 to this Bill amends the *Income Tax Assessment Act 1936* (ITAA 1936) to restrict eligibility for the dependent spouse tax offset to taxpayers with a dependent spouse born before 1 July 1952.

4.2 This Schedule also amends the ITAA 1936 so a taxpayer eligible for an amount of offset in respect of an invalid spouse or carer spouse is not also entitled to the equivalent amount of dependent spouse tax offset as a component of their zone, overseas forces or overseas civilian tax offset.

Context of amendments

4.3 The Treasurer announced in the 2011-12 Mid-Year Economic and Fiscal Outlook that the Government would phase-out, from 1 July 2012, the dependent spouse tax offset for taxpayers with a dependent spouse born on or after 1 July 1952.

4.4 This reform extends the Government's *Building Australia's Workforce* package announced in the 2011-12 Budget. As part of this package, from 1 July 2011, the dependent spouse tax offset is only available to taxpayers who maintain a spouse either born before 1 July 1971 or unable to work due to invalidity or carer obligations.

4.5 The dependent spouse tax offset originated in the initial ITAA 1936. It is one of several tax offsets in section 159J of the ITAA 1936 for taxpayers who maintain particular dependants. Other examples are the invalid relative tax offset, parent/parent-in-law tax offset and the child-housekeeper tax offset.

4.6 The maximum dependent spouse tax offset is $2,355 in 2011-12. The maximum amount of the offset is indexed each year with reference to the All Groups Consumer Price Index number in accordance with section 159HA of the ITAA 1936.

4.7 The amount of the dependent spouse tax offset reduces by $1 for every $4 by which the adjusted taxable income of the dependent spouse exceeds $282. This means the effective tax rate on the first $10,000 earned by a spouse is around 25 per cent.

4.8 The taxpayer is entitled to the maximum offset if the dependent spouse has a taxable income of $282 or less. In 2011-12, a dependant spouse could have adjusted income of $9,702 and the taxpayer would still receive some of the dependent spouse tax offset.

4.9 Taxpayers cannot claim the dependent spouse tax offset for any part of the income year that they are a member of a Family Tax Benefit (Part B) family without shared care, or parental leave is payable to the taxpayer or their spouse, pursuant to section 159JA of the ITAA 1936.

4.10 Taxpayers are also not entitled to the dependent spouse tax offset if their adjusted taxable income is more than the limit for Family Tax Benefit (Part B). The income limit for Family Tax Benefit (Part B) is defined as the amount specified in subclause 28B(1) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*, and is indexed under Part 2 of Schedule 4 to that Act.

4.11 In 2011-12, the income test for Family Tax Benefit (Part B) is adjusted taxable income of $150,000 for the primary earner.

4.12 The amount of dependent spouse tax offset is relevant in determining the amount of other concessional tax offsets which a taxpayer may be entitled to. These other offsets are the:

- zone tax offset (section 79A of the ITAA 1936), which is available to residents of remote or isolated locations that are prescribed in Schedule 2 to the ITAA 1936;

- overseas forces tax offset (section 79B of the ITAA 1936), which is available to Australian Defence Force personnel who have served at overseas locations specified by the Treasurer pursuant to subsection 79B(5) of the ITAA 1936; and

- overseas civilian tax offset (section 23AB of the ITAA 1936), which is available to personnel that have served under the control of the United Nations and are prescribed in Regulation 6 of the *Income Tax Regulations 1936*.

4.13 Recipients of the zone, overseas forces or overseas civilian tax offset receive a base amount of offset. In addition, they also receive up to 50 per cent of any dependency tax offsets to which they are entitled that

are or were provided for in section 159J of the ITAA 1936 . These offsets are described as the 'relevant rebate amount' for the purposes of the zone tax offset and 'concessional rebate amount' for the purposes of the overseas forces tax offset. In addition, eligible taxpayers also receive an amount of dependent spouse tax offset under section 159J.

4.14 The amounts of dependency tax offset relevant to the calculation of a taxpayer's zone, overseas forces or overseas civilian tax offset amount include 'notional' dependency tax offsets. These are offsets that were previously available to taxpayers maintaining certain types of dependants but have since been repealed in their own right.

4.15 Examples are the offset for taxpayers maintaining a full-time student aged less than 25 and the offset for a child aged less than 21 (not being a student). These offsets are allowed for in the table in subsection 159J(2), but from 1 July 1976, they have not been able to be claimed by taxpayers pursuant to subsection 159J(1A).

4.16 Subsection 159J(1B) provides for an increased child-housekeeper tax offset if the taxpayer would have been entitled to an offset in respect of a dependant full-time student or child less than 21 years (not being a student) but for the fact that those offsets have not been claimable from 1 July 1976. In 2011-12, the amount of this child-housekeeper (with child) offset is $2,299.

4.17 For taxpayers maintaining a dependent spouse, who would have also been entitled to the child or student offset if those offsets were available, there is a 'notional' dependent spouse (with child) offset. This offset is a higher amount than the dependent spouse tax offset. The maximum notional dependent spouse (with child) offset is indexed in accordance with section 159HA. In 2011-12 the maximum offset is $2,736.

4.18 The base amount for the purposes of the overseas forces and overseas civilian offsets is $338 and the taxpayer is also entitled to 50 per cent of their dependency tax offsets entitlements as a component of their offset.

4.19 Taxpayers eligible for the zone tax offset may receive three different base amounts depending on the zone in which they reside. The zones are Zone A, Zone B and 'special areas' within zones. *Special areas* are described in subsection 79A(3D) of the ITAA 1936 and comprise points in Zone A or Zone B that are more than 250 kilometres from the centre point of the nearest urban centre with a census population of more than 2,500 as at 1 November 1981.

4.20 Taxpayers residing in Zone A with a dependent spouse are eligible for up to $338 plus 50 per cent of their dependency tax offsets entitlement as a component of their offset.

4.21 Taxpayers residing in Zone B with a dependent spouse are eligible for up to $57 plus 20 per cent of their dependency tax offsets entitlement. Taxpayers residing in 'special areas' within Zone A or Zone B are eligible for up to $1,173 plus 50 per cent of their dependency offsets entitlement.

Summary of new law

4.22 From 1 July 2012, taxpayers with a dependent spouse born on or after 1 July 1952 will no longer be entitled to claim the dependent spouse tax offset. This means the dependent spouse tax offset will be gradually phased out as the population ages.

4.23 In recognition of community expectations, taxpayers maintaining a dependent spouse born on or after 1 July 1952 who is an invalid, permanently unable to work or providing care, will remain entitled to claim an amount equivalent to the dependent spouse in respect of a dependant 'invalid spouse' or dependent 'carer spouse'.

4.24 Taxpayers with a dependent spouse born on or after 1 July 1952 who are eligible for the zone, overseas forces or overseas civilian tax offsets will remain eligible for an amount equivalent to the dependent spouse tax offset as a component of their zone, overseas forces or overseas civilian offset. This is in recognition of the limited employment opportunities that may exist in remote or isolated regions or if a person's spouse is deployed overseas.

4.25 Because of their continuing eligibility for the dependent spouse tax offset, taxpayers with a dependent spouse born before 1 July 1952 will only be entitled to an amount equating to 50 per cent of their dependent spouse tax offset entitlement as part of their zone, overseas forces or overseas civilian tax offset (or 20 per cent if they are a resident of Zone B).

4.26 By contrast, taxpayers with a dependent spouse born on or after 1 July 1952 would be entitled to the relevant proportion of their dependent spouse tax offset entitlement, assuming no age restriction applied (that is, either the 20 or 50 per cent). In addition, the taxpayer could claim the full amount of this dependent spouse tax offset entitlement as a component of their zone, overseas forces or overseas civilian tax offset.

4.27 Taxpayers eligible for more than one of the zone, overseas forces or overseas civilian tax offsets will not be able to claim more than the full amount of offset in respect of an invalid or carer spouse across each offset. That is, a taxpayer will not be able to receive more than their maximum dependent spouse entitlement if they have eligibility for both an amount of zone and overseas forces tax offset.

4.28 Taxpayers who are eligible for the carer spouse and the invalid spouse rebates will be subject to the same income test that applies to the dependent spouse rebate. Taxpayers are not eligible for the carer, dependent or invalid spouse rebates if their adjusted taxable income is more than the limit of Family Tax Benefit (Part B) for the year. The limit for Family Tax Benefit (Part B) in 2011-12 is $150,000.

4.29 Taxpayers will not be able to claim more than one offset in respect of the same spouse when determining their zone, overseas forces or overseas civilian tax offset entitlements.

Comparison of key features of new law and current law

New law	*Current law*
Taxpayers who maintain a dependent spouse born on or after 1 July 1952 will no longer be able to claim the dependent spouse tax offset from 1 July 2012.	Taxpayers who maintain a dependent spouse born on or after 1 July 1971 are not eligible to claim the dependent spouse tax offset
Taxpayers who claim zone, overseas forces or overseas civilian tax offsets will not be entitled to claim more than one amount of offset in respect of the same spouse as a component of their zone, overseas forces or overseas civilian tax offset in the 2011-12 and later income years.	The introduction of the invalid spouse and carer spouse means that some taxpayers could claim more than one amount of offset in respect of the same spouse as a component of their zone, overseas forces or overseas civilian tax offset.
Taxpayers eligible for more than one of the zone, overseas forces or overseas civilian tax offsets will not be able to claim more than the full amount of offset in respect of an invalid or carer spouse across each offset.	Taxpayers eligible for more than one of the zone, overseas forces or overseas civilian tax offsets are able to claim more than the full amount of offset in respect of offset in respect of an invalid or carer spouse across each offset.
Eligibility for the carer or invalid spouse tax offset will be aligned to the income test for the dependent spouse rebate so eligibility is only assessed on the adjusted taxable income of the taxpayer.	Eligibility for the carer and invalid spouse tax offset is assessed on the combined adjusted taxable income of the taxpayer and the taxpayer's spouse.

Detailed explanation of new law

4.30 These amendments give effect to the 2011-12 Mid-Year Economic and Fiscal Outlook measure to phase-out, from 1 July 2012, the eligibility of the dependent spouse tax offset for taxpayers who maintain a dependent spouse born on or after 1 July 1952.

4.31 These amendments also give effect to consequential amendments associated with the introduction of the carer spouse and the invalid spouse tax offset in Table 2 of subsection 159J(2) as part of the 2011-12 Budget measure to phase-out the dependent spouse tax offset.

4.32 Taxpayers who maintain a dependent spouse who is unable to work because of invalidity or care obligations will continue to receive an amount equivalent to the dependent spouse tax offset as though the age restriction did not apply.

4.33 In response to the 2011-12 Budget measure, the *Tax Laws Amendment (2011 Measures No. 5) Act 2011* amended the tax law to phase out the dependent spouse tax offset for taxpayers with a spouse born on or after 1 July 1971, except for taxpayers with a dependant who is unable to work due to invalidity or care obligations.

4.34 The *Tax Laws Amendment (2011 Measures No. 5) Act 2011* also amended the tax law to introduce the carer spouse tax offset and the invalid spouse tax offset.

4.35 The carer spouse tax offset is available to a taxpayer with a dependent spouse who is unable to work because of care obligations. A ***carer spouse*** is a person who is a spouse of the taxpayer, being a person who is wholly engaged in providing care to an invalid relative; or to whom a carer allowance or carer payment is being paid pursuant to the *Social Security Act 1991* or to whom a carer service pension is being paid pursuant to the *Veterans' Entitlements Act 1986* .

4.36 The invalid spouse tax offset is available to taxpayers with a dependent spouse who is unable to work because of invalidity. An ***invalid spouse*** is a person who is a spouse of the taxpayer, being a person who is in receipt of a disability support pension or a special needs disability support pension or has been certified by certain professionals as having a continuing inability to work. The certificate must have been issued for the purpose of examining the dependant's eligibility for disability support pension under the *Social Security Act 1991* by:

- a medical officer of the 'Health Department', being the department that deals with matters arising under section 1 of the *National Health Act 1953* that is administered by the

'Health Minister', being the Minister who administers section 1 of the *National Health Act 1953*; or

- a medical practitioner appointed by the 'Families Secretary' being the Secretary of the department that deals with matters arising under the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) that is administered by the 'Families Minister', being the Minister administering section 1 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth).

4.37 The tax law currently allows taxpayers to receive a proportion of any invalid spouse or carer spouse entitlement in determining the zone, overseas forces or overseas civilian offset, in addition to a proportion of dependent spouse tax offset.

4.38 Amendments are necessary to ensure that a taxpayer eligible for an amount of offset in respect of an 'invalid spouse' or 'carer spouse' is not also entitled to the equivalent amount of dependent spouse tax offset as a component of their zone, overseas forces or overseas civilian tax offset.

4.39 The amendments to sub-subparagraph 23AB(7)(a)(ii)(B), subsection 79A(4) (paragraph (b) of the definition of 'relevant rebate amount') and subsection 79B(6) (paragraph (b) of the definition of 'concessional rebate amount') provide clarity that these amendments relate to a rebate to which the taxpayer is entitled to in respect of a dependant who is an invalid relative for the purpose of class 5 in the table in subsection 159J(2) or a dependant included in class 6 in the table in subsection 159J(2). These amendments remove the reference to invalid spouse or carer spouse. A *dependant* for the purpose of class 6 in the table in subsection 159J(2) means a parent of the taxpayer or of the taxpayers spouse. ***[Schedule 4, items 1, 4 and 8]***

4.40 The amendments to subparagraphs 23AB(7)(a)(iii), 79A(2)(a)(ii), 79A(2)(d)(ii) and 79A(2)(e)(ii) provide clarity that a taxpayer is not entitled to claim more than one amount of offset in respect of the same spouse as a component of their zone, overseas forces or overseas civilian tax offset in 2011-12 and later income years. These amendments will ensure that taxpayers eligible for the carer spouse or the invalid spouse tax offsets do not receive an unintended windfall gain as a result of equivalent offsets for taxpayers with a spouse who is unable to work because of invalidity or carer obligations. ***[Schedule 4, items 2, 3 and 6]***

4.41 The amendments to subparagraphs 79B(2)(a)(iii) and 79B(4A)(b)(iii) and paragraph 79B(4)(c) and provide clarity that if the taxpayer is not entitled to a rebate under section 159J in respect of a

dependent included in class 1 in the table in subsection 159J(2) or an invalid spouse or carer spouse for the purpose of class 5 in the table in subsection 159J(2), the aggregate rebates available under section 23AB, 79A or 79B cannot exceed an amount equal to the dependent spouse concessional amount. ***[Schedule 4, items 5 and 7]***

4.42 The amendments to paragraph 159J(1AB)(a) ensure that taxpayers eligible for a rebate in respect of an invalid spouse or carer spouse in class 5 have the same income test as if they were eligible for a rebate in respect of a dependent in class 1 in the table in subsection 159J(2). ***[Schedule 4, item 9]***

4.43 The amendments to paragraph 159J(1AB)(b) clarify that the income test in subsection 159J(1AC) only applies to taxpayers eligible for a rebate in respect of a dependent in class 2 or 6, or an invalid relative for the purpose of class 5 in the table in subsection 159J(2). ***[Schedule 4, item 10]***

4.44 The amendments to subsection 159J(1C) change the eligibility for the dependent spouse tax offset so that from 1 July 2012, the dependent spouse tax offset is only available to taxpayers who maintain a dependent spouse born before 1 July 1952. ***[Schedule 4, item 11]***

4.45 Taxpayers with a dependent spouse born before 1 July 1952 will continue to be entitled to an amount equating to 50 per cent of their dependent spouse tax offset entitlement as part of their zone, overseas forces or overseas civilian tax offset (or 20 per cent if they are resident of Zone B). This means the calculation of the amount of zone, overseas forces and overseas civilian tax offsets for taxpayers with a dependent spouse born before 1 July 1952 will not change.

Application and transitional provisions

4.46 The amendments made by items 1 to 10 apply to assessments for the 2011-12 income year and later income years. As the zone, overseas forces and overseas civilian offsets are paid on assessment, no taxpayers are disadvantaged from these amendments. ***[Schedule 4, item 12]***

4.47 The amendments made by item 11 apply to assessments for the 2012-13 income year and later income years. ***[Schedule 4, item 12]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Phasing out the dependent spouse tax offset

4.48 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

4.49 This Schedule amends the ITAA 1936 to restrict the eligibility for the dependent spouse tax offset to taxpayers with a dependant spouse born before 1 July 1952.

4.50 This Schedule also amends the ITAA 1936 so a taxpayer eligible for an amount of offset in respect of an invalid spouse or carer spouse is not also entitled to the equivalent amount of dependent spouse tax offset as a component of their zone, overseas forces or overseas civilian tax offset.

Human rights implications

4.51 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

4.52 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury

Miscellaneous amendments to the taxation laws

Outline of chapter

5.1 Schedule 5 to this Bill makes miscellaneous amendments to various taxation laws.

Context of amendments

5.2 Amendments to the taxation laws, such as these, are periodically made to correct technical or drafting defects, remove anomalies and correct unintended outcomes in the tax legislation. Progressing such amendments gives priority to the care and maintenance of the tax system, as supported by a 2008 recommendation from the Tax Design Review Panel.

Summary of new law

5.3 These miscellaneous amendments mainly address minor technical deficiencies which have been identified in the Minerals Resource Rent Tax (MRRT) legislation.

Detailed explanation of new law

Part 1 — Amendments related to the Minerals Resource Rent Tax

Referencing addition

5.4 A note that points readers to the provisions outside Division 30 of the MRRT that also include amounts in a miner's mining revenue is amended to include a reference to section 140-20 (which includes pre-mining profits in mining revenue). ***[Schedule 5, item 6, note to section30-5 of the MRRT]***

Conclusive evidence

5.5 The production of an MRRT notice of assessment is conclusive evidence that the assessment was properly made and (except in proceedings reviewing the assessment) that the particulars of the assessment are correct (see subsection 350-10(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953)). This is identical to the treatment of notices of assessment for income tax purposes (see section 177 of the *Income Tax Assessment Act 1936* (ITAA 1936)).

5.6 For MRRT purposes, the conclusive evidence rule also applies to determinations the Commissioner of Taxation makes of various MRRT amounts for the purposes of:

- the anti-profit shifting rules in Division 205 of the MRRT; and

- the compensating adjustment provisions of the MRRT general anti-avoidance rule in Division 210 of the MRRT.

5.7 Extending the conclusive evidence rule to cover those determinations is unnecessary because the determinations are only ever given effect to by making or amending an MRRT assessment, which the rule already covers. Accordingly, these amendments remove those determinations from the scope of the MRRT's conclusive evidence rule. ***[Schedule 5, items 17 and 18, item 2 in the table in subsection 350-10(1) in Schedule 1 to the TAA 1953]***

5.8 This amendment has two versions, only one of which can commence. That is necessary to address the fact that the original MRRT conclusive evidence rule had two versions: one that was part of a new generic assessment regime; and one that amended an existing generic assessment regime added by other legislation. Which of those applies depends on the sequencing of the commencement of the various pieces of legislation. The version of the amendment that removes the determinations from the conclusive evidence rule modifies the *relevant* version of the original addition of that rule. ***[Clause 2, items 2 and 3 in the table]***

Incomplete definition

5.9 An incomplete link to the definition of 'index number' is amended to ensure the MRRT has its intended effect. ***[Schedule 5, items 2 and 3, section 960-265 and definition of 'index number' in subsection 995-1(1) of the Income Tax Assessment Act 1997 (ITAA 1997)]***

5.10 A starting base loss that is not used in a year is uplifted and carried forward to the next year. Under the market value method for

valuing and depreciating starting base assets, the uplift factor is based on the consumer price index (CPI) (see paragraph (b) of the definition of 'uplift factor' in subsection 80-45(1) of the MRRT).

5.11 However, the MRRT does not currently achieve the CPI indexation of starting base losses, since it incompletely links to the ITAA 1997 definition of 'index number'.

5.12 Paragraph (b) of the meaning of 'uplift factor' in subsection 80-45(1) of the MRRT refers to 'index numbers'. Division 300 of the MRRT provides that 'index number' has the meaning given in subsection 995-1(1) of the ITAA 1997. The subsection 995-1(1) definition then points to section 960-265, which includes a table listing 13 items.

- If the amount to be indexed relates to items 8 to 12 in that table, then the 'index number' has the meaning given in section 960-285 — which is the estimate of full-time adult average weekly ordinary time earnings.
- If the amount to be indexed relates to another provision in that table, then the 'index number' has the meaning given in section 960-280 — which is the CPI.

5.13 However, the list in section 960-265 does not mention MRRT starting base losses. This makes it unclear which 'index number' to use in the formula provided in subsection 80-45(1) of the MRRT.

5.14 The intention is that unused starting base losses under the market value approach should be uplifted in line with the CPI. This amendment adds an item to the table in section 960-265 of the ITAA 1997 to ensure amounts under paragraph (b) of the meaning of 'uplift factor' in subsection 80-45(1) of the MRRT are indexed according to the CPI. ***[Schedule 5, item 2, section 960-265 of the ITAA 1997]***

5.15 An amendment is also made to the definition of 'index number' in subsection 995-1(1) of the ITAA 1997 to ensure that the default uplift of an amount is based on the CPI, even if the amount is not mentioned in the table in section 960-265. That ensures that future uses of 'index number' will always have a clear meaning. ***[Schedule 5, item 3, definition of 'index number' in subsection 995-1(1) of the ITAA 1997]***

5.16 A consequential amendment amends a Guide provision so that it no longer implies that the indexation provisions are only used for the purposes of the income tax law. ***[Schedule 5, item 1, section 960-260 of the ITAA 1997]***

Mining revenue under the safe harbour method

5.17 When a mining revenue event occurs, some part of the revenue amount for the event (for example, the sale price of the taxable resources) is attributed to the taxable resource. That amount becomes mining revenue that is subject to tax under the MRRT.

5.18 Normally, the method used to attribute part of the revenue amount to the taxable resource must be the 'most appropriate and reliable' method. However, to improve certainty and reduce compliance costs, a 'safe harbour' method is provided that is taken to be the most appropriate and reliable method for a miner who chooses to use it (see subsection 30-25(5) of the MRRT).

5.19 The safe harbour method works out the amount to be attributed by subtracting, from the revenue amount, the amounts that a notional entity would charge to provide the miner with the downstream activities that are actually undertaken if that notional entity were to recover its operating costs, depreciation on its capital assets, and a sufficient return to justify committing its capital.

5.20 In applying the safe harbour method, the miner is only allowed to deduct the costs relating to what the notional entity is 'assumed by subsection (4) to do'. Those words were intended to pick up all the assumptions set out in subsection (4) but some of the assumptions are arguably not about things the notional entity is 'assumed to do' and so might not be picked up. In particular, the paragraph 30-25(4)(d) assumption that there is a competitive market for what the notional entity is assumed to do might not be picked up because it is an assumption about circumstances rather than about the notional entity's actions.

5.21 These amendments make clear that all the matters that must be assumed when using the most appropriate and reliable method to attribute a part of the revenue amount to the taxable resource must also be assumed when applying the safe harbour method to do that attribution. An amendment is also made to remove any implication that the depreciation costs of the notional downstream entity are taken into account on a different basis to operating costs and the costs of capital. The miner's revenue amount should be reduced by any of these costs that relate to the notional downstream entity doing what it is taken to do and in the circumstances in which it is assumed to do those things. ***[Schedule 5, items 9 and 10, paragraph 30-25(5)(a) and subparagraph 30-25(5)(a)(ii) of the MRRT]***

Treatment of multiple mining revenue events

5.22 A 'mining revenue event' in the MRRT is the event that triggers an amount being included in a miner's mining revenue for a particular quantity of taxable resources. The current definition provides that there is only one mining revenue event for each quantity of taxable resources to make sure that there is no double counting of revenue (for example, taxable resources are not taxed when exported and again when later supplied).

5.23 However, there are some cases where having multiple mining revenue events for the same quantity of taxable resources is appropriate. These cases are where the mining revenue event is the supply of several things produced from the *same* quantity of taxable resource.

5.24 In those cases, treating the supply or export of each thing produced from the taxable resources as a separate mining revenue event ensures that the amount attributed to the taxable resource is based on the full value realised from the taxable resource. These amendments therefore provide that there can be more than one mining revenue event for a quantity of taxable resources that is used to produce something else. However, to avoid any double counting, they also ensure that there can be only one mining revenue event for each of the things produced. A note that explains the current effect of the definition of 'mining revenue event' is adjusted to reflect the amended result. ***[Schedule 5, items 7 and 8, paragraph 30-15(1)(c) and the note to subsection 30-15(1) of the MRRT]***

Example 5.1: Coal converted into electricity and fly-ash

Schofield Power Corp operates a power station fuelled from a coal mine it owns. Burning the coal in the power station produces electricity, which Schofield supplies to the grid, and fly-ash, which it exports. Schofield has one mining revenue event when it supplies the electricity and another mining revenue event when it exports the fly-ash. A portion of the revenue amount for each of those events is attributed to the coal and included in Schofield's mining revenue.

However, if Schofield supplied the fly-ash after it had exported it, there would not be another mining revenue event for that supply. There can only be one mining revenue event for the electricity and one mining revenue event for the fly-ash.

Multiple mining revenue events under the safe harbour method

5.25 When using the safe harbour method to attribute a part of the revenue amount to the taxable resource, the costs of the notional entity providing the downstream services can only be subtracted from the

revenue amount to the extent that they reasonably relate to the taxable resource.

5.26 If there are multiple mining revenue events for the same quantity of taxable resource, the safe harbour method could be interpreted as allowing the full costs of the notional entity's downstream costs to be subtracted from the revenue amount for *each* of the products produced from the taxable resource. That would double count the downstream costs and produce an incorrect figure. Therefore, these amendments make clear that only an appropriate part of the notional entity's total downstream costs can be deducted for each relevant mining revenue event. However, this is not to suggest that there needs to be a direct relationship between a particular cost and a particular mining revenue event. It is sufficient that they are reasonably related. ***[Schedule 5, item 11, subsection 30-25(5) of the MRRT]***

Example 5.2: Safe harbour method for transforming coal

> Continuing the previous example, if Schofield chooses to use the safe harbour method for its supplies of electricity and for its exports of fly-ash, it would work out the costs a notional entity would charge for providing the downstream activities for the coal it mined and subtract an appropriate part of those costs from the revenue amount for supplying the electricity and the remaining part from the revenue amount for exporting the fly-ash.

Mining revenue not related to a particular mining revenue event

5.27 Section 30-55 of the MRRT includes an amount in mining revenue for supplies or proposed supplies of taxable resources where the amount does not relate to any particular mining revenue event. This deals with so called 'take-or-pay' contracts, where a miner receives an amount in one year for a supply that will be made when the customer asks for it in another year (or perhaps even never asks for it).

5.28 However, the provision does not cover amounts received for supplies, or proposed supplies, of things produced from taxable resources. The supply of such things is the relevant mining revenue event unless it occurs after the taxable resources are supplied or exported. For example, if the miner converts iron ore into steel and supplies or exports that, the mining revenue event is the supply or export of the steel. If there is a take-or-pay contract in relation to the supply of the steel in that case, no provision includes the amount received in the miner's mining revenue until the later year in which the steel is supplied or exported. If it is never supplied or exported, no amount would ever be included in mining revenue.

5.29 These amendments extend the provision to cover things produced from taxable resources, putting mining revenue arising from take-or-pay contracts for such things on the same footing as mining revenue arising from take-or-pay contracts for taxable resources. ***[Schedule 5, item 12, paragraph 30-55(b) of the MRRT]***

Example 5.3: Take-or-pay contract for synthetic diesel

Pyrite Energy mines coal for conversion into synthetic diesel in its plant. It enters into an agreement with Fastburn Pty Ltd, an overseas petroleum distributor, under which Fastburn will pay Pyrite an annual amount of $100 million for the supply of a million barrels of diesel fuel, to be delivered in the amounts and at the times Fastburn specifies.

In the 2014 MRRT year, Fastburn only calls for delivery of half a million barrels. Therefore, there would be a $50 million normal revenue amount, part of which would be attributed to the coal and become mining revenue.

The remaining $50 million would be mining revenue as an amount not related to any particular mining revenue event. If the remaining half a million barrels of diesel is supplied in a later year, there would be no further amount included in Pyrite's mining revenue; indeed, there would probably be an amount of mining expenditure in that later year under a Division 160 adjustment to reflect the fact that not all the second $50 million was ultimately attributable to the coal.

Allocating the mining revenue to a mining project interest

5.30 The MRRT works out an MRRT liability for each mining project interest and then adds them together to produce an amount the miner is liable to pay. Therefore, it is important to allocate every amount of mining revenue to a mining project interest. In the case of amounts included in mining revenue because they do not relate to any particular mining revenue event, the relevant mining project interest is not specified.

5.31 These amendments ensure that the amount is included in the mining revenue of the mining project interest from whose project area the taxable resources that are to be supplied are proposed to be extracted. If the supply or proposed supply relates to resources of more than one mining project interest, the amount would be apportioned between them. ***[Schedule 5, item 12, paragraph 30-55(b) of the MRRT]***

Combining mining project interests with starting base assets

5.32 Mining project interests are able to combine when they are sufficiently integrated in their operations (see section 115-10 of the MRRT). However, mining project interests are generally not able to

combine if they have starting base assets, since this would effectively allow the base value of those assets to be transferred.

5.33 An exception to this is where the same miner has had each mining project interest at all times from 2 May 2010 (when the resource tax reforms were announced). This exception appears in paragraph 115-10(1)(e) of the MRRT.

5.34 However, the current drafting of paragraph 115-10(1)(e) would not allow the combination of other mining project interests with starting base assets that have been fully written off (that is, assets whose base value has reduced to zero), even though this would not involve any effective transfer of base value between the integrated mining project interests.

5.35 These amendments ensure that mining project interests with starting base assets that have a base value of zero need not have been held by the same miner at all times from 2 May 2010 in order to be combined. ***[Schedule 5, item 14, paragraph 115-10(1)(e) of the MRRT]***

Renewing or changing mining ventures

5.36 An entity has a mining project interest to the extent that it is entitled to share in the output of a mining venture in which it participates (see subsection 15-5(1) of the MRRT). A mining venture is an undertaking that has a purpose of extracting taxable resources from the area covered by a production right (see subsection 15-5(3)).

5.37 A mining project interest terminates on the day when no one has the mining project interest any longer (see section 135-5). However, an interest does not terminate simply because the production right underlying the mining venture that underlies the interest is changed or renewed (see subsection 135-10(1)). That ensures that a change or renewal of the production right cannot mean that there is a new production right and therefore a new mining project interest.

5.38 In one case though, a change or renewal of a production right does produce a new mining project interest. That is the case where the changed or renewed production right covers an additional area. In such a case, the mining project interest continues to the extent that it does not cover an additional area and, to the extent that it would otherwise cover an additional area, it is taken to be a new mining project interest (see subsection 135-10(2)).

5.39 Similarly, a change or renewal of a mining venture (for example, a renewal of an agreement between two joint venturers) does not terminate the mining project interest (see section 135-15). However,

unlike changes or renewals of production rights, there is no similar exception for changes or renewals of mining ventures that cover an additional area. These amendments put changes and renewals of mining ventures on the same footing as changes or renewals of production rights by providing that, to the extent that a change or renewal of a mining venture means that a mining project interest would cover an additional area, that additional area will be a project area for a separate mining project interest. ***[Schedule 5, item 15, subsection 135-15(2) of the MRRT]***

5.40 Consequential amendments adjust notes that point readers to the possible consequences of changing or renewing mining ventures and production rights. ***[Schedule 5, items 4 and 5, notes to subsections 15-5(1) and (4) of the MRRT]***

Relationship between mining ventures and mining project interests

5.41 These amendments also reword provisions that imply that mining ventures relate to mining project interests so that they instead talk about mining project interests that relate to mining ventures. That reflects the correct logical sequence in which a mining venture must exist *before* there can be a mining project interest (see subsection 15-5(1) of the MRRT). ***[Schedule 5, items 13 and 15, paragraph 35-40(2)(b) and subsection 135-15(1) of the MRRT]***

The simplified MRRT method

5.42 The MRRT provides a simplified method of working out if a miner is under the threshold for the low-profit offset that effectively exempts a miner from MRRT liability. The simplified method saves the miner from the compliance costs involved in doing a full MRRT calculation when it will end up with no MRRT liability.

5.43 Amendments to the MRRT Bill moved in the House of Representatives increased the low-profit offset threshold from $50 million to $75 million but no similar amendment was made to the simplified MRRT method's reference to profits of $50 million or less. These amendments increase the profit a miner can make before it can no longer access the simplified MRRT method from $50 million to $75 million to align with the increase in the low-profit offset threshold. ***[Schedule 5, item 16, subsection 200-10(1) of the MRRT]***

Part 2 — Other amendments to the taxation laws

5.44 Amendments made in 2009 to the *Migration Act 1958*, resulted in the re-numbering of certain Migration Act provisions. This amendment to Schedule 1 to the TAA 1953 updates a reference to a specific Migration Act provision, to ensure the provision operates as originally intended. ***[Schedule 5, item 19, paragraph (a) in the cell in item 4 in the table, column headed 'and the record or disclosure …', of subsection 355-65(8) in Schedule 1 to the TAA 1953]***

Application and transitional provisions

5.45 The amendments relating to the MRRT commence immediately after the MRRT commences. This ensures that the amendments do not fail by attempting to amend something that is not yet an Act. ***[Clause 2, item 1 in the table]***

5.46 An exception is the amendment to the conclusive evidence provision, which has two versions. Which of those versions takes effect depends on which version of the underlying provisions is enacted. This is discussed above. ***[Clause 2, items 2 and 3 in the table]***

5.47 The other amendment to the taxation laws commences on the day this Bill receives Royal Assent. ***[Clause 2, item 4 in the table]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Miscellaneous amendments to the taxation laws

5.48 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

5.49 This Schedule makes technical corrections and other like miscellaneous amendments to various taxation laws, as part of the Government's commitment to uphold the integrity of the taxation system.

Human rights implications

5.50 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

5.51 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury

Index

Schedule 1: Disallow deductions against rebatable benefits

Bill reference	Paragraph number
Item 1, section 12-5, after item in the table headed ‘rates and land taxes’	1.16
Item 2, subsection 26-19(1)	1.28
Item 2, subsections 26-19(1) and (2)	1.17, 1.27
Item 2, subsection 26-19(2)	1.30
Item 3, note at the end of the definition of ‘purpose of producing assessable income’ in subsection 995-1(1)	1.32
Item 4	1.33

Schedule 2: Limiting the trading stock exception for superannuation funds

Bill reference	Paragraph number
Items 1 to 4, subsection 70-10(2)	2.11
Item 4, subsection 70-10(2)	2.10, 2.12
Item 5	2.13
Item 6	2.15

Schedule 3: Tax exemption for payments to individuals for recent floods

Bill reference	Paragraph number
Item 1	3.11
Item 2	3.13
Items 3 and 4	3.15

Schedule 4: Phasing out the dependent spouse tax offset

Bill reference	***Paragraph number***
Items 1, 4 and 8	4.39
Items 2, 3 and 6	4.40
Items 5 and 7	4.41
Item 9	4.42
Item 10	4.43
Item 11	4.44
Item 12	4.46, 4.47

Schedule 5: Miscellaneous amendments to the taxation laws

Bill reference	***Paragraph number***
Item 1, section 960-260 of the ITAA 1997	5.16
Item 2, section 960-265 of the ITAA 1997	5.14
Items 2 and 3, section 960-265 and definition of 'index number' in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)	5.9
Item 3, definition of 'index number' in subsection 995-1(1) of the ITAA 1997	5.15
Items 4 and 5, notes to subsections 15-5(1) and (4) of the MRRT	5.40
Item 6, note to section 30-5 of the MRRT	5.4
Items 7 and 8, paragraph 30-15(1)(c) and the note to subsection 30-15(1) of the MRRT	5.24
Items 9 and 10, paragraph 30-25(5)(a) and subparagraph 30-25(5)(a)(ii) of the MRRT	5.21
Item 11, subsection 30-25(5) of the MRRT	5.26
Item 12, paragraph 30-55(b) of the MRRT	5.29, 5.31
Items 13 and 15, paragraph 35-40(2)(b) and subsection 135-15(1) of the MRRT	5.41
Item 14, paragraph 115-10(1)(e) of the MRRT	5.35
Item 15, subsection 135-15(2) of the MRRT	5.39
Item 16, subsection 200-10(1) of the MRRT	5.43
Items 17 and 18, item 2 in the table in subsection 350-10(1) in Schedule 1 to the TAA 1953	5.7

Bill reference	***Paragraph number***
Item 19, paragraph (a) in the cell in item 4 in the table, column headed ‘and the record or disclosure …’, of subsection 355-65(8) in Schedule 1 to the TAA 1953	5.44
Clause 2, item 1 in the table	5.45
Clause 2, items 2 and 3 in the table	5.8, 5.46
Clause 2, item 4 in the table	5.47