Exposure Draft explanatory memorandum Minerals Resource Rent Tax Repeal and repeal and rephasing of MRRT related measures

Glossary

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

Abbreviation	***Definition***
ATI	adjusted taxable income
CGT	capital gains tax
Commissioner	Commissioner of Taxation
ISB	income support bonus
ITAA 1997	*Income Tax Assessment Act 1997*
LISC	low income superannuation contribution
MRRT Imposition Acts	*Minerals Resource Rent Tax (Imposition—Customs) Act 2012*, *Minerals Resource Rent Tax Act (Imposition—Excise) Act 2012* and the *Minerals Resource Rent Tax Act (Imposition—General) Act 2012*
MRRT	Minerals Resource Rent Tax
MRRTA 2012	*Minerals Resource Rent Act 2012*
PRRT	Petroleum Resource Rent Tax
PRRTAA 1987	*Petroleum Resource Rent Tax Assessment Act 1987*
SG	superannuation guarantee
SGAA 1992	*Superannuation Guarantee (Administration) Act 1992*
SKB	schoolkids bonus
SGLIA	*Superannuation Government (Co-contribution for Low Income Earners) Act 2003*
TAA 1953	*Taxation Administration Act 1953*

Chapter 1
Minerals Resource Rent Tax Repeal

Outline of chapter

1.1 Schedule 1 to the Bill abolishes the Minerals Resource Rent Tax (MRRT), by repealing the:

- *Minerals Resource Rent Tax Act 2012* (MRRTA 2012); and
- *Minerals Resource Rent Tax Act (Imposition-Customs) Act 2012*, *Minerals Resource Rent Tax Act (Imposition-Excise) Act 2012* and the *Minerals Resource Rent Tax Act (Imposition-General) Act 2012* (collectively the MRRT Imposition Acts).

1.2 The Schedule also makes consequential amendments to other legislation, including the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA 1953), required as a result of the repeal of the MRRT.

Context of amendments

Background to the MRRT

1.1 The MRRT applied from 1 July 2012 to taxable resources (broadly iron ore and coal) after they were extracted from the ground but before they underwent any significant processing or value adding. Coal seam gas produced as a necessary incident of coal mining was also included as a taxable resource to avoid unnecessary compliance and administration costs, and changes were made to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA 1987) to ensure that the Petroleum Resource Rent Tax (PRRT) did not also apply to those resources.

1.2 The MRRT imposed a significant regulatory and compliance burden on the iron ore and coal mining industries, which was exacerbated by its complex design. Prior to the introduction of the MRRT, iron ore and coal miners were already subject to the relevant State royalty arrangements as well as to Commonwealth income tax.

1.3 The MRRT did not replace State royalties as originally envisaged by the Australia's Future Tax System Review, but instead imposed an additional layer of taxation. The revenue expected to be raised by the MRRT has been progressively revised down since its announcement, in part because the States increased their royalties (which are credited against MRRT).

1.4 Repealing the MRRT restores confidence and promotes activity in the mining industry, allowing it to thrive, create jobs and contribute to the prosperity of all Australians.

Summary of new law

1.5 Schedule 1 to the Bill repeals the MRRTA 2012 and the MRRT Imposition Acts.

1.6 Schedule 1 also contains a large number of consequential amendments to other Commonwealth legislation. These amendments principally remove provisions that are no longer required because of the repeal of the MRRT.

1.7 In some cases, the repeal of the MRRT requires more significant amendments. In the PRRTAA 1987, the definition of petroleum is amended to remove references to MRRT. Amendments are also made to other provisions in the PRRTAA 1987 to exclude coal seam gas recovered under licences that do not permit the commercial use or exploitation of coal seam gas, and to clarify that only exploration expenditure for the purpose of finding and commercially exploiting petroleum is deductible exploration expenditure.

1.8 These amendments apply from 1 July 2014. As a result, taxpayers do not accrue any further MRRT liabilities on or after this date. It also means that rehabilitation tax offsets are only available in relation to MRRT years ending on or before 30 June 2014.

1.9 However, the general and special transitional provisions in the Schedule ensure that the repeal does not affect taxpayers' existing rights and obligations or the ability of the Commissioner of Taxation (Commissioner) to administer and exercise powers under the law in relation to the MRRT years for which the MRRT applied.

Comparison of key features of new law and current law

New law	*Current law*
Imposition of tax	
Taxpayers are not subject to MRRT from 1 July 2014.	Taxpayers must pay MRRT at a rate of 22.5 per cent on their mining profit less MRRT allowances from coal and iron ore mining projects reduced by their tax offsets.
Treatment of coal seam gas	
The definition of petroleum under the PRRT includes all coal seam gas. Rights or licences that only allow incidental and non-commercial activities in relation to coal seam gas are not production licences, exploration permits and retentions leases. As a result, incidental coal seam gas recovered under the licences is not subject to MRRT or PRRT. Similarly, exploration that only incidentally relates to coal seam gas is not deductible exploration expenditure under the PRRT.	The definition of petroleum under the PRRT does not include coal seam gas that is incidentally recovered in the course of coal mining operations. Instead it is subject to MRRT.

Detailed explanation of new law

1.10 The MRRTA 2012 and the MRRT Imposition Acts are repealed with effect from 1 July 2014. Taxpayers do not accrue any further MRRT liabilities on or after this date. It also means that rehabilitation tax offsets are only available in relation to MRRT years ending on or before 30 June 2014. ***[Schedule 1, items 1 to 4]***

PRRT changes

Definition of petroleum and production licence

1.11 As a result of the repeal of the MRRT, the definition of petroleum in the PRRTAA 1987 is amended to remove the exclusion for 'taxable resources' within the meaning of the MRRTA 2012. ***[Schedule 1, item 48]***

1.12 As a result of this amendment, all petroleum, including all coal seam gas, would be subject to PRRT. However, some entities only recover coal seam gas as an unavoidable incident of coal mining activities. Imposing PRRT on these entities would involve excessive compliance costs for no real benefit.

1.13 To exclude these incidental activities, a further amendment has been made to the definition of production licence.

1.14 Generally any authority or right under Australian law that permits the recovery of petroleum will be a production licence and hence any recovery of petroleum under the right or licence will be subject to tax.

1.15 The amendments to the definition of production licence mean that a right or authority will *not* be a production licence if:

- it only permits the recovery of coal seam gas as a necessary result of coal mining (or as required for the purposes of health and safety or to prevent methane emissions); and

- all the coal seam gas that is recovered is used for mining activities in the relevant area or given to an entity that has a production licence covering the same area as the authority or right.

[Schedule 1, item 51]

1.16 An authority or right will be a production licence even if the relevant entity has chosen to operate in a way consistent with the required restrictions on recovery. For the exception to apply, the restrictions must be terms of the licence. Consistency with the restrictions is a matter to be determined by examining the terms of the right or authority and the law under which it is issued.

1.17 The requirements about use look at what the entity has done. Examples of uses where the exception can apply include heating for onsite offices and accommodation, flaring or otherwise destroying the gas or generating electricity for the operation of mining equipment. Examples of uses in respect of which the exception does not apply include generating electricity for sale to the grid or for offsite use and transporting the gas out of the area covered by the permit. The exception also does not apply where coal seam gas is sold or otherwise used commercially other than it being transferred to the holder of a production licence covering the relevant area (in which case the coal seam gas is subject to PRRT in the hands of the production licence holder).

1.18 Additional explanatory material has also been included to assist taxpayers in identifying the consequences of the change. ***[Schedule 1, items 49 and 51]***

Treatment of exploration

1.19 In ensuring only profit from the recovery of petroleum is taxed, the PRRT allows entities to offset the expenditure they incur in exploration and development against the assessable receipts they receive from the recovery of the petroleum.

1.20 Coal and coal seam gas are almost inevitably found together in varying quantities. Discovering coal often involves discovering coal seam gas and vice versa. Previously, identifying the precise nature of exploration was not important as exploration expenditure for coal seam gas would be covered under one of the broadly equivalent MRRT and PRRT regimes. However, with the repeal of MRRT, this distinction is significant because the different types of exploration activity are now subject to different tax treatments.

1.21 These different tax treatments could result in inappropriate outcomes if an entity that is permitted to explore for both coal and coal seam gas could treat the entire amount of exploration expenditure as PRRT exploration expenditure. In particular, it would be inappropriate if exploration expenditure for the purpose of finding and exploiting coal and incidental coal seam gas is both deductible for PRRT purposes and also able to be transferred and used to offset other PRRT liabilities.

1.22 The amendments address this issue in two ways. First, rights and licenses that only permit the incidental discovery and recovery of petroleum, including coal seam gas, are not 'exploration permits' or 'retention leases' for the purposes of the PRRTAA 1987. Expenditure in relation to these permits would be outside the scope of the PRRT and not deductible. ***[Schedule 1, item 51)]***

1.23 Secondly, the amendments deal with situations where an entity holds a right or licence that permits it to explore for both petroleum and other resources, or a combination of rights and/or licences that have the same effect. In such situations, payments the entity makes are only exploration expenditure to the extent that the objective purpose of the expenditure is finding and exploiting coal seam gas or another form of petroleum. ***[Schedule 1, item 52]***

1.24 Additional explanatory material has also been included to assist taxpayers in identifying the consequences of these changes. ***[Schedule 1, items 47 and 50]***

1.25 The purpose of expenditure is determined objectively based on what a reasonable person would conclude given the available evidence – the subjective intent of the entity is not relevant. Determining purpose will generally require an examination of the nature of the exploration and the activities of the entity for which a wide range of factors may be relevant, including:

- the terms of the right or licence allowing exploration;
- the characteristics and location of the area being explored;
- the nature of the exploration activities;
- any agreements or understandings entered into with other entities about the exploration or the exploitation of the area being explored;
- prospectuses or other contemporaneous documentation identifying the taxpayer's proposed future activities; and
- the entity's other activities and available expertise.

1.26 A taxpayer's objective purpose may change over the life of their exploration activities, resulting in different proportions of their expenditure being excluded over the life of their exploration activities in an area.

Example 1.1: Change in purpose over the course of exploration

Coal Co holds an authority under an Australian law that permits it to explore in Area A for both coal and coal seam gas. Coal Co undertakes exploration activities in March 2014. All of the available evidence, including Coal Co's exploration plan that it lodged when obtaining the permit, as well as the nature of the exploration conducted and the expertise of the personnel employed demonstrates that the sole purpose of Coal Co in undertaking this exploration is finding coal. None of the expenditure incurred in relation to Coal Co's March exploration qualifies as exploration expenditure.

Coal Co's March exploration indicates the area contains no commercially viable coal deposits but may have significant coal seam gas reserves.

Coal Co subsequently undertakes further exploration of the area in July 2014. Unlike the March exploration, all of the objective evidence in relation to this exploration indicates it is undertaken solely for the purpose of identifying coal seam gas. This evidence includes Coal Co having varied its exploration plan, changed the nature of its exploration activities and arranged for the exploration to be conducted by experts

in coal seam gas exploration. The expenditure incurred in relation to Coal Co's July exploration qualifies as exploration expenditure. However this change in purpose does not affect the character of the March expenditure.

Consequential amendments

1.27 Consequential amendments are made to other Commonwealth laws (including taxation laws) to give effect to the repeal of the MRRT. These provisions remove references to MRRT or to MRRT related provisions that are redundant with the repeal of the MRRTA 2012. ***[Schedule 1, items 5 to 46, 53 to 89, and 92 to 126, paragraph (e) of Schedule 1 to the Administrative Decisions (Judicial Review) Act 1977; paragraphs 177-12(4)(h) and (i) of the A New Tax System (Goods and Services Tax) Act 1999; subsection 3(1) and Parts II and XI of the Crimes (Taxation Offences) Act 1980; sections 10-5, 12-5, 15-85, 40-725 and 40-751, subsections 703-50(1), 719-50(1), 721-10(2), (4) and (6), 721-25(1AA), 721-25(1B), (2) and (3), section 960-265 and subsection 995-1(1) of the ITAA 1997; Schedule 4 of the Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012; item 169 of Schedule 7 to the Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013; subsection 3B(1C), section 3D, subsection 8AAB(4), subparagraph 8AAZLG(1)(b)(ii), paragraph 8AAZLH(1)(b), section 14ZQ and subsections 14ZW(1AB) and (1AC) of the TAA 1953; paragraphs 11-1(g), 12-330(1)(b), and 12-335(2)(a), subsection 18-10(3), section 18-49, Part 3-15, paragraph 155-5(2)(e), subsections 155-15(1) and 155-30(3), sections 155-55, 155-57 and 155-90, subsection 250-10(2), sections 280-1, 280-50 and 280-101, paragraph 280-105(1)(a), subsection 280-110(1), sections 280-170, 284-30 and 284-35, paragraphs 284-75(2)(a) and (2)(b), subsections 284-80(1) and 286-75(2AA), paragraphs 286-80(2)(a) and 350-5(b), section 352-1, Subdivision 352-B, subparagraphs 353-10(1)(a)(ii), (b)(ii) and (c)(ii), sections 353-15 and 353-17, subsection 355-50(1), paragraph 357-55(faa), subsection 360-5(1), subsections 444-5(1), (1A), (1B) and (2), subsections 444-10(1), (2), (3) and (5), section 444-15, subsections 444-30(1), (2) and (3), subsections 444-70(1) and (2) and Subdivision 444-F in Schedule 1 to the TAA 1953; subsections 3(1), 3C(1) and 3C(2), sections 12AA, 12AB, 12AC and 12AF of the Taxation (Interest on Overpayments and Early Payments) Act 1983]***

1.28 As part of repealing references to the MRRT in the administrative penalty provisions (section 284-90 of Schedule 1 to the TAA 1953), these amendments consolidate the existing threshold requirements relating to income tax and the PRRT. They consolidate thresholds currently located in subsection 284-90(1) and subsection 284-90(3) into the central threshold provisions in subsection 284-90(3). These changes do not change the operation of the provisions. ***[Schedule 1, items 90 and 91, subsection 284-90(1) and paragraph 284-90(3)(a) in Schedule 1 to the TAA 1953]***

Application and transitional provisions

1.29 The amendments in Schedule 1 apply from 1 July 2014. This means that taxpayers do not accrue any further MRRT liabilities on or

after this date. It also means that rehabilitation tax offsets are only available in relation to MRRT years ending on or before 30 June 2014. ***[Schedule 1, clause 2]***

General and specific transitional provisions

1.30 The general and specific transitional provisions ensure that, despite the repeal of the MRRTA 2012, the administration, collection and recovery of MRRT relating to MRRT years ending on or before 30 June 2014 can still occur. They also preserve the rights and obligations of taxpayers relating to MRRT years ending on or before 30 June 2014. ***[Schedule 1, Parts 3 and 4]***

Example 1.2: Taxpayer complying with MRRT obligations

Weiss and Yim Limited (WYL) is a large iron ore and coal miner. It is required to lodge its MRRT return and pay the MRRT for the year ended 30 June 2014 (2013-14 MRRT year) on 1 December 2014. Even though this obligation arises after 1 July 2014, the obligation is preserved by the general transitional provision as it relates to the MRRT year ended on 30 June 2014. WYL complies with this obligation by lodging its 2013-14 MRRT return.

On 1 August 2015 WYL discovers that it omitted to include an amount of mining expenditure in its 2013-14 MRRT return. The general transitional provision enables:

- WYL to request the Commissioner to amend its MRRT assessment for the 2013-14 MRRT year; and
- the Commissioner to consider the request and make an amended assessment and refund any overpaid MRRT to WYL.

Example 1.3: Ongoing administration of the MRRT

Huge Iron and Coal Limited (HIC) is a large iron ore and coal miner. It paid its MRRT and lodged its MRRT return for the year ended 30 June 2013 (2012-13 MRRT year) on 1 March 2014. The general transitional provision preserves anything that was done before the repeal of the MRRT, which includes HIC's payment of its MRRT and lodgment of its 2012-13 MRRT return.

The general transitional provision means that:

- The Commissioner is able to undertake compliance activities after 1 July 2014 in the same manner the Commissioner would have if the MRRT had not been repealed for MRRT years ending on or before 30 June 2014. The Commissioner does so by undertaking a

risk review and then an audit of HIC's affairs in connection with its 2012-13 MRRT return in November 2014.

- HIC is obliged to comply with requests made by the Commissioner that were provided for in the MRRT law. This includes providing information in accordance with a notification given under section 353-10 of Schedule 1 to the TAA 1953.

- The Commissioner finds that HIC has entered into a scheme for the dominant purpose of getting an MRRT benefit. Due to the general transitional provision the Commissioner is able to:

  – make and issue a determination that HIC has entered into a scheme for the dominant purpose of getting an MRRT benefit;

  – amend HIC's 2012-13 MRRT assessment;

  – notify HIC that a shortfall interest charge applies; and

  – impose an administrative penalty relating to the tax shortfall amount.

  The general transitional provision means that HIC will have to pay any additional MRRT, any shortfall interest charge, and any administrative penalty that is imposed.

  HIC disagrees with the amended assessment as it believes that it is excessive. Due to the general transitional provision HIC is able to exercise its right to object to the amended assessment and have this objection considered by the Commissioner. If the objection is not allowed in full, HIC can also exercise its right to appeal to the Administrative Appeals Tribunal or the Courts.

1.31 The general application provisions are subject to a number of more specific transitional provisions in the legislation. ***[Schedule 1, item 129]***

1.32 The specific transitional provisions include:

- the treatment of taxpayers with substituted accounting periods (see paragraphs 1.33 to 1.35);

- integrity provisions to prevent the bringing forward of expenditure (see paragraphs 1.36 to 1.38); and

- powers of the Commissioner to make certain legislative instruments (see paragraph 1.39).

Taxpayers with substituted accounting periods

1.33 Consistent with the way that the MRRT was introduced with all entities commencing their first MRRT year on 1 July 2012, the final MRRT year ends on 30 June 2014. Whilst this means that taxpayers with substituted accounting periods have a 'short' final MRRT year, this approach is necessary to ensure that all taxpayers are subject to the MRRT for the same period of time. ***[Schedule 1, item 130]***

1.34 Where a taxpayer has a 'short' final MRRT year ending on 30 June 2014, the full-year threshold amounts applying under the MRRTA 2012 are proportionately adjusted to take into account that the taxpayer's final MRRT year is less than a full year. This ensures that taxpayers are not advantaged or disadvantaged where they have a short final MRRT year. ***[Schedule 1, item 130, note 1]***

1.35 Taxpayers with a 'short' final MRRT year may also have a reduced number of instalment quarters and a final instalment quarter of less than the usual three months for their final MRRT year. ***[Schedule 1, item 130, note 2]***

Example 1.4: Substituted accounting period taxpayer

Boutique Iron and Coal Limited (BIC) is a large iron ore and coal miner that is an early balancing entity with an MRRT year that ends on 31 December.

Due to the application of the substituted accounting period provision, BIC will have a shortened MRRT year that commences on 1 January 2014 and ends on 30 June 2014 (2014-15 MRRT year).

As its 2014-15 MRRT year is for less than 12 months, BIC will need to adjust its threshold amounts in working out relevant MRRT amounts. During its 2014-15 MRRT year it had a group production of 5 million tonnes of taxable resources. As the adjusted amount of 10.1 million tonnes (5*365/181) is in excess of 10 million tonnes it is not eligible to use the alternative valuation method to work out its mining revenue for the 2014-15 MRRT year.

Due to the shortened MRRT year, BIC will only have two instalment quarters in its 2014-15 MRRT year, being those ending 31 March 2014 and 30 June 2014.

Integrity provision to prevent the bringing forward of expenditure

1.36 Under the MRRTA 2012, all expenditure that satisfies the connection to upstream mining operations can be included in mining

expenditure or pre-mining expenditure for pre-mining projects, when the expenditure is incurred. Therefore, amounts that are incurred prior to 1 July 2014 and are included in mining expenditure and pre-mining expenditure may reduce or remove any MRRT liability under the MRRTA 2012 even though it may relate to something that happens after 1 July 2014.

1.37 Accordingly, an integrity rule is included to prevent taxpayers from bringing forward expenditure between the day that the exposure draft legislation for the MRRT repeal was released, and the end date of the MRRT. That expenditure cannot be treated as mining expenditure or pre-mining expenditure if it relates to anything to be done, or omitted to be done, on or after 1 July 2014. As a result, expenditure of this kind does not remove or reduce any MRRT liability and is also disregarded for the purposes of determining whether a taxpayer has a rehabilitation tax offset. ***[Schedule 1, item 131]***

1.38 This integrity provision applies from the date the exposure draft legislation is released (24 October 2013) to ensure taxpayers have adequate notice of mining expenditure and pre-mining expenditure being limited in this way.

Example 1.5: Limits on bringing forward expenditure

Smith & Elliott Mining Co (SEMC) has a mining project interest, Giant Coal, and has accounting periods that end on 30 June.

On 1 February 2014 SEMC enters into a contract with Great Engineering for the provision of engineering services to Giant Coal's upstream mining operations commencing on 1 March 2014 for a period of three months (first contract) under the following terms:

- an engagement fee of $20 million, due to be paid on the commencement of the contract; and
- an additional service fee payable 30 days after the end of the period if the threshold of service hours for the quarter is exceeded.

SEMC renews the contract for a further period of three months (second contract) commencing on 1 June 2014.

As the engineering expenditure was incurred after 24 October 2013, the day that the exposure draft legislation for the MRRT repeal was released, the 'bringing forward expenditure' rule applies.

The engagement fee and any additional service fee relating to the first contract are included in SEMC's mining expenditure for the 2013-14 MRRT year. The bringing forward expenditure rule does not apply to

the engineering expenditure from the first contract as none of the engineering services are performed on or after 1 July 2014.

In relation to the second contract, the engagement fee incurred on 1 June 2014 and any additional service fee are not included SEMC's mining expenditure for the 2013-14 MRRT year to the extent that they relate to anything done on or after 1 July 2014. SEMC will need to apply a reasonable basis of apportionment to determine the amount of the expenditure incurred under the second contract that is mining expenditure.

Continuation of Commissioner's power to make certain legislative instruments

1.39 The Commissioner may continue to make legislative instruments to provide a class of entities with an extension of time to provide their MRRT return for an MRRT year or to exempt a class of entities from having to provide an MRRT return for an MRRT year. This ensures that the Commissioner retains the flexibility to exempt taxpayers from, or give taxpayers an extension of time for, lodging their MRRT returns for MRRT years ending on or before 30 June 2014. This specific transitional provision does not limit the extent of the Commissioner's powers under the general transitional provisions. ***[Schedule 1, item 132]***

Chapter 2
Repeal and rephasing of MRRT related measures

Outline of chapter

2.1 This chapter explains the treatment of the measures that were related to the enactment of the Minerals Resource Rent Tax (MRRT) given the repeal of that tax. Most of those measures are repealed. The gradual increase in the superannuation guarantee charge percentage to 12 per cent is to proceed but the timetable for the increase has been rephased.

2.2 Legislative references in this chapter are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise specified.

Context of amendments

2.1 The Government made an election commitment to repeal the MRRT and its related measures.

2.2 The revenue expected from the MRRT was intended to fund a number of other tax measures, including changes to the capital allowances for small business entities, the creation of a loss carry-back regime for companies and the payment of a superannuation co-contribution to low income individuals. With the repeal of the MRRT, these measures are also repealed.

2.3 The gradual increase in the minimum percentage of wages, salary and other earnings that must be paid as superannuation contributions for the purposes of the superannuation guarantee (SG) charge was also related to the enactment of the MRRT. With mining investment at or near its peak, a transition to new sources of economic growth is needed. However, the 2013 June quarter National Accounts and other recent data releases show that the transition to broader based growth has been slow, with the economy growing below trend. Businesses are contending with high operating costs and current challenging economic conditions, which is placing pressures on their viability and their ability to employ people.

2.4 Given that increases in the SG are funded largely from reductions in take-home wages or business profits, rephasing the SG could boost near-term economic activity. Any reductions in businesses' overall wages bills would lower their operating costs, while employees could also receive more take-home pay in the near term.

Summary of new law

2.5 The measures that were intended to be funded by the revenue expected from the MRRT are either being repealed or rephased.

Comparison of key features of new law and current law

New law	*Current law*
Repeal of loss carry back	
Companies can only carry their tax losses forward to use as a deduction for a future year.	Companies can either carry their tax losses forward to use as a deduction for a future income year or carry up to $1 million back to an earlier year (in which they paid tax) to obtain a tax offset for the current year.
Changes to the capital allowances for small business entities	
Small business entities can claim a deduction for the value of a depreciating asset that costs less than $1,000 in the income year the asset is first used or installed ready for use.	Small business entities can claim a deduction for the value of a depreciating asset that costs less than $6,500 in the income year the asset is first used or installed ready for use.
Small business entities can claim a deduction for an amount included in the second element of the cost of a depreciating asset that was first used or installed ready for use in a previous income year. The amount must be less than $1,000.	Small business entities can claim a deduction for an amount included in the second element of the cost of a depreciating asset that was first used or installed ready for use in a previous income year. The amount must be less than $6,500.
Small business entities can allocate depreciating assets that cost $1,000 or more to their general small business pool and claim a deduction for the depreciation of the assets in the pool.	Small business entities can allocate depreciating assets that cost $6,500 or more to their general small business pool and claim a deduction for the depreciation of the assets in that pool.
Assets allocated to the general small business pool depreciate at a rate of 15 per cent in the year they are allocated, and a rate of 30 per cent in subsequent income years.	Assets allocated to the general small business pool depreciate at a rate of 15 per cent in the year they are allocated, and a rate of 30 per cent in subsequent income years.

New law	*Current law*
If the value of a small business entity's general small business pool is less than $1,000 at the end of the income year, the small business entity can claim a deduction for the entire value of the pool. Motor vehicles are subject to the same rules as other depreciating assets.	If the value of a small business entity's general small business pool is less than $6,500 at the end of the income year, the small business entity can claim a deduction for the entire value of the pool. Special rules apply to depreciating assets that are motor vehicles. A small business entity can deduct the first $5,000 of the cost of a motor vehicle, plus 15 per cent of any remaining cost, in the income year that it is first used or installed ready for use. The motor vehicle is then added to the small business entity's general small business pool, and depreciated as part of the pool at a rate of 30 per cent in subsequent income years.
Repeal of the geothermal exploration deduction	
Geothermal energy exploration and prospecting expenditure is not immediately deductible. If a geothermal exploration right is exchanged for a geothermal energy extraction right relating to the same, or a similar area, then a capital gains tax (CGT) roll-over will apply to defer the liability until the sale of the extraction right.	Geothermal energy exploration and prospecting expenditure is deductible in the income year that the asset is first used or expenditure is incurred. No CGT roll-over is provided for geothermal explorers when an exploration right is exchanged for a geothermal energy extraction right as the geothermal exploration right is a depreciating asset, not a CGT asset. However, there is relief from income tax liability upon disposal of a geothermal exploration right.
Rephasing of the SG charge percentage increase	
The SG charge percentage will pause at 9.25 per cent for the years starting on 1 July 2014 and 1 July 2015, and increase to 9.5 per cent for the year starting on 1 July 2016, and then gradually increase by half a percentage point each year until it reaches 12 per cent for years starting on or after 1 July 2021.	The SG charge percentage will increase from 9.25 per cent to 9.5 per cent for the year starting on 1 July 2014, and gradually increase by half a percentage point each year until it reaches 12 per cent for years starting on or after 1 July 2019.

New law	*Current law*
Repeal of the LISC	
The LISC is not payable in respect of concessional contributions made after 1 July 2013.	The LISC is payable each year in respect of concessional contributions made in each income year.
Repeal of the income support bonus	
The income support bonus is repealed. Saving provisions apply to preserve the law with respect to the income support bonus in relation to taxpayers' entitlements to payments of income support bonus for the period before the repeal, whether payments are made before, on or after the commencement of the amendments.	The income support bonus is a tax exempt, indexed, non-means tested payment paid twice annually to eligible social security recipients.
Repeal of the schoolkids bonus	
The schoolkids bonus is repealed. Saving provisions apply to preserve the law with respect to schoolkids bonus in relation to eligibility on a bonus test day occurring before commencement and in relation to payments of schoolkids bonus made before, on or after the commencement.	The schoolkids bonus is a tax exempt, indexed family assistance payment that is available to eligible families receiving Family Tax Benefit Part A and young people in school receiving youth allowance or certain other income support or veterans' payments on 2 test dates each year.

Detailed explanation of new law

Background

2.6 The expected revenue from the Minerals Resource Rent Tax (the MRRT) was intended to fund a number of related measures that each had a cost to revenue.

2.7 This Bill repeals the MRRT. In accordance with the Government's election commitment, most of the related measures are also repealed.

Loss carry-back

What is loss carry-back?

2.8 Loss carry-back was added to the income tax law by the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013.*

2.9 It allows a company to choose to use its tax losses in a way other than carrying them forward as a deduction for a future income year. Instead, companies can choose to carry their losses back to one of the previous two income years. The amount carried back is then multiplied by the corporate tax rate to produce a tax offset that is refundable to the company in the current income year.

2.10 The offset is limited to the least of the amount of tax paid in the year the loss is carried back to, the amount in the company's franking account, and $300,000 (at current corporate tax rates).

Loss carry-back repealed

2.11 The loss carry-back provisions are repealed ***[Schedule 2, item 1, Division 160]***. The transitional provisions related to the introduction of the loss carry-back measure are also repealed ***[Schedule 2, item 2, Division 160 of the Income Tax (Transitional Provisions) Act 1997 (IT(TP) Act 1997)]***.

Repeal of consequential amendments

2.12 The consequential amendments that were made to the tax laws as a result the introduction of loss carry-back are largely reversed to reflect the fact that the loss carry-back measure is repealed.

2.13 The amendments remove references to loss carry-back, or to loss carry-back provisions, that were previously added to the law. ***[Schedule 2, items 3 to 41, subsections 6(1), 92A(3), 177C(1), (2) and (3), 177CB(1) and 177F(1) and (3) of the ITAA 1936; sections 13-1, 36-25, 67-23, 195-37 and 195-72 and subsections 36-17(1), 195-15(5), 205-35(1), 320-149(2), 830-65(3), 960-20(2) and (4) and 995-1(1) of the ITAA 1997; and section 45-340 in Schedule 1 to the TAA 1953]***

General tax law improvements not repealed

2.14 Some more general improvements to the income tax law that were made as part of the loss carry-back measure are not repealed. These are:

- The inclusion of the amount of a taxpayer's refund from refundable tax offsets in the taxpayer's income tax assessment. This ensures that the amount of the refund can be contested using the normal objection and appeal

procedures. This inclusion was made by Part 2 of Schedule 5 to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013*.

- The wider use of the term 'utilise' in relation to tax losses. However, the part of the definition of that term that refers to utilisation through carrying back a tax loss to an earlier year is repealed.

- The changes to the franking account debit rules to ensure that any franking account that a foreign resident company might have is debited when it receives a tax offset refund in the same way an Australian resident company's franking account would be debited.

Changes to the capital allowances for small business entities

2.15 The $6,500 threshold for depreciating assets, costs incurred in relation to depreciating assets, and low pool values under the small business entity capital allowance rules is reduced to $1,000 (returning it to the level it was prior to the changes made by the *Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012).*

2.16 The special rules for certain motor vehicles are also repealed.

Deductions for depreciating assets

2.17 Under the existing arrangements, a small business entity that elects to use the capital allowance rules may deduct (or 'write-off') the taxable purpose proportion of the value of an asset that cost less than $6,500 in the income year in which it was first used or installed ready for use. These amendments reduce the threshold for writing-off depreciating assets from $6,500 to $1,000. ***[Schedule 3, item 3, paragraph 328-180(1)(b)]***

2.18 Following the amendments, depreciating assets that cost $1,000 or more are allocated to the small business entity's general small business pool, depreciated at a rate of 15 per cent in the income year in which they are first used or installed ready for use, and then depreciated as part of that pool at an ongoing rate of 30 per cent in later income years.

2.19 The existing arrangements simplified the pooling arrangements available for small business entities by consolidating what were previously the 'general small business pool' (for assets with an effective life of less than 25 years) and the 'long life small business pool' (for assets with an effective life of 25 years or more). The amendments do not affect those simplified pooling arrangements.

Deductions for amounts included in the second element of the cost of depreciating assets

2.20 Under the existing arrangements, a small business entity can also deduct an amount included in the second element of a depreciating asset's cost (for example, an amount spent on improving or transporting a depreciating asset), provided the amount is under $6,500, the amount is the first such amount to be deducted in respect of the asset, and the asset had been written-off in a previous income year. These amendments reduce the threshold for writing-off amounts included in the second element of an asset's cost from $6,500 to $1,000. ***[Schedule 3, item 4, paragraphs 328-180(2)(a) and (3)(a)]***

2.21 Following the amendments, where an amount of $1,000 or more is included in the second element of a depreciating asset's cost, and the depreciating asset was written off in a previous income year, the asset is treated as having a value equal to the amount and is allocated to the small business entity's general small business pool. The asset is depreciated at a rate of 15 per cent in the income year in which the amount was incurred, and 30 per cent in subsequent income years.

Deductions for low pool values

2.22 Under the existing arrangements, a small business entity can also deduct the value of its general small business pool at the end of an income year if the value of the pool at the end of the year is less than $6,500 (this value is determined prior to applying any applicable rates of depreciation to the pool). These amendments reduce this 'low pool value' threshold to $1,000, meaning that a small business entity can deduct the entire value of its general small business pool at the end of an income year if the value of the pool at the end of the year is less than $1,000. ***[Schedule 3, item 5, subsection 328-210(1)]***

Consequential amendments

2.23 Other amendments are made to provisions that reference the deductions for depreciating assets, amounts incurred in respect of depreciating assets, and low pool values to reflect the reduction of the $6,500 threshold to $1,000. ***[Schedule 3, items 1, 2, and 6 to 10, sections 328-170 and 328-180 (heading), and subsections 328-210(3) (example), 328-215(4), 328-250(1), 328-250(4) (heading), and 328-253(4) (heading)]***

Special rules for certain motor vehicles

2.24 Under the existing arrangements, a small business entity can claim a special deduction in respect of a depreciating asset that was a motor vehicle in the income year in which the vehicle was first used or installed ready for use. That deduction is equal to the taxable purpose

proportion of the first $5,000 value of the motor vehicle plus 15 per cent of any additional value. The remaining value of the motor vehicle is then allocated to the small business entity's general small business pool and depreciated as part of that pool at an ongoing rate of 30 per cent in later income years. These rules only apply where the motor vehicle cost $6,500 or more (as motor vehicles that cost less than $6,500 are written-off under the general instant asset write-off rule).

2.25 These amendments repeal the special rules for certain motor vehicles. ***[Schedule 4, items 3 and 4, section 328-237 and the group heading before that section]***

2.26 In the absence of the special rules for certain motor vehicles, the general capital allowance provisions apply to depreciating assets that are motor vehicles in the same way they do to all other depreciating assets.

2.27 Minor amendments are also made to a number of other provisions to remove references to the special rules for certain motor vehicles. ***[Schedule 4, items 1, 2 and 5 to 7, subsection 328-190(2A), section 328-200, subsections 328-250(1) and (2) and paragraph 328-250(3)(b)]***

Repeal of geothermal energy exploration deduction

What is the geothermal energy exploration deduction?

2.28 Currently, there are two ways that the capital allowance provisions may provide an immediate deduction for geothermal energy exploration expenditure.

Assets first used in geothermal energy exploration

2.29 The capital allowance provisions provide that geothermal energy exploration rights are depreciating assets. The provisions apply to depreciating assets first used for exploration or prospecting for geothermal energy resources from which geothermal energy can be extracted. They also provide that in certain circumstances an asset's decline in value is equal to the asset's cost, which has the consequence that an immediate deduction of this amount may be available. A depreciating asset starts to decline in value when it is used or installed ready for use for any purpose by the taxpayer.

2.30 An immediate deduction is not available if, when the asset is first used, it is used for development drilling for geothermal energy resources or for operations in the course of working a property containing geothermal energy resources. This ensures that the immediate deduction is only available for the cost of depreciating assets first used for

exploration or prospecting, and not for the costs of depreciating assets used in the development or extraction of a geothermal energy resource.

Immediate deduction for expenditure on exploration or prospecting for geothermal energy resources

2.31 Expenditure on exploration or prospecting which does not form part of the cost of a depreciating asset may also qualify for an immediate deduction under another part of the capital allowance provisions (section 40-730). An immediate deduction is available for expenditure incurred in exploration or prospecting for geothermal energy resources which is not part of the cost of a depreciating asset.

2.32 To be entitled to this deduction, expenditure must be incurred on exploration or prospecting for geothermal energy resources from which energy can be extracted and the geothermal energy extraction must be carried on by the entity claiming the deduction. Otherwise, the entity must be carrying on a business of exploration or prospecting for geothermal energy resources from which energy can be extracted and that expenditure was necessarily incurred in carrying on that business.

2.33 Like the deduction available for assets first used in geothermal energy exploration, an entity is not entitled to an immediate deduction for other expenditure on exploration or prospecting for geothermal energy resources if the expenditure was on development drilling for geothermal energy resources, or on operations in the course of working a property containing geothermal energy resources.

Repeal of the geothermal energy exploration deduction

2.34 The amendments repeal the two ways in which geothermal exploration or prospecting expenditure can be immediately deducted. Firstly, geothermal exploration rights and information are no longer defined as a depreciating asset. Secondly, expenditure on exploration or prospecting for geothermal energy resources is no longer immediately deductible under the capital allowance provisions. ***[Schedule 5, items 5 to 8, 16 to 19, 21 and 22, paragraphs 40-30(2)(ba) and (bb), section 40-40 (table item 9A), subsections 40-80(1A), 40-290(5), 40-730(2A) and (2B) and 40-730(3), paragraphs 40-730(4)(b), (c), (d) and (e) and subsections 40-730(7A), (7B) and (9)]***

Repeal of exclusion of certain types of deductions

2.35 Deductions are currently not available for certain types of expenditure relating to geothermal energy extraction, including expenditure for landcare, electricity, phone lines and construction.

2.36 This ensures consistency between the treatment of mining operations and geothermal energy extraction, and denies taxpayers the opportunity to deduct the same capital expenditure more than once.

2.37 The amendments remove the provisions denying deductions for landcare, electricity, phone lines and construction expenditure in relation to geothermal energy extraction. Geothermal explorers can therefore deduct these expenditures under the capital allowance provisions, which are available to any taxpayer (other than a miner who uses land for carrying on a business for a taxable purpose). ***[Schedule 5, items 10 to 14 and 23, paragraph 40-630(1)(b), subsection 40-630(1) (note), paragraphs 40-630(1A)(b), (1B)(b) and (3)(b), paragraphs 40-650(3)(a) and (b) and subparagraph 43-70(2)(fa)(iv)]***

CGT roll-over

2.38 The amendments prevent a tax liability from arising from the conversion of a geothermal exploration right to a geothermal extraction right in relation to the same (or a similar) area. This is achieved by extending the existing CGT roll-over in Subdivision 124-L that applies to prospecting and mining entitlements. This ensures that the roll-over includes the conversion, exchange or replacement of exploration or mining rights held by geothermal energy explorers.

2.39 The broadening of the scope of the existing CGT roll-over is achieved by providing that geothermal exploration rights are treated in the same way as prospecting entitlements and geothermal extraction rights are treated in the same way as mining entitlements, for the purpose of the CGT roll-over. However, an authority, licence, permit or entitlement to prospect for, or extract, geothermal energy resources only include those issued under an Australian law. ***[Schedule 5, items 25 to 29, paragraphs 124-710(1)(a), (b) and (c) and 124-710(2)(a), (b) and (c)]***

2.40 Under the existing arrangements, the termination value of the geothermal exploration right is zero. This ensures that there is no immediate tax liability when the geothermal energy explorer stops holding a geothermal exploration right and acquires a geothermal extraction right relating to the same, or a similar area.

2.41 As the geothermal energy extraction right that is acquired is a CGT asset, changes are also made to the CGT cost base rules in Division 110 to ensure that the appropriate capital gain tax outcome arises. Specifically, the first element of the cost base of the geothermal extraction right is set to zero.

2.42 As geothermal exploration rights cease to be depreciating assets as a result of the amendments, rules concerning their termination value in Division 40 become redundant and are repealed. ***[Schedule 5, item 9, subsection 40-300(2) (table item 12)]***

2.43 Similarly, as geothermal exploration rights are no longer depreciating assets, the CGT rules would result in a CGT gain arising upon disposal. Therefore the amendments repeal the special cost base rules for geothermal extraction rights so that the gain from the disposal of the geothermal energy extraction right is the same as it would otherwise be under the normal CGT rules. CGT roll-over relief ensures that no income tax liability arises on the exchange of a geothermal exploration right for a geothermal extraction right. ***[Schedule 5, item 24, section 112-38]***

Assessable income – amounts received for geothermal exploration information

2.44 Consideration received for dealing with or disclosing geothermal exploration information is ordinary income assessable under section 6-5 if the information is:

- disclosed for the purpose of profit-making, or
- dealt with or disclosed under an agreement for the provision of a service that involves sharing the information with another person and has no adverse effect on the profit-making structure of the business.

2.45 However, there are circumstances where the consideration received for dealing with or disclosing information does not give rise to ordinary income (i.e. the amount received is not assessable under 6-5). Therefore, under the existing arrangements, such amounts are included as statutory income in part by reference to their status as a depreciating asset.

2.46 This removes any doubt that the dealing with or sharing of such information is assessable income. As the amendments in Schedule 5 provide that geothermal exploration information is no longer a depreciating asset, amendments are made to maintain the scope of amounts included in statutory income. ***[Schedule 5, items 2, 3 and 4, section 15-40]***

2.47 The amendments ensure that amounts received by taxpayers for geothermal exploration information are statutory income if:

- the taxpayer continues to hold the information;
- the information is relevant to geothermal energy extraction or a business carried on relating to geothermal energy prospecting or extraction; and
- the amount received is not assessable income under section 6-5.

[Schedule 5, items 2, 3 and 4, section 15-40]

Consequential amendments

2.48 A number of consequential amendments to headings, notes and other things are made to reflect the repeal of the geothermal energy exploration deduction. The redundant definitions of 'geothermal exploration right' and 'geothermal energy extraction right' are repealed. ***[Schedule 5, items 1, 15 and 31 to 38, section 12-5 (table item headed 'capital allowances'), subsection 40-730(1), paragraphs 165-55(2)(ba) and 716-300(1)(b) and (c), subsections 716-300(1) (note) and 995-1(1)]***

Superannuation guarantee charge percentage

SG charge percentage

2.49 Under the SG legislation, employers are required to make a prescribed minimum level of superannuation contributions to a complying superannuation fund or a retirement savings account on behalf of their eligible employees.

2.50 The minimum level of employer superannuation contributions is calculated with reference to the SG 'charge percentage' (as defined in subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992)) and each eligible employee's ordinary time earnings, salary or wages.

2.51 The *Superannuation Guarantee Charge Act 1992* imposes the SG charge on any employer who has an SG shortfall in respect of a quarter. An employer who does not contribute the minimum level of required employer superannuation contributions on time is liable to pay a charge based on the SG shortfall. The SG shortfall for a quarter is calculated under section 17 of the SGAA 1992 and consists of the total of the employer's individual SG shortfalls for that quarter, a nominal interest component, and an administration component.

Rephasing of the SG charge percentage increase

2.52 The SG charge percentage is currently legislated to gradually increase to reach 12 per cent for quarters in years starting on or after 1 July 2019.

2.53 The amendments change the timing of that legislated increase so that the SG charge percentage is maintained at 9.25 per cent for the years starting on 1 July 2014 and 1 July 2015, and increases to 9.5 per cent for the year starting on 1 July 2016. The SG charge percentage then

gradually increases by half a percentage point each year until it reaches 12 per cent for years starting on or after 1 July 2021. ***[Schedule 6, item 1]***

2.54 The rephasing of the SG charge percentage is summarised in the table below:

Table 2.1 Rephasing of the SG charge percentage

Year	*SG charge percentage*	
	New law	*Current law*
Year starting on 1 July 2013	9.25	9.25
Year starting on 1 July 2014	9.25	9.5
Year starting on 1 July 2015	9.25	10
Year starting on 1 July 2016	9.5	10.5
Year starting on 1 July 2017	10	11
Year starting on 1 July 2018	10.5	11.5
Year starting on 1 July 2019	11	12
Year starting on 1 July 2020	11.5	12
Years starting on or after 1 July 2021	12	12

Low income superannuation contribution

2.55 The low income superannuation contribution (LISC) is a superannuation contribution made on behalf of individuals with an adjusted taxable income (ATI) of $37,000 or less in an income year. The maximum contribution amount payable is $500. The contribution is designed to broadly return the tax paid on concessional contributions by an individual's superannuation fund.

2.56 The LISC was funded with the expected revenue from the MRRT, and is being repealed with the removal of the MRRT. The Government will revisit incentives in superannuation for low income earners once the Budget is back in a strong surplus.

2.57 The amendments repeal the framework for the LISC contained in Part 2A of the *Superannuation Government (Co-contribution for Low Income Earners) Act 2003* (SGLIA), and make consequential amendments to other areas of that Act to reflect the repeal of the LISC. ***[Schedule 7, items 1 to 6]***

Repeal of income support bonus

2.58 The income support bonus (ISB) is a tax-free, indexed, non-means tested payment that is paid twice annually to eligible social

security recipients. The ISB was intended to provide additional support for eligible income support payment recipients to manage unanticipated expenses.

2.59 Current ISB instalment rates are $105.80 for single people (or $211.60 per annum) or $88.20 for most people who are an eligible member of a couple (i.e. $176.40 per annum per person). Eligible members of a couple separated by illness, or couples where a partner is in respite care or in gaol, receive the single rate of $105.80 (or $211.60 per annum per person).

2.60 To be eligible to receive the ISB, a person must be a recipient of Newstart Allowance, Sickness Allowance, Youth Allowance, Austudy, ABSTUDY Living Allowance, Special Benefit, Parenting Payment, Transitional Farm Family Payment, or Exceptional Circumstances Relief Payment. The ISB is also paid to eligible recipients under the Veterans' Children Education Scheme prepared under Part VII of the *Veteran's Entitlement Act 1986* and under the Military Rehabilitation and Compensation Act Education and Training Scheme established under the *Military Rehabilitation and Compensation Act 2004*. Changes to those schemes reflecting the repeal of the ISB will also be made to coincide with the commencement of this Bill.

2.61 People on these payments receiving more than the basic amount of Pension Supplement are not eligible for the ISB.

2.62 The ISB is repealed with the removal of the MRRT. Without legislative amendment, the next instalment of the ISB payment would be paid to recipients in March 2014. ***[Schedule 8, items 1 to 11, Part 2.18B, section 1190 (table item 71), subsections 23(1), 1191(1) (table item 43) and 1192(10), and paragraph 23(4AA)(ac) of the Social Security Act 1991; and sections 12L and 47DAB and subsection 47(1) of the Social Security (Administration) Act 1999]***

Consequential amendments

2.63 The consequential amendments made to the *Farm Household Support Act 1992*, *Social Security Act 1991* and *Social Security (Administration) Act 1999* as a result of the introduction of the ISB are repealed to reflect the repeal of the ISB. ***[Schedule 8, items 12 to 14 and items 23 to 25, subsections 24A(8A), 24AA(10A) and 24B(6) of the Farm Household Support Act 1992; paragraph 1231(1AA)(b) of the Social Security Act 1991; and section 123TC of the Social Security (Administration) Act 1999]***

2.64 Provisions that were inserted into the ITAA 1997 to provide for income tax exemptions for ISB payments are also repealed as they will no longer be required. ***[Schedule 8, items 15 to 22, sections 11-15, 52-75 and 52-114, subsections 52-10(1M) and 52-65(1K), and paragraphs 52-10(1)(zb) and (zc) and 52-65(1)(c)]***

Repeal of the schoolkids bonus

2.65 The schoolkids bonus (SKB) is an indexed payment that is available to eligible families receiving Family Tax Benefit Part A and young people in school receiving Youth Allowance or certain other income support or payments (such as the Veterans' Children Education Scheme). The SKB is paid twice annually, with instalments generally paid in January and June each year. The payment was designed to provide assistance to families in meeting education expenses. It is exempt from income tax.

2.66 Currently, an instalment of the primary school amount for the SKB is $205 while an instalment of the secondary school amount for the SKB is $410.

2.67 The SKB is repealed with the removal of the MRRT. Without legislative amendment, the next instalment of the SKB would be in respect of the bonus test day occurring on 1 January 2014. ***[Schedule 9, items 1 to 20, Divisions 1A of Part 3 and 1A of Part 4, subsection 3(1), and clause 2 and subclause 3(1) of Schedule 4 to the A New Tax System (Family Assistance) Act 1999; and Division 2A of Part 3, section 219TA, subsections 93A(6) and 221(5), and paragraphs 66(1)(ba) and 71(1)(a) of the A New Tax System (Family Assistance) (Administration) Act 1999]***

Consequential amendments

2.68 Consequential amendments made to the *Social Security (Administration) Act 1999* as a result of the introduction of the SKB are repealed to reflect the removal of the SKB. ***[Schedule 9, item 23, Subdivision DG of Division 5 of Part 3B of the Social Security (Administration) Act 1999]***

2.69 Provisions that were inserted into the ITAA 1997 to provide for income tax exemptions for the SKB are also repealed as they are no longer required. ***[Schedule 9, items 21 and 22, sections 11-15 and 52-150]***

Application and transitional provisions

Loss carry-back

2.70 Loss carry-back is repealed with effect from the start of the 2013-14 income year. For companies with normal accounting periods, the repeal applies for the year starting on 1 July 2013 and for later income years. For taxpayers with substituted accounting periods, the repeal applies from the start of the period that matches the 2013-14 financial year. ***[Schedule 2, item 42]***

2.71 The operation of the loss carry-back provisions for the 2012-13 income year is preserved, including for the purposes of any future action that relates to their operation for that year. For example, a choice to carry-back a loss for the 2012-13 income year can still be made or changed to the extent that it could have been made or changed had the provisions not been repealed. Similarly, assessments for that year can still be made or amended within the normal time limits to take into account a loss being carried back, and can still be subject to an objection in relation to a loss being carried back. ***[Schedule 2, sub-item 43(1)]***

Example 2.1 Amending loss carry-back assessments

For the 2012-13 income year, Black & Boyd Pty Ltd had a $1 million loss, which it chose to carry back to its 2011-12 income year. In 2016, the Commissioner concluded that Black & Boyd had $400,000 in unreturned assessable income for its 2012-13 income year, reducing to $600,000 the loss it had available to carry back.

The Commissioner can amend Black & Boyd's 2012-13 assessment to reduce its loss carry-back tax offset even though, by 2016, the loss carry-back provisions were repealed. Black & Boyd can also object to the amended assessment even though the relevant provisions no longer exist.

2.72 The similar preservation effect provided for by section 7 of the *Acts Interpretation Act 1901* is not limited by the Bill's specific savings provision so it could also operate to preserve the 2012-13 operation of the repealed provisions. ***[Schedule 2, sub-item 43(2)]***

2.73 A tax loss cannot be utilised by being carried back for income years after the 2012-13 income year. However, a loss that was carried back for that year continues to be treated as having been utilised. This ensures that the loss cannot be used more than once. ***[Schedule 2, item 44, subsection 960-20(1) of the IT(TP) Act 1997]***

2.74 Net exempt income that was utilised to reduce the amount of a loss that was carried back also continues to be treated as having been utilised. ***[Schedule 2, item 44, subsection 960-20(2) of the IT(TP) Act 1997]***

Changes to the capital allowances for small business entities

2.75 With the exception of the amendments in relation to low pool values, the amendments made by Schedules 3 and 4 apply from 1 January 2014. These amendments include the changes in relation to depreciating assets that are first used or installed ready for use at a particular time, changes in relation to amounts included in the second element of the cost of a depreciating asset that has been written-off in an earlier income year, the repeal of the special rules for certain motor

vehicles, as well as the consequential amendments to other provisions. ***[Schedule 3, sub-items 11(1) and (2); and Schedule 4, item 8]***

2.76 In the majority of cases, the above amendments begin to apply part-way through a small business entity's 2013-14 income year (an exception to this would be a small business entity with a substituted accounting period that finishes on 31 December).

Depreciating assets

2.77 Depreciating assets that are first used or installed ready for use in the part of the income year that to 1 January 2014 are subject to the $6,500 threshold. The $1,000 threshold then applies to assets that are first used or installed ready for use in the remaining part of that income year.

2.78 Where a depreciating asset is both installed ready for use and first used in the same income year, but these two events occur at different times during the income year, the $6,500 threshold continues to apply to the asset if it was installed ready for use prior to 1 January 2014. The $1,000 threshold applies to a depreciating asset that is first used on or after 1 January 2014 only if it was not installed ready for use before 1 January 2014.

Example 2.2 Treatment of assets installed before 1 January 2014

Nathan's Knits is a small business entity that designs and produces fashionable knitwear. Over the past few years, Nathan's Knits has experienced a substantial growth in sales and Nathan (the proprietor of Nathan's Knits) has had difficulties producing sufficient knitwear to satisfy the demand from his wholesale customers.

Nathan purchases an additional industrial loom on 16 November 2013 in anticipation of further demand for his knitwear for the 2014 Winter Season. The new loom costs $5,000 and will only be used in his business. Nathan has the loom installed ready for use in his workshop on 1 December 2013, but does not begin using it at that time as he is still working on next season's designs. Nathan starts to use the new loom on 1 February 2014.

Nathan's Knits' income year commences on 1 July and ends on 30 June. Nathan chooses to apply Subdivision 328-D for the 2013-14 income year.

Although Nathan started to use the new loom after 1 January 2014, the $6,500 instant asset write-off threshold continues to apply to the loom as it was installed ready for use before 1 January 2014. Nathan's Knits is able to claim a deduction for the full cost of the loom because the taxable purpose proportion of its adjustable value is under $6,500 (being $5,000 x 100% business estimate use).

Amounts included in the second element of the cost of depreciating assets

2.79 The changes in respect of amounts included in the second element of a depreciating asset's cost apply to amounts that are incurred on or after 1 January 2014. The $6,500 threshold therefore applies to amounts incurred in the part of an income year that occurs prior to 1 January 2014, whereas the $1,000 threshold applies to amounts that are incurred on or after 1 January 2014.

Low pool values

2.80 The amendments in relation to low pool values apply to income years that finish on or after 1 January 2014. ***[Schedule 3, sub-item 11(3)]***

2.81 In contrast to the rules for depreciating assets and amounts incurred in respect of depreciating assets (each of which relies upon an event occurring at a particular time during an income year), the deduction available for low pool values is for an income year. As such, the reduced threshold for low pool values applies for the entire income year to which it first applies.

2.82 The reference to an income year 'that finishes on or after 1 January 2014' means that the changes in relation to low pool values will generally apply to a small business entity's 2013-14 income year. In the event that a small business entity has an early substituted accounting period that finishes on or before 31 December 2013, the changes will apply to its 2014-15 income year. Application to this income year is consistent with the other amendments because an early balancing small business entity of that kind is able to apply the $6,500 threshold to every depreciating asset that is first used or installed ready for use in the 2013-14 income year (as well as the $6,500 threshold for any amount included in the second element of a depreciating asset's cost that is incurred during the 2013-14 income year).

Special rules for certain motor vehicles

2.83 As with the changes for depreciating assets and amounts included in the second element of the cost of such assets, the repeal of the special rules for certain motor vehicles apply to motor vehicles that are first used or installed ready for use on or after 1 January 2014. The above discussion on the application of the changes for depreciating assets is equally applicable to the repeal of the special rules for certain motor vehicles. (For example, the special rules will still apply to a motor vehicle that is first used in a part of an income year that occurs after 1 January 2014 if it was installed ready for use in an earlier part of that income year which occurred prior to 1 January 2014).

Repeal of geothermal energy exploration deduction

2.84 The repeal of the capital allowance deduction for geothermal energy exploration expenditure and the repeal of the denials of deductions relating to expenditure for landcare operations, electricity and telephone lines, apply to expenditure incurred after 30 June 2014. ***[Schedule 5, sub-item 39(2)]***

2.85 The repeal of the modification to the cost base rules applies to geothermal energy extraction rights held at any time after 30 June 2014. ***[Schedule 5, sub-item 39(3)]***

2.86 The amendments allowing geothermal energy explorers to use a CGT roll-over in relation to the disposal of a geothermal exploration right where they acquire a geothermal energy extraction right covering the same (or a similar) area, applies to CGT events that occur after 30 June 2014. ***[Schedule 5, sub-item 39(3)]***

2.87 The amendments also insert transitional provisions so that deductions or balancing adjustments for geothermal exploration rights or geothermal exploration information which were held, or started to be held, before 1 July 2014 are not adversely affected by the repeal of the immediate deductibility of geothermal exploration expenditure. ***[Schedule 5, sub-item 39(1)]***

Superannuation guarantee charge percentage

2.88 The rephasing of the SG increase applies to quarters starting on or after 1 July 2013. ***[Schedule 6, item 2]***

Low income superannuation contribution

2.89 The repeal of the LISC applies to concessional contributions for financial years starting on or after 1 July 2013. ***[Schedule 7, sub-item 7(1)]***

Reporting

2.90 Section 12G of the SGLIA requires the Commissioner to give a Treasury Minister a report for presentation to Parliament on the working of the LISC during the quarter.

2.91 The reporting obligation under section 12G continues until the commencement of Schedule 7 (on Royal Assent to this Bill), after which time no further reporting in respect of any quarter or financial year is required. ***[Schedule 7, sub-item 7(2)]***

Notification where the Commissioner receives new information

2.92 Where an individual does not lodge an income tax return, the Commissioner may estimate the individual's adjusted taxable income (ATI) to determine their eligibility for the LISC. The Commissioner is not required to notify the individual when, based on the information available to the Commissioner at that time, it is determined that a person is eligible for the LISC.

2.93 Subsection 12F(2) of the SGLIA provides that if the Commissioner obtains further information after estimating an individual's ATI and, as a result of that information, decides that the LISC is not payable, the Commissioner must give written notice of the decision to the person. As the individual is not notified of the first decision to pay the LISC, the notification of the subsequent decision has the potential to cause confusion. From the commencement of Schedule 7 (on Royal Assent of the Bill), written notification under section 12F is longer be required. Individuals will continue to receive information from their superannuation fund regarding all transactions on their account in their annual member statement. ***[Schedule 7, sub-items 8(1) and 8(2)]***

Transitional arrangements for the 2012-13 financial year

2.94 The LISC continues to be payable in respect of concessional contributions for the 2012-13 financial year. However, the Commissioner can only determine that the LISC (or an underpaid amount of the LISC) is payable before 1 July 2015. This provides certainty regarding eligibility to the LISC and enables the Commissioner to streamline administrative systems after 1 July 2015. ***[Schedule 7, sub-items 9(1) and 9(2)]***

Repeal of the income support bonus

2.95 The law with respect to the ISB is preserved in relation to payments of the ISB to individuals who were entitled to payment in relation to the period prior to the repeal for ISB payments made before, on or after the commencement of the amendments. Parts of the social security law relating to a person's qualification for the ISB in force prior to the commencement of the amendments will continue to apply in relation to that qualification. ***[Schedule 8, sub-items 26(1),(2) and (6)]***

2.96 The provisions of the ITAA 1997 which relate to the ISB also continue to operate in respect of payments made to recipients before, on or after the commencement of the amendments to those provisions. ***[Schedule 8, sub-items 26(3) to (5)]***

Repeal of the schoolkids bonus

2.97 The law with respect to the SKB is preserved in relation to individuals who are eligible for SKB on a bonus test day occurring before commencement of the amendments. This would allow the SKB to be paid after commencement in relation to that eligibility. ***[Schedule 9, sub-items 24(1) and (4)]***

2.98 Provisions of the ITAA 1997 which relate to the SKB also continue to operate in respect of SKB payments made before, on or after commencement. ***[Schedule 9, sub-item 24(2)]***

2.99 Provisions in the *Social Security (Administration) Act 1999* providing for the income management of SKB payments are preserved so that any payments made before, on or after commencement are subject to the provisions. ***[Schedule 9, sub-item 24(3)]***