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## ***General outline and financial impact***

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### **Miscellaneous amendments**

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

***Date of effect:*** The amendments in Parts 1 and 2 will commence on Royal Assent unless otherwise indicated in Chapter 1 of this explanatory memorandum.

***Proposal announced:*** These amendments were publicly released for consultation on the Treasury website on 21 December 2012.

***Financial impact:*** These amendments will have a nil/minimal impact on revenue over the forward estimates.

***Compliance cost impact:*** Negligible.



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# Chapter 1

## Miscellaneous amendments

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### Outline of chapter

1.1 Schedule # to this Bill makes miscellaneous amendments to various taxation laws.

### Context of amendments

1.2 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

1.3 These miscellaneous amendments address minor technical deficiencies and legislative uncertainties within several taxation laws.

### Detailed explanation of new law

#### Part 1 — General amendments

*Correcting a typographical error — dollar signs*

**Table 1.1: Amendments to the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999**

<i>Provisions being amended</i>	<i>What the amendments do</i>
<i>A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999</i> 15(1)(c) 16(2)(c)	Insert the missing dollar sign before all references to '20,542'.

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[Schedule #, item 1]	
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Updating references to a repealed provision

**Table 1.2: Amendments to the Crimes (Taxation Offences) Act 1980, New Business Tax System (Former Subsidiary Tax Imposition) Act 1999, and Taxation (Interest on Overpayments and Early Payments) Act 1983**

<i>Provisions being amended</i>	<i>What the amendments do</i>
<p><b>Crimes (Taxation Offences) Act 1980</b>            3(1) (paragraph (b) of the definition of 'income tax')            [Schedule #, item 2]</p>	<p>Ensure that remaining references in the tax laws to section 170AA of the <i>Income Tax Assessment Act 1936</i> refer to it as former section 170AA, as this provision has been repealed.</p>
<p><b>New Business Tax System (Former Subsidiary Tax Imposition) Act 1999</b>            4(2)(a)            4(2)(b)            [Schedule #, item 29]</p>	
<p><b>Taxation (Interest on Overpayments and Early Payments) Act 1983</b>            3C(1) (table item 15 of the definition of 'relevant tax')            8A(1)(a)(vb)            [Schedule #, items 33 and 34]</p>	

Relocating a Schedule

**Table 1.3: Amendment to the Excise Tariff Amendment (Condensate) Act 2011**

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b>Excise Tariff Amendment (Condensate) Act 2011</b>            Item 4 of Schedule 1            [Schedule #, item 3]</p>	<p>Relocates the new section 7 of the <i>Excise Tariff Act 1921</i> so it appears before the Schedule to this Act.</p>

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Removing a redundant definition

**Table 1.4: Amendment to the Fringe Benefits Tax Assessment Act 1986**

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Fringe Benefits Tax Assessment Act 1986</i></b> 136(1) (definition of 'Chief Executive Centrelink') [Schedule #, item 4]	Removes the definition of 'Chief Executive Centrelink' as it is no longer utilised by the Act.  This amendment gives effect to a suggestion made via <b>TIES (issue 0003-2012)</b> .

Removing asterisks

**Table 1.5: Amendments to the Fuel Tax Act 2006**

<i>Provisions being amended</i>	<i>What the amendments do</i>
<b><i>Fuel Tax Act 2006</i></b> 43-10(11) 43-10(12) [Schedule #, item 5]	Remove asterisks which precede the expression 'road user charge', as this is not a defined term.

Contact lenses and the medical expenses rebate

**Table 1.6: Amendments to the Income Tax Assessment Act 1936**

<i>Provisions being amended</i>	<i>What the amendments do</i>
<b><i>Income Tax Assessment Act 1936</i></b> 159P(4) (subparagraphs (g)(i) and (ii) of the definition of 'medical expenses') [Schedule #, item 6]	Ensure that payments relating to contact lenses are treated the same way as payments relating to spectacles, for the purposes of the medical expenses rebate.  These amendments give effect to a suggestion made via <b>TIES (issue 0010-2012)</b> .

Removing an unnecessary term

**Table 1.7: Amendments to the Income Tax Assessment Act 1997**

<i>Provisions being amended</i>	<i>What the amendments do</i>
<b><i>Income Tax Assessment Act 1997</i></b> 10-5 (table item headed "balancing adjustment") 10-5 (table item headed "industrial property") 10-5 (table item headed "residual value")	Remove all references to the term 'industrial property' in the assessable income Guide material, as this term is no longer relevant to assessable income.

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[Schedule #, items 7 to 9]	
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*Renumbering a note*

**Table 1.8: Amendment to the *Income Tax Assessment Act 1997***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Income Tax Assessment Act 1997</i></b> 102-20 (Note 5, second occurring) [Schedule #, item 10]	Corrects the erroneously numbered second occurrence of 'Note 5', to 'Note 6'.

*Amending the definition of 'tax preferred end user' in the *Income Tax Assessment Act 1997**

1.1 This amendment will bring Australian residents within the definition of 'tax preferred end user' to the extent that they carry on a business at, or through, a permanent establishment in a foreign jurisdiction. In this regard the words 'to the extent' perform an important function in excising the foreign business operations of the entity. The Australian resident is then a 'tax preferred end user' in respect of those activities, in much the same way that a foreign resident is a 'tax preferred end user' in respect of all of its activities. Conversely, the entity will not be a 'tax preferred end user' in respect of its other business activities (for example its Australian business operations). [Schedule #, item 11, paragraph 250-55(b)]

1.2 The modification to the definition in this way is justified by the fact that income derived at or through the permanent establishment will generally be non-assessable non-exempt income because of section 23AH of the *Income Tax Assessment Act 1936* (ITAA 1936). Appropriately, the modified definition will not apply to the entity that is subject to the Division's operation, because the 'end user' must be another entity.

1.3 Other than minor amendments to paragraph 250-155(3)(b) and subparagraphs 250-60(1)(b)(i) and (ii) of the *Income Tax Assessment Act 1997* to include the word 'business' after references to 'foreign resident', the modified definition will interact appropriately with the other provisions of Division 250 without any further modifications. For example, because the relevant part of the Australian resident's activities are picked up in the modified definition, subsections 250-60(1) and 250-60(2) will then operate appropriately. These subsections set out when an asset will be put to a 'tax preferred use' and will only apply to the assets used by the Australian resident in carrying on a business at or through its foreign permanent establishment. [Schedule #, items 12 to 14, subparagraphs 250-60(1)(b)(ii) and 250-60(2)(b)(ii), and paragraph 250-155(3)(b)]

1.4 Because a permanent establishment is not a distinct legal entity (it is simply a part of an entity), even where the Australian resident has exclusive use of the asset it may be possible for the asset to be used both in the business the entity carries on at or through the foreign permanent establishment, and in its other activities more generally. In this context, and in conjunction with the 12 month requirement under section 250-20, the ‘used wholly or principally outside Australia’ tests in subparagraphs 250-60(1)(b)(ii) and 250-60(2)(b)(ii) will operate in a similar way to which they do in respect of a foreign resident who also has Australian business operations (that is an asset will only be found to have been put to a ‘tax preferred use’ where it has been predominantly used outside of Australia).

1.5 Given the operation of subsections 51AD(1A) and 159GH(1B) of the ITAA 1936, section 51AD and Division 16D will not apply to the extent that the modified definition of ‘tax preferred end user’ has effect in respect of an Australian resident that carries on a business at or through a foreign permanent establishment.

*Clarifying an expression*

**Table 1.9: Amendment to the Income Tax Assessment Act 1997**

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 727-95(a) <i>[Schedule #, item 16]</i>	Rephrases the sentence so reference can be made to the defined term ‘arm’s length’.

*Removing an extraneous definition*

**Table 1.10: Amendment to the Income Tax Assessment Act 1997**

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 995-1(1) (definition of ‘natural resource’, first occurring) <i>[Schedule #, item 17]</i>	Removes an extraneous definition of ‘natural resource’ from the Dictionary.

**Table 1.11: Amendments to the Income Tax Rates Act 1986 and Tax Laws Amendment (Income Tax Rates) Act 2012**

<i>Provisions being amended</i>	<i>What the amendments do</i>
<p><b><i>Income Tax Rates Act 1986</i></b>            3(1) (definition of ‘net income phase-out limit’)            3(1) (definition of ‘non-resident phase-out limit’)            3(1) (definition of ‘resident phase-out limit’)            13(2)            13(5)(b)            13(6)(c)            13(8)(b)            13(10)            14(2)(c)            14(3)            15(2)(b)            15(4)(d)            15(6)(b)            15(8)  <i>[Schedule #, items 18 to 27]</i></p> <p><b><i>Tax Laws Amendment (Income Tax Rates) Act 2012</i></b>            2(1) (table item 3)            Part 2 of Schedule 1  <i>[Schedule #, items 41 and 42]</i></p>	<p>Division 3 of Part II of the <i>Income Tax Rates Act 1986</i> (the Rates Act) sets the rates of tax payable on income of Australian resident minors (section 13), certain trusts (section 14), and foreign resident minors (section 15).</p> <p>These provisions contain fixed monetary thresholds that are implicitly linked to the statutory tax rates that apply to taxpayers more generally. For that reason, when there is a change in the tax rates, a corresponding change to the fixed monetary thresholds is also required.</p> <p>The recent reforms to the personal income tax rates that commenced on 1 July 2012 included an increase in the first tax rate for residents from 15 per cent to 19 per cent, and an increase of the first tax rate for foreign residents in the table in Part II of Schedule 7 to the Rates Act (‘the first tax rate for non-residents’) from 29 per cent to 32.5 per cent.</p> <p>While amendments have been made to section 15 to reflect these changes (the fixed monetary threshold was changed from \$732 to \$663), there was no corresponding consequential amendment to the concessional threshold in subsection 14(2). If the concessional threshold is not amended, trustees with annual, relevant trust income of \$595 would pay around \$24 more in tax than trustees with annual, relevant trust income of \$594 — producing a very large and unintended effective marginal tax rate.</p> <p>To correct this missed consequential and to avoid the need to make future changes to the thresholds when there are changes to the relevant tax rates, these amendments replace references to these fixed monetary thresholds with the formulae that are used to produce the new monetary amounts that are used in the thresholds.</p> <p>With the introduction of the formulas, legislated future changes to the thresholds to</p>

	reflect legislated changes to the tax rates are also repealed, as they are no longer necessary.
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*Correcting a reference*

**Table 1.12: Amendment to the *New Business Tax System (Venture Capital Deficit Tax) Act 2003***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>New Business Tax System (Venture Capital Deficit Tax) Act 2003</i></b> 2(1) (table item 2) [Schedule #, item 30]	Corrects the reference to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i> , by removing the '(No.2)'.

*Rectifying a misdescribe — correcting an amending reference*

**Table 1.13: Amendment to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012</i></b> Item 1 of Schedule 2 [Schedule #, item 31]	Corrects an incorrect amending reference to those paragraphs in the <i>Superannuation Industry (Supervision) Act 1993</i> that confer the general administration of the Act on the Commissioner of Taxation.

*Public ancillary funds*

**Table 1.14: Amendment to the *Taxation Administration Act 1953***

<i>Provision being amended</i>	<i>What the amendment does</i>
<b><i>Taxation Administration Act 1953</i></b> 426-102(1)(a)(ii) of Schedule 1 [Schedule #, item 32]	Under reforms introduced in 2011, all public ancillary funds must have trustees which are constitutional corporations. However, a temporary concession was provided for a trustee prescribed by regulation. This mechanism permitted the granting of additional time for certain new public ancillary funds to comply with the requirement to have a trustee that is a constitutional corporation. The need for a limited exemption mechanism was identified during consultation and is intended to be exercised in limited number of cases where a need for additional transitional relief can be demonstrated. However, the regulation making power was unnecessarily limited to cases involving public ancillary funds with

	<p>single trustees.</p> <p>This is inappropriate because in the exceptional cases contemplated in the explanatory materials, public ancillary funds without constitutional corporations will need to have more than one trustee to comply with the <i>Public Ancillary Guidelines 2011</i>. This amendment allows more than one trustee to be prescribed as exempt during the transitional period.</p>
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*Allowing for the amendment of assessments*

**Table 1.15: Amendment to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Tax Laws Amendment (2011 Measures No. 9) Act 2012</i></b> 4(4) [Schedule #, item 35]</p>	<p>Allows the Commissioner of Taxation to amend assessments of those taxpayers who are entitled to apply the foreign income tax offset against the Medicare levy and Medicare levy surcharge back to 1 July 2008 (as a result of changes in Part 28 of Schedule 6 to the <i>Tax Laws Amendment (2011 Measures No. 9) Act 2012</i>).</p>

*Rectifying a misdescribe — hyphens*

**Table 1.16: Amendment to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012***

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><b><i>Tax Laws Amendment (2011 Measures No. 9) Act 2012</i></b> Item 14 of Schedule 1 [Schedule #, item 36]</p>	<p>Removes the hyphen from the expression ‘self-managed superannuation funds’ in Item 14 of Schedule 1 to this Act, which amends a Note in the <i>Superannuation Industry (Supervision) Act 1993</i>. This is necessary to ensure that the subsequent amendment to the same Note (in Item 204 of Schedule 6 to this Act) will be effective, as it refers to the expression without a hyphen.</p>

*Rectifying a misdescribe — parentheses*

**Table 1.17: Amendments to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012***

<i>Provisions being amended</i>	<i>What the amendments do</i>
<b><i>Tax Laws Amendment (2011 Measures No. 9) Act 2012</i></b> Item 200 of Schedule 6 Item 201 of Schedule 6 Item 202 of Schedule 6 Item 203 of Schedule 6 <i>[Schedule #, item 37 to 40]</i>	Remove the parentheses in the references to the <i>Superannuation Industry (Supervision) Act 1993</i> in Items 200 to 203 of Schedule 6, which amend provisions in the <i>Income Tax Assessment Act 1997</i> . This will ensure that Items 200 to 203 of Schedule 6 will be effective in amending these provisions, as the provisions in the <i>Income Tax Assessment Act 1997</i> did not originally have parentheses.

**Part 2 — Asterisking amendments**

**Table 1.18: Amendments to the *Income Tax Assessment Act 1997***

<i>Provisions being amended</i>	<i>What the amendments do</i>
<b><i>Income Tax Assessment Act 1997</i></b> 43-170(2)(b) 70-20(b) 70-30(1)(a) 70-110(1)(a) 70-120(6)(b) 87-40(2)(e) 112-20(1)(c) 112-20(2)(a) 116-30(2)(b)(i) 207-128(1)(e) 243-20(7) 243-25(1)(d) 420-30(c)(i) 620-40(2) 707-325(4)(b)(i) 775-120(a) 820-105(1)(b)(ii) 820-105(3)(h) 820-215(1)(b)(ii)	Ensure the terms ‘arm’s length’ and ‘quarter’ are correctly asterisked, as they are defined terms.

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820-215(3)(h)	
820-315(1)(d)	
820-315(3)(f)	
820-410(1)(d)	
820-410(3)(f)	
820-910(3)(d)	
820-942(2)(g)	
960-275(1) (formula)	
960-275(1A) (formula)	
960-275(2) (formula)	
960-275(3) (formula)	
960-280(1)	
960-280(2)	
960-280(4)	
960-285(3A) (formula)	
960-285(4) (formula)	
960-285(6)	
[Schedule #, items 43 to 49]	

## Commencement and application arrangements

1.6 All of the amendments in Part 1 of Schedule # commence on Royal Assent, unless otherwise indicated below. Further, if any of the amendments in Part 1 of Schedule # have specific application provisions, there are also identified below.

1.7 The amendment made by item 1 is to commence immediately after the relevant income amounts came into effect (on 1 July 2012). This ensures that the references to '20,542' will have always been regarded as including a dollar sign.

1.8 The amendment made by item 3 is to commence immediately after the *Excise Tariff Amendment (Condensate) Act 2011* came into effect (on 24 November 2011). This ensures that the new section 7 to the *Excise Tariff Act 1921* will have always been regarded as being located before the Schedule to this Act.

1.9 The amendments made by items 11 to 14 modify the definition of 'tax preferred end user' and apply to end users of assets on or after 1 July 2007. This application date is retrospective because the amendments give effect to the original policy intent of Division 250, and accompanying amendments to section 51AD and Division 16D of the ITAA 1936 (for Division 250 instead of section 51AD and Division 16D

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of the ITAA 1936 to apply to the use of certain assets by users who are exempt from Australian tax). *[Schedule #, item 15]*

1.10 The amendments made by items 18 to 27 apply in relation to the 2012-13 income year and all later income years. This ensures that no taxpayer is disadvantaged from a missed consequential not made as part of recent changes to the personal individual marginal tax rates. *[Schedule #, item 28]*

1.11 The amendment made by item 31 is to commence immediately after the commencement of item 1 of Schedule 2 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* (on 31 January 2013), which is when this Act inserted an additional paragraph in the *Superannuation Industry (Supervision) Act 1993*. This ensures that there will never have been an incorrect amending reference to the *Superannuation Industry (Supervision) Act 1993*.

1.12 The amendment made by item 36 is to commence immediately after the commencement of item 14 of Schedule 1 to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012* (on 22 March 2012). This ensures that the expression ‘self-managed superannuation funds’ in item 14 of Schedule 1 will have always been regarded as not having a hyphen, thereby allowing the subsequent amendment in item 204 of Schedule 6 to be effective.

1.13 The amendments made by items 37 to 40 are to commence immediately after the commencement of items 200 to 203 of Schedule 6 to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012* (on 21 March 2012). This ensures that the references to the *Superannuation Industry (Supervision) Act 1993* in items 200 to 203 of Schedule 6 will have always been regarded as not including parentheses (and will be effective), as the provisions they are amending in the *Income Tax Assessment Act 1997* did not originally have parentheses.

1.14 All of the amendments in Part 2 of Schedule # commence on Royal Assent, and none of them have specific application provisions.