- The minerals resource rent tax is repealed from 1 October 2014 (¶19-005).
- Changes to the farm management deposits scheme come into force (¶18-290).
- An exploration development incentive may come into effect (¶10-010).

Retirement, termination and superannuation

- Changes to the treatment of excess non-concessional contributions may come into force (¶13-775).
- The superannuation guarantee charge percentage is 9.5% from 1 July 2014, but will be frozen at this rate until 2020/21 (¶39-100).
- The ATO will have wider powers to penalise trustees of SMSFs who contravene superannuation laws (¶13-800).

International

- The FATCA reporting and withholding requirements come into force (¶22-075).
- The thin capitalisation measures are tightened (¶22-700).
- Legislation may take effect to retrospectively implement parts of the Investment Manager Regime (¶22-122).

Personal tax

- A 2% budget repair levy applies to an individual's taxable income in excess of $180,000 (¶2-131; ¶42-000).
- The dependant spouse offset is to be abolished (¶15-130).
- The mature age worker tax offset will be abolished (¶15-365).
- Taxpayers will receive a tax receipt showing how and where their tax payments are used (¶2-030).
- Government co-contributions to the First Home Saver Accounts scheme will be abolished (¶13-500).

Other tax measures

- Entities giving tax advice in the course of giving financial product advice are brought within the tax agent regime (¶32-010).
- The geothermal energy concession is abolished (¶17-500).

Chapter 1 Introduction to Australian Income Tax

Introduction

¶1-000 Scope of this chapter

Students, practitioners and lecturers have long recognised that the study of Australian tax law is a difficult discipline. The *Australian Master Tax Guide* is accepted by experienced tax practitioners, in both law and accountancy, as a basic working tool to unlock the intricacies and complexities of Australian income tax law and practice.

The intention of this chapter is to introduce students, as well as practitioners, to the Australian federal tax system and the principles of Australian income tax law. In particular, this chapter provides essential information required by students who use the *Australian Master Tax Guide* to obtain a working knowledge of Australian income tax law.

On such a difficult topic as taxation, practitioners and students may find it useful to also refer to *Australian Taxation Law* (Woellner, Barkoczy, Murphy, Evans and Pinto), an annual text which covers the Australian taxation system from a conceptual and theoretical point of view. Further, *Foundations of Taxation Law* (Barkoczy) provides a concise introduction to the policy, principles and practice that underpin the Australian taxation system. Summaries of leading cases can be found in *Australian Tax Casebook* (Barkoczy). Further assistance can be found in the *Australian Master Tax Examples* (Nethercott, Richardson and Devos), a publication designed to expand on the examples in the *Australian Master Tax Guide* and provide practical guidance on the operation of the tax laws.

The Federal Framework

¶1-010 Income tax in Australia

Income tax was first imposed in Australia by the States, commencing with South Australia in 1884, New South Wales and Victoria in 1895, Queensland and Tasmania in 1902 and Western Australia in 1907. The first federal income tax was levied by the Commonwealth in 1916 to finance Australia's role in World War I.

The introduction of the federal tax resulted in different tax levies by at least two authorities (State and federal) and, as between the States, at different rates. Accordingly, after 1916, the States and the Commonwealth endeavoured to provide a uniform tax system. In 1923, to minimise the duplication of administrative facilities, the Commonwealth and all the States except Western Australia agreed that federal income tax was to be collected by State officials. Simultaneously, certain Commonwealth officials were transferred from the Commonwealth government to the respective State departments and a joint form for State and federal income tax returns was adopted.

The object of the uniform tax system was achieved to a major degree with the enactment of the Commonwealth *Income Tax Assessment Act 1936* (ITAA36). This Act consolidated and amended the Commonwealth legislation in respect of the assessment and collection of income tax.

Due to the varieties of special income taxes imposed by the respective States, however, significant disparities continued to exist between the States as well as between the federal and State tax systems. This position was radically changed in 1942 when, as a war-time measure, the Commonwealth suspended all agreements then existing between the Commonwealth and the States and assumed all functions connected with the imposition and collection of income tax (¶1-100). This has remained unchanged and, at the present time, only the Commonwealth directly imposes an income tax.

Since 1997, substantial parts of ITAA36 have been written into a new Act, the *Income Tax Assessment Act 1997* (ITAA97), and the two must now be read together to get a full understanding of the income tax system (¶1-700).

¶1-020 Constitutional basis of federal income tax

The Commonwealth Parliament derives its power to enact income tax legislation from the Constitution; at the same time, the Constitution imposes restrictions on this legislative power. The empowering provision is s 51(ii) by which the parliament has, subject to the Constitution, "power to make laws for the peace, order, and good government of the Commonwealth with respect to . . . [T]axation; but so as not to discriminate between States or parts of States". Other relevant provisions in the Constitution are s 53, 55, 99, 114 and 117.

The Commonwealth law with respect to income tax has, since the first enactment in 1915, been contained in separate Acts: one Act dealing with the subject of tax, its assessment and collection, and the other(s) imposing the tax. The Acts were originally the *Income Tax Assessment Act 1915* and the *Income Tax Act 1915*. The convention of having separate Acts, which is followed in respect of all other Commonwealth tax laws (eg GST), is required by s 55 of the Constitution (¶1-050).

Section 53 of the Constitution is also important. That section provides that proposed laws "imposing taxation, shall not originate in the Senate" and that "the Senate may not amend proposed laws imposing taxation". Consequently, all Bills imposing tax must originate in the House of Representatives and, if the Senate wishes to amend a Bill imposing tax, it can only request that the House agree to the amendment(s).

Over the years, numerous taxpayers have attempted to argue that they are exempt from fulfilling their taxation obligations because the taxation system itself is invalid. Their endeavours to mount complex constitutional arguments based on the notion that Australia's entire legal and political systems are invalid have received short shrift from the courts, being dismissed as frivolous and disclosing no cause of action. The ATO has issued PS LA 2004/10 advising its staff on how to deal with such arguments.

¶1-030 Constitutional restrictions on federal income tax law

The Constitution contains a number of restrictions on the federal government's powers to levy and collect income tax. These restrictions are, in general terms, dealt with in ¶1-040 to ¶1-090 below.

¶1-040 ". . . with respect to . . . taxation"

For the valid exercise of power under s 51(ii) of the Constitution, the legislation in substance must be "with respect to . . .[T]axation".

In early cases, the High Court developed the features of a "tax" as a compulsory exaction of money by a public authority for public purposes, enforceable by law, and which is not a payment for services rendered (*Matthews v The Chicory Marketing*

Board (Vic)). The court also said that the features included that: (1) the payments are not penalties (*R v Barger*); (2) the exactions are not arbitrary (*Hipsleys Ltd*); and (3) the exactions should not be incontestable (*MacCormick*).

However, the High Court has taken a broader approach in later cases, holding that a compulsory payment under statutory powers could still be a tax even though it was levied by a non-public authority or for purposes which could not properly be described as public (*Air Caledonie International v The Commonwealth of Australia*). Further, it has said that the moneys need not be paid into consolidated revenue to be a tax, provided the moneys raised by the imposition form part of the Consolidated Revenue Fund from which they must be appropriated (*Northern Suburbs General Cemetery Reserve Trust v The Commonwealth of Australia*; *Australian Tape Manufacturers Association v The Commonwealth of Australia*).

In holding that the child support legislation did not impose a tax, the High Court confirmed that the features set out above were not an exhaustive definition of a tax (*Luton v Lessels*). In particular, it said that all the factors were important but that the presence or absence of any of them was not determinative; it was necessary, in every case, to consider all the features of the legislation.

The High Court has upheld the validity of the superannuation guarantee charge (SGC) on the basis that it was within the constitutional conception of taxation; the fact that revenue raising was secondary to the attainment of some other legislative purpose (in this case, providing superannuation benefits for employees) was no reason for treating the SGC otherwise than as a tax (*Roy Morgan*).

¶1-050 Laws imposing taxation

Section 55 of the Constitution provides that laws ''imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect'' and that laws ''imposing taxation . . . shall deal with one subject of taxation only''. It is because of this provision that Australian income tax legislation consists of separate Acts: the Rating Acts which actually impose a tax and fix the rate of tax; and ITAA36 and ITAA97 which provide for the incidence, assessment and collection of the tax and for a variety of incidental matters.

However, it is clear that a law will not necessarily be considered as imposing a tax even though it contains provisions relating to the imposition of the tax, eg if it deals with the collection and recovery of taxes and the punishment of offenders. Although these matters are necessary for the effective imposition of tax, they are not regarded as actually imposing the tax (*Re Dymond*).

Nor will a law necessarily be considered as imposing a tax merely because it creates a debt owing to the Commonwealth. In a challenge to the constitutional validity of the child support scheme contained in the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*, the High Court held that the legislation did not amount to ''laws imposing taxation'' as it did not have either the purpose or effect of raising revenue for the Commonwealth; rather its purpose was to create and facilitate the enforcement of private rights and liabilities (*Luton v Lessels*).

The second paragraph of s 55 provides that laws ''imposing taxation . . . shall deal with one subject of taxation only''. (The second paragraph also provides that laws imposing duties of customs shall deal with duties of customs only and laws imposing duties of excise shall deal with duties of excise only.) The scope of a single subject of taxation was considered in *Resch's case*, where it was held that the taxation of both income and capital gains falls within the one subject.

¶1-070 Tax laws must not discriminate between States

Section 51(ii) of the Constitution expressly prohibits any federal tax which discriminates between States or parts of States. In addition, s 99 of the Constitution provides that the Commonwealth shall not by any law or regulation of trade, commerce or revenue, give preference to any one State or any part of it over another State or any part of it.

The High Court has held that the repealed minerals resource rent tax (MRRT) was valid (*Fortescue Metals Group*; see also ¶1-115). The former MRRT legislation had a different practical operation in different States as those States had, by legislation, created different circumstances to which such legislation would apply. However, this did not mean that the former MRRT legislation discriminated between the States or that there was preference of one State over another. It also did not contravene the Melbourne Corporation doctrine (ie it did not impose any special burden on the exercise of powers and fulfilment of functions of the States which curtailed their capacity to function as governments).

The High Court has held that a regulation providing for the different valuation of livestock for different States violated s 51(ii) (*Cameron*), but that an Act which imposed stamp duty in respect of Commonwealth places did not, even though the scheme of the Act might produce differences in revenue outcomes between States (*Permanent Trustee*).

¶1-080 Crown instrumentalities immune from tax

Section 114 of the Constitution prohibits the Commonwealth from imposing any tax on property, of any kind, belonging to a State, while ITAA97 (and previously ITAA36) specifically exempts from income tax the revenue from municipal corporations and other public authorities. The scope of s 114 raises a number of issues which continue to be tested in the courts, including the meaning of a ''State'', and whether a particular tax is a ''tax on property''.

In *SGH Limited* the High Court held that SGH, a building society controlled by a State instrumentality, was not the State of Queensland for tax purposes. In reaching its decision the court said that it was relevant to consider the activities undertaken by the entity as well as the legal relationship between the entity and the executive government of the State. If the entity is wholly owned by the State concerned, and must act solely in the interests of the State, the conclusion that it is the State or an emanation of the State will readily follow (see also *State Bank of New South Wales*).

In rejecting a challenge under s 114 by the State of Queensland to the imposition of FBT on States, a majority of the High Court concluded that FBT was not a tax on the property of the State but on transactions which affected that property (*State of Queensland v Commonwealth of Australia*). A challenge by South Australia succeeded in *South Australia v Commonwealth of Australia*, where the High Court found that a State superannuation fund was exempt from CGT (but not from ordinary income tax) under s 114 because CGT is a tax on property.

In *Austin v Commonwealth of Australia* the High Court declared the federal superannuation contributions surcharge legislation to be invalid in its application to a New South Wales Supreme Court judge on the ground that it placed a particular disability or burden upon the operations or activities of the State of New South Wales so as to be beyond the legislative powers of the Commonwealth. In rejecting the Commonwealth's argument that the treatment in special legislation of constitutionally protected funds was dictated by the operation of the Constitution itself, the High Court said that a federal law cannot be justified on the basis that it is an indirect means of achieving what would otherwise be prohibited by s 114.

Commonwealth bodies have had mixed results when they sought to use s 114 as protection from State taxes. In *Superannuation Fund Investment Trust v Commr of Stamps (SA)*, the High Court refused protection against South Australian stamp duty. In contrast, in *Allders International v Commr of State Revenue (Vic)*, the High Court

invalidated Victorian legislation imposing stamp duty on a lease of a duty-free store in a federal airport (under s 52(i) of the Constitution, the federal government has exclusive power to legislate with respect to ''Commonwealth places'').

¶1-090 Territorial operation of income tax legislation

Another problem arising out of the constitutional limitations on the Commonwealth in tax matters is the territorial limitation of any Australian income tax legislation. An overriding factor here is the prefatory requirement in s 51 of the Constitution which restricts parliament's taxing power to legislation for the ''peace, order, and good government of the Commonwealth''. This suggests that there must be some nexus with Australia before Australian taxing legislation can have an extraterritorial effect. Before the Commonwealth can tax overseas source income, for example, the taxpayer must reside, have a presence, carry on a business or hold property within the jurisdiction.

Further, the extraterritorial operation of any statute may be a question of interpretation, as well as a question of validity, since it is presumed that a legislature intends that its legislation is restricted in its application to persons, property or events within its territory unless there is a clear intention to the contrary. In this respect, specific provisions of ITAA36 and ITAA97 should be noted, eg the definition of the term ''resident'' (ITAA36 s 6(1)).

¶1-100 State income tax

From 1923 to 1936 there was substantial co-operation between the Commonwealth and State governments on the levying and collection of State and federal income taxes. In 1936, following the 1932 Royal Commission on Taxation (the Ferguson Commission), the then new federal Income Tax Assessment Act was adopted by the States as a model for their own income tax legislation. The various State revenue departments collected both their own and the federal taxes (except in Western Australia where the federal government collected its own tax as well as the State tax).

Within five years, however, significant divergences appeared between the various States and the Commonwealth in the make-up of the income tax legislation and in tax rates. When World War II commenced, the Commonwealth argued that the dual system of taxation was wasteful and remodelled the Commonwealth/State revenue arrangements by a series of manoeuvres which effectively squeezed the States out of the income tax field. The Commonwealth plan, which still continues, was to collect all income tax revenues but hand a proportion back to the States for their own use.

A variation of this arrangement applies to GST collected by the Commonwealth. Revenue collected from GST is channelled back to the States and Territories in return for their agreement to abolish certain State taxes (¶1-115).

The Commonwealth achieved power over the States in income tax matters by passing legislation in 1942 under which:

(1) officers of the various State taxation departments were transferred to the Commonwealth Public Service

(2) it became an offence for any taxpayer to pay State income taxes before paying any federal income taxes in any year

(3) federal income tax was imposed at such a high rate that there was either no or little income left in the hands of taxpayers on which the State taxes might be levied, and

(4) the Commonwealth reimbursed the State governments out of revenue raised, but a condition for reimbursement was that the States did not themselves levy any income tax.

However, there is no Commonwealth constitutional restriction against State income tax legislation. Indeed, in some States, the pre-1942 State legislation survives although no actual State income tax has been levied since that year.

¶1-110 Revenue sharing

A necessary part of the 1942 uniform tax system was the sharing of revenue by the Commonwealth with the States. In the post-war period, a complex revenue sharing system has been developed to deal with what is known as ''vertical fiscal imbalance'', ie the significant difference between the relative revenue and expenditure responsibilities of the Commonwealth and the States. Commonwealth funding assistance to the States takes two primary forms: specific purpose payments (sometimes referred to as ''tied grants'') and general revenue assistance.

The allocation of general revenue assistance to individual States is made on the basis of a formula recommended by an independent statutory body, the Commonwealth Grants Commission. The formula used by the Commission does not result in a simple per capita allocation. The Commission uses ''horizontal fiscal equalisation'' principles, which recognise that certain ''donor'' States (such as NSW and Victoria) have greater relative revenue capacities and/or less significant expenditure disabilities than the other States. It should be noted that, while the Commonwealth cannot discriminate between States in levying income tax, effective discrimination may be achieved in the distribution of money under the revenue sharing arrangements (*WR Moran*).

At the request of the States, the Commonwealth introduced legislation in 1998 to protect the States' tax base from any potential erosion resulting from the *Allders International* decision (¶1-080). The legislation provides for ''mirroring'' of stamp duty, payroll tax, financial institutions duty, bank account debits tax and any other State taxes that may become at risk, and the return to the States of any revenue collected through the mirror legislation. The validity of the *Commonwealth Places (Mirror Taxes) Act 1998* was upheld by the High Court in *Permanent Trustee*.

The commencement of GST on 1 July 2000 caused radical changes to Commonwealth/State revenue sharing. GST revenue collected by the Commonwealth is channelled to the States and Territories, in return for their agreeing to abolish certain taxes and charges (¶1-115). The distribution of GST revenue is also conditional on the States applying horizontal fiscal equalisation principles. The Commission continues to determine the equalisation formula and also proposes an equitable allocation of GST revenue. The allocation reflects the capabilities and needs of each State, as well as the fact that not all States levy the whole range of taxes to be eliminated.

Recommendations of the National Commission of Audit on federation and fiscal relations in its report, *Towards Responsible Government*, will be addressed by the government in its White Paper on the Reform of the Federation, which is scheduled for release by the end of 2015.

¶1-115 State taxes and duties

The revenue received by the States and Territories from the Commonwealth under the revenue sharing system is insufficient to pay for their basic spending requirements. Consequently, the States and Territories have traditionally relied on a variety of taxes and duties to raise additional revenue, in particular stamp duty, payroll tax, land tax and business franchise licence fees imposed on tobacco, alcohol and petrol.

In *Ha & Hammond*, the High Court by majority (4:3) held that business franchise licence fees imposed by New South Wales on tobacco were in reality excise duties and were constitutionally invalid (under s 90 of the Constitution, only the Commonwealth has the power to levy ''duties of excise''). This meant that similar business franchise licence fees imposed by the States and Territories on alcohol and petrol were also constitutionally invalid. To minimise the potentially serious impact on State and Territory revenues, the federal government increased the rate of duty imposed by the Commonwealth on tobacco, alcohol and petrol and returned the additional revenue raised to the States and Territories (less the Commonwealth's administration costs).

These arrangements ceased when the GST commenced on 1 July 2000 and the States and Territories were required to progressively eliminate certain State taxes (and the federal government eliminate wholesale sales tax). In return, GST revenue collected by the Commonwealth would be channelled to the States and Territories. Various State taxes such as financial institutions duty, debits tax, ''bed taxes'' and stamp duty on listed marketable securities have now been abolished.

Note that s 91 of the Constitution, which preserves a State's legislative powers on granting certain kinds of aid or bounty, does not limit the Commonwealth's legislative power (*Fortescue Metals Group*, see also ¶1-070).

Scheme of the Legislation

¶1-120 Scheme of the legislation

Partly for constitutional reasons (¶1-050), and partly for administrative ease, the income tax system is effected through a variety of separate Acts of parliament. These Acts are introduced in the paragraphs that follow (¶1-130 – ¶1-180).

¶1-130 Income Tax Assessment Acts

There are now two principal Commonwealth Acts dealing with, but not imposing, an income tax: ITAA36 and ITAA97. Frequent amendments to ITAA36 increased its size to over 5,000 pages, making it a complicated and unwieldy document. As a result, the Tax Law Improvement Project (TLIP) was established to restructure, renumber and rewrite the income tax law. The result is ITAA97, which has replaced substantial parts of ITAA36 (¶1-700).

ITAA36 is divided into Parts and Schedules, some of which are broken into Divisions. ITAA97 is divided into Chapters, which are broken into Parts and Divisions.

All sections in ITAA97 contain hyphens (eg s 6-5) whereas sections in ITAA36 mostly do not (eg former s 51).

¶1-140 Income Tax Regulations

Just as there are now two Income Tax Assessment Acts, so there are now two sets of regulations made by the Governor-General: the Income Tax Regulations 1936 pursuant to ITAA36 s 266 and the Income Tax Assessment Regulations 1997 pursuant to ITAA97 s 909-1. By and large, these regulations prescribe how certain parts of ITAA36 and ITAA97 (as appropriate) are to be implemented.

¶1-150 Rating Acts

The Rating Acts impose the actual tax on taxable income as determined under ITAA36 or ITAA97. The rates are declared and imposed under a number of different Acts. The most important Acts are:

- the *Income Tax Rates Act 1986* and the *Income Tax Act 1986* which together declare and impose income tax on all categories of taxpayers — individuals, trustees, companies, superannuation funds, ADFs and PSTs, and
- the *Medicare Levy Act 1986* which imposes the Medicare levy and Medicare levy surcharge on individuals and sets out the amount of levy payable.

In addition, other Commonwealth Acts impose tax in special circumstances. These include the *A New Tax System (Ultimate Beneficiary Non-Disclosure Tax) Act (No 1) 1999*, the *General Interest Charge (Imposition) Act 1999*, the *Family Trust Distribution Tax (Primary Liability) Act 1998*, the *Income Tax (Franking Deficit) Act 1987*, the *Income Tax (Deferred Interest Securities) (Tax File Number Withholding Tax) Act 1991*, the *Superannuation Contributions Tax Imposition Act 1997* and the *Termination Payments Tax Imposition Act 1997*.

¶1-160 International agreements

Australia has entered into special tax treaties with over 50 countries to prevent double taxation and allow co-operation between Australia and overseas tax authorities in enforcing their respective tax laws. These treaties are generally referred to as ''double taxation agreements''. Under the Australian Constitution, international treaties are not self-executing (ie they must be given the force of law by an Act of parliament). This procedure is achieved under the terms of the *International Tax Agreements Act 1953* (¶22-140 and following).

¶1-170 Taxation Administration Act and Regulations

The *Taxation Administration Act 1953* (TAA), and the regulations made under it, contain provisions dealing with the administration of the tax laws by, and the powers of, the ATO.

The TAA has become increasingly important because it now contains: the PAYG withholding and instalment regimes; generic offence and prosecution provisions; generic provisions dealing with objections, reviews and appeals under various tax laws; generic provisions imposing penalties for breaches of various tax laws; generic record-keeping provisions; the payment, ABN and identification verification system; and provisions governing the public, private and oral rulings systems.

¶1-180 Fringe benefits tax legislation

The *Fringe Benefits Tax Assessment Act 1986* and its associated rating Act, the *Fringe Benefits Tax Act 1986*, require employers to pay tax on the value of fringe benefits that they provide to employees or associates of employees (¶35-000).

Administration

¶1-200 Australian Taxation Office

The income tax system is administered by the ATO, which is headed by the Commissioner of Taxation, three Second Commissioners and a number of First Assistant Commissioners. The National Office is located in Canberra. For details of the organisational structure of the ATO, see the ATO website. For ATO contact details, see ¶45-200.

The ATO has a ''2020 vision'', where the administration of the future tax and superannuation systems will be based on mutual trust and transparency of information. Under the vision, a tailored approach will be provided where openness about tax affairs, voluntary compliance and willing participation in the tax and superannuation systems will be rewarded with streamlined experiences. In this regard, a program office has been set up to drive cultural change to align with and support this 2020 vision.

Each year the Commissioner presents an annual report to parliament. The report contains useful information on revenue raising, the administration of the tax Acts administered by the Commissioner and the various enforcement strategies adopted by the ATO. Within the Federal Cabinet, the Minister for Revenue oversees the ATO on administrative matters and the business tax reform process.

The office of Inspector-General of Taxation was established in 2003 as an independent statutory office to review systemic tax administration issues and to report to the government with recommendations for improving tax administration for the benefit of all taxpayers. The sole focus of the Inspector-General is on tax systems, eg the conduct of the ATO or the underlying tax laws dealing with administrative matters; the Inspector-General cannot review taxation policy.

Two types of foreign termination payments are covered by Subdiv 83-D:

- termination payments relating to a period when the taxpayer was not an Australian resident, and
- termination payments relating to a period when the taxpayer was an Australian resident.

Termination payments — foreign resident period

A payment received by a taxpayer in respect of a foreign resident period is not assessable income and is not exempt income if:

- it was received in consequence of the termination of the taxpayer's employment in a foreign country
- it is not a superannuation benefit (ie it is not a superannuation fund payment ¶14-100)
- it is not a payment of a pension or an annuity (whether or not the payment is a superannuation benefit — this ensures that only lump sum payments are covered), and
- it relates only to a period of employment when the taxpayer was not an Australian resident (ITAA97 s 83-235; *Branson*: exempt non-resident foreign termination payment).

A payment that relates to a period of employment during which the recipient was variously a resident and not a resident of Australia, does not relate only to a period of employment when the person was not a resident. Such a payment will not be tax free under s 83-235, either in whole or in part (ID 2009/123; *Case 16/2000*; *Branson*).

Termination payments — Australian resident period

A payment received by a taxpayer is not assessable income and is not exempt income if it was received in consequence of:

- the termination of the taxpayer's employment in a foreign country, or
- the termination of the taxpayer's engagement on qualifying service on an approved project (within the meaning of ITAA36 s 23AF) in relation to a foreign country (ITAA97 s 83-240).

"Termination" for the above purposes includes retirement from the engagement and cessation of the engagement because of the death.

For the payment to be non-assessable non-exempt income, the following conditions must also be met:

- the payment relates only to the period of that employment or engagement
- the payment is not a superannuation benefit
- the payment is not a payment of a pension or an annuity (whether or not the payment is a superannuation benefit)
- the taxpayer was an Australian resident during the period of the employment or engagement
- the payment is not exempt from income tax under the law of the foreign country
- for a period of employment — the taxpayer's foreign earnings from the employment are exempt from income tax under ITAA36 s 23AG (¶10-860; *FC of T v Blank*: exempt foreign earnings must be derived exclusively from foreign service; appeal pending), and
- for a period of engagement — the taxpayer's eligible foreign remuneration from the service is exempt from income tax under s 23AF.

[AMSG ¶8-910; FITR ¶130-600ff; SLP ¶39-000]

Chapter 15 Personal Tax Offsets

Personal Tax Offsets

¶15-000 What is a personal tax offset?

This chapter discusses the personal tax offsets that are available to individual taxpayers. Tax offsets are subtracted from the tax calculated on taxable income (ITAA97 s 4-10). In contrast, a deduction is subtracted from assessable income in calculating the taxable income on which tax is payable.

▶ Example

Carrie-anne has a 2014/15 assessable income of $37,500 and deductions of $500. Her taxable income is therefore $37,000 and her gross tax $3,572. She is entitled to a part low income earners rebate of $445 (¶15-300). Her net tax is therefore $3,527 – $445 = $3,082.

The term ''tax offset'' is a generic term used in ITAA97 to describe what in ITAA36 are called ''rebates''. In this chapter, both terms are used although the ATO's practice seems to be to refer only to ''tax offsets''.

The tax offsets discussed in this chapter are those that, in general terms, relate to the taxpayer's personal circumstances. Various other tax offsets/rebates available to individual taxpayers are dealt with elsewhere. These *include*: the offset for shareholders in receipt of franked distributions (¶4-800); the primary producer averaging offset (¶18-200); the rebate for assessable life assurance bonuses (¶10-240); the rebate for superannuation contributions for a spouse (¶13-770) and the tax offsets for research and development (¶20-150) and film production (¶20-330).

Generally, the sum of all tax offsets allowable to a taxpayer cannot exceed the amount of tax otherwise payable, and any unused offsets cannot be carried forward to be set off against tax payable in future years. There are, however, exceptions to this (¶15-010).

Amount of offsets

The personal tax offsets claimable in **2014/15** are set out in the table at ¶42-165.

[FITR ¶40-500, ¶40-510

¶15-005 Checklist of tax offsets

This checklist of tax offsets shows where they are dealt with in Chapter 15 or elsewhere in the Guide. The paragraph number shown should be referred to for the particular circumstances under which the offset is payable.

Offset/rebate	Source
ABSTUDY allowances	¶15-315
AIC allowances	¶15-315
Austudy allowances	¶15-315
FBT, non-profit employers only	¶35-642
UN service overseas	¶15-190
VCES allowances	¶15-315
Annuities	¶14-500
Beneficiaries	¶15-315
Bonuses under short-term life policies	¶10-240
Child care	¶2-133
Conservation tillage refundable tax offset	¶19-135
Defence Force members	¶15-180

Offset/rebate	Source
Dental expenses — see Medical expenses	
Dependant (Invalid and Carer) Tax Offset (''DICTO'')	¶15-100
Dependant spouse tax offset (former)	¶15-130
Dividends, franked, received by resident individuals, eligible superannuation funds, ADFs, PSTs, registered organisations	¶4-800
Dividends received by life insurance companies	¶4-760
Doctors' bills — see Medical expenses	
Drought relief payment	¶15-315
Education allowances	¶15-315
Exceptional circumstances relief payment	¶15-315
Farm household support (grant of financial assistance)	¶15-315
Film production offset	¶20-330
Health insurance premiums	¶15-330
Hospital expenses — see Medical expenses	
Income arrears received in a lump sum	¶15-340
Income streams provided by superannuation funds:	
from a taxed source	¶14-220
from an untaxed source	¶14-240
[illegible] relative, contributions to maintenance	¶15-100
[illegible]e payments, unused annual or long service leave	¶14-720
Life benefit termination payment	¶14-620
Loss carry-back	¶3-095
Low income	¶15-300
Low income aged persons (SAPTO)	¶15-310
Lump sums paid by superannuation funds:	
from a taxed source	¶14-220
from an untaxed source	¶14-240
Mature age allowance	¶15-315
Mature age worker (former)	¶15-365
Medical expenses	¶15-320
National Rental Affordability Scheme	¶20-600
Newstart allowance	¶15-315
Nursing home fees — see Medical expenses	
Optical expenses — see Medical expenses	
Parenting payment	¶15-315
Partner allowance	¶15-315
Pensions paid by taxed superannuation funds	¶14-240
Pensions paid in arrears	¶15-340
Pensioners (SAPTO)	¶15-310
Primary producer's income (averaging provisions)	¶18-210
Seafarer's tax offset	¶3-020
Self-funded retirees of pension age	¶15-315
Senior Australians and pensioners tax offset (SAPTO)	¶15-310

Offset/rebate	Source
Sickness allowance	¶15-315
Special benefit	¶15-315
Superannuation contributions for low income/non-working spouse	¶13-770
United Nations service (civilian personnel)	¶15-190
Widow allowance	¶15-315
Youth allowance	¶15-315
Zone rebates for taxpayers in remote areas	¶15-190

¶15-010 Personal tax offsets priority rules

Under s 63-10(1), the order in which personal tax offsets are applied is as follows:

- seniors and pensioners tax offset (SAPTO), also known as the low income aged persons offset (¶15-310)
- low income aged persons offset for trustee (¶15-310)
- beneficiary offset (¶15-315)
- low income rebate (¶15-300)
- any offset not covered by another item in this list, eg the dependant (invalid and carer tax) offset (¶15-100); the zone/overseas service rebates (¶15-160, ¶15-180, ¶15-190) and the medical expenses rebate (¶15-320)
- foreign income tax offset (¶21-670)
- refundable tax offsets, eg the private health insurance offset (¶15-330).

Section 63-10(1) also specifies what happens to any excess or unused amount of a tax offset. Certain unused tax offsets may be transferred to one's spouse, refunded or carried forward to future income years. For example, unused SAPTO (¶15-310) may be eligible to be transferred to one's spouse, the private health insurance offset (¶15-330) is refundable, and the franking deficit tax offset (¶8-300) may be carried forward.

[FITR ¶110-510, ¶112-

Income Test for Certain Tax Offsets

¶15-025 Income test for certain tax offsets

An income test and limit applies for certain tax offsets/rebates, ie the dependant (invalid and carers tax) offset ("DICTO") (¶15-100), the former dependant spouse rebate (¶15-130), the medical expenses rebate (¶15-320), the zone/overseas service rebates (¶15-160, ¶15-180, ¶15-190).

For 2014/15, the income limit is $150,000 (reducing to $100,000 from 2015/16).

The income test is derived from the definition of "adjusted taxable income" within the meaning of the *A New Tax System (Family Assistance) Act 1999*, disregarding s 3 and 3A of Sch 3 to that Act.

The adjusted taxable income for tax offset/rebate purposes ("ATI") is the sum of the following amounts:

- taxable income

- reportable superannuation contributions, ie the sum of the person's personal deductible contributions and reportable employer superannuation contributions made by the person's employer (¶13-730)
- total net investment loss, ie from financial investments (shares, interests in managed investment schemes (including forestry schemes), rights and options, and like investments), and net loss from rental properties
- adjusted fringe benefits, ie reportable fringe benefits adjusted down for FBT paid by the employer
- income from certain tax-free pensions and benefits from Department of Human Services or Veterans' Affairs
- target foreign income, ie any income, payment or benefit received from a foreign source that is tax exempt in Australia,

minus the annual amount of any child support/child maintenance the taxpayer pays.

The application of the test to individuals/families are dealt with in the commentary relating to the particular tax offset.

¶15-030 Definitions of dependant for DICTO

The categories of dependants relevant for the purposes of the DICTO are explained below.

Brother means the brother of the taxpayer or their spouse. Using the reasoning containing in ITAA97 s 960-255(2), brother would seem to include stepbrothers because the stepfather or stepmother is deemed to be the natural child of both children for the purposes of the ITAA36 and ITAA97 (however this could be affected if the parent's relationship ended).

Child includes an adopted child, a step-child or an ex-nuptial child of a person or their spouse or a child within the meaning of the *Family Law Act 1975* (s 995-1(1); 6(1)).

Parent of taxpayer or taxpayer's spouse — An individual is the parent of anyone who is the individual's child (ITAA97 s 995-1). It includes the parents of the taxpayer and the parents of the taxpayer's (legal or de facto) spouse, but does not include a grandparent (*Case D67*).

Resident — Resident takes its meaning as defined in ITAA36 s 6(1) (¶21-010). However a foreign resident spouse or child is effectively deemed to be a resident and an eligible dependant if the taxpayer has a domicile in Australia for the purposes of the three dependency rebates under ITAA36 s 159J(6)) and ITAA97 s 61-10. If a migrant taxpayer's spouse and children are overseas waiting to join the taxpayer, the migrant may claim the dependent spouse rebate for a period of up to five years after arriving in Australia, provided arrangements have been made for the spouse and children to migrate to Australia as soon as possible and the other requirements for entitlement are met. In such a case, the ATO may require the following information to be provided: (i) the date of the taxpayer's arrival in Australia; (ii) the reason why the dependants are overseas; (iii) evidence of the arrangements that have been made for the dependants to come to Australia; and (iv) the expected date of the dependants' arrival in Australia.

A rebate may also be claimed in respect of a dependant who is temporarily overseas. In such a case, the ATO may require the taxpayer to provide a statement outlining the circumstances of the dependant's temporary absence from Australia and the expected date of his/her return to Australia. A proportionate rebate may be claimed in respect of a dependant who is a resident for only part of the year.

Sister means the sister of the taxpayer or their spouse. Using the reasoning contained in ITAA97 s 960-255(2), sister would seem to include stepsisters because the stepfather or stepmother is deemed to be the natural child of both children for the purposes of the Act (however this could be affected if the parent's relationship ended).

Spouse — A person is a spouse if they are in a registered relationship with another individual (including same sex relationships) under a state or territory law for the purposes of *Acts Interpretation Act 1901* s 2E. A person also qualifies as a spouse if they are not married but in a relationship with another individual and they live with the other individual on a genuine domestic basis in a relationship as a couple (ITAA97 s 995-1(1)).

[FTR ¶75-470]

Dependant (Invalid and Carer) Tax Offset

¶15-100 Dependant (Invalid and Carer) Tax Offset

A tax offset is available to taxpayers maintaining certain classes of dependants who are genuinely unable to work due to invalidity or carer obligations (ITAA97 s 61-5).

The Dependant (Invalid and Carer) Tax Offset ("DICTO") is **$2,535** for the 2014/15 income year and is indexed annually. The offset reduces by $1 for every $4 by which the dependant's adjusted taxable income (ATI) exceeds $282. This means that for the 2014/15 year, the DICTO will completely cut-out when the dependant's ATI exceeds **$10,422**.

The DICTO is not available to a taxpayer whose ATI exceeds the income limit for family assistance purposes (s 61-20(1)). The ATI threshold for 2014/15 is $150,000 (reducing to $100,000 for 2015/16).

If the taxpayer claims the DICTO for a spouse, the income test is based on the ATI of the taxpayer. If the claim is for any other kind of dependant (eg a parent, child, brother or sister, etc), the income test is based on the combined ATI of the taxpayer and the taxpayer's spouse.

Eligiblity for DICTO

Taxpayers will be eligible for DICTO if:

1) they contribute to the maintenance of an eligible dependant
2) the eligible dependant receives an eligible pension or payment
3) they do not receive a disqualifying payment, and
4) they do not exceed the relevant ATI.

Maintenance of an eligible dependant

Taxpayers are eligible for DICTO if they contribute to the maintenance of an eligible dependant who is unable to work due to invalidity or care obligations. Eligible dependants include:

- spouses
- parents and spouse's parents
- children, brothers, sisters and spouse's brothers and sisters over 16 years of age.

The definitions of these dependants are explained at ¶15-030.

The eligible dependant must be an Australian resident or deemed to be one (see the definition of "resident" in ¶15-030).

The term "maintenance" is not defined and is not a limited term. A taxpayer will be considered to maintain another person if they reside together.

Dependant for part year only

Where a person is dependant for only part of the year, the DICTO allowable to the taxpayer is the amount which the Commissioner considers to be reasonable in the circumstances (ITAA97 s 61-20; 61-40). In practice, the DICTO is apportioned on a time basis. In apportioning the DICTO, only ATI of the dependant during the part of the year when they were a dependant is taken into account.

The same principles apply where a dependant is resident for only part of the year.

Two or more contributing to maintenance

Where two or more persons contribute to the maintenance of a person who is a dependant of one or more of those contributing, a partial rebate will be allowed of such amount as, in the Commissioner's opinion, is reasonable (ITAA97 s 61-40).

Where two or more people contribute to the maintenance of a dependant, the taxpayer's DICTO entitlement will be reduced even if the other contributor is not entitled to a rebate in regard to his/her contributions.

Eligible invalidity and care payments

Taxpayer can only receive DICTO if the dependant receives an eligible payment of a kind. These are limited to the following:

- a disability support pension or a special needs disability support pension under the *Social Security Act 1991*
- an invalidity service pension under the *Veterans' Entitlements Act 1986*
- a carer allowance under the *Social Security Act 1991* in the case of a spouse, parent or parent-in-law, or
- a carer payment under the *Social Security Act 1991* in relation to caring for a child, brother, sister, brother-in-law or sister-in-law who is aged 16 or older.

For a brief explanation of these payments and eligibility rules for each see the Department of Human Services "A guide to Australian Government payments booklet".

Disqualifying offsets and payments

At the time of publication, taxpayers are not eligible for DICTO if they are eligible to receive in respect of the dependant:

- any (remaining) dependant rebate under ITAA36 s 159J (ITAA97 s 61-10(1)(d))
- Family Tax Benefit Part B (or if their spouse is also eligible to receive this benefit) (ITAA97 s 61-25).

Income limits and part year issues

Individuals will be ineligible for DICTO when their ATI, and that of their partner's exceeds the **$150,000** ATI limit (ITAA97 s 61-20) — see the income tests at ¶15-025.

If an individual has a spouse for part of the year then only their spouses's ATI for the period that they were spouses is taken into account (ITAA97 s 61-20(3)). It should be noted that the definition of spouse is broad, and includes de facto couples (¶15-030). This means that a couple who live together on a permanent basis and who get married during the year could be treated as being spouses for the entire year.

▶ Example

Ashton's daughter Meg lives with him and he receives a carer allowance for her. On 18 March 20[illegible] Ashton marries Mila. Mila has an ATI of $120,000 and Ashton has income of $8,000. Ashton therefore has to include Mila's ATI for 105 days (18 March to 30 June 2015), ie (105 ÷ 365) × $120,000 = $34,520 (ignore cents as per the *Individual tax return instructions*). Their combined ATI is $42,520, ie $34,520 plus $8,000 and, therefore, Ashton can claim for the DICTO for the 2014/15 year.

More than one DICTO

Taxpayers may be eligible for more than one DICTO in an income year if they had more than one dependant during the income year (none of who are their spouses) or if they had different spouses during the year. For example, if the taxpayer divorced a spouse during an income year and remarried later that year, he/she could claim an amount of DICTO for each spouse (for each part of the year).

If a taxpayer maintained two or more spouses for whom he/she may be eligible to claim the DICTO, a claim exists only for the spouse with whom the taxpayer resided (s 61-15(1)). If the taxpayer did not reside with any of the spouses or if he/she resided with more than one, the taxpayer's DICTO is limited to one amount, being the smallest offset that could be claimed in respect of one of the spouses (s 61-15(2)).

Former Dependant Spouse Rebate

¶15-130 Former dependant spouse rebate

The government proposes to abolish the dependant spouse rebate with effect from the 2014/15 year. For commentary on the operation of the rebate up to the 2013/14 year, see the *Australian Master Tax Guide 2014*.

Zone/Overseas Service Rebates

¶15-160 Zone rebate for residents of isolated areas

A rebate of tax is available to individuals who are classed as residents of specified remote areas of Australia. With effect from the 2014/15 year, the former notional dependant rebates that were used to calculate the zone rebate are proposed to be replaced with the dependant (invalid and carer) tax offset or DICTO.

The specified remote areas of Australia covered by the zone rebate are comprised of two zones, Zone A and Zone B (ITAA36 s 79A). In general, Zone A comprises those areas where the factors of isolation, uncongenial climate and the high cost of living are more pronounced and Zone B comprises the less badly affected areas. The rebate for ordinary Zone A residents is accordingly higher than the rebate for ordinary Zone B residents. A special category of zone allowances is available to taxpayers residing in particularly isolated areas (''special areas'') within either zone.

The areas of mainland Australia and Tasmania covered by Zones A and B are generally in the west, north and centre of Australia. Special areas of Zone A include Macquarie Island, Norfolk Island, Cocos (Keeling) Islands, Christmas Island, Heard Island, McDonald Islands, Lord Howe Island and the Australian Antarctic Territory. Zone B also covers islands forming part of Australia that are adjacent to the coastline of the portions of the mainland and Tasmania. Special areas of Zone B include King Island (Tas) and the Furneaux Group of islands (Tas).

A search facility of towns falling in Zones A and B, as well as the special areas in the zones, is available from the www.ato.gov.au/Individuals/Tax-Return/2013-Supplementary-tax-return/Tax-offset-questions-T4-T11/T5---Zone-or-overseas-forces. A non-exhaustive list is normally contained in the *Individual tax return instructions supplement*. For general guidelines on eligibility for the zone rebate, see TR 94/27.

Meaning of resident of zone area

To be eligible for the zone rebate, a taxpayer must satisfy one of the following residency tests (ITAA36 s 79A(3B)):

(1) the taxpayer resided in a zone area (not necessarily continuously) for more than half the income year, ie for at least 183 days (a day includes a fraction of a day: TR 94/27)

(2) the taxpayer has actually been in a zone area (whether continuously or not) for more than half the income year

(3) the taxpayer died during the income year and resided in a zone area at the date of death

(4) the taxpayer resided or has actually been in a zone area for one half or less of the income year and for one half or less of the previous income year, and over the two income years concerned has resided or actually been in the zone area for more than 182 days (excluding any days in the previous year taken into account in determining rebate entitlements under ITAA36 s 79B Australian Defence Force personnel serving overseas: ¶15-180) or ITAA36 s 23AB (overseas service with UN forces: ¶15-190). This test only applies where the taxpayer was not eligible for a zone rebate in that previous income year, or

(5) the taxpayer resided in a zone area for one half or less of the present income year (including the first day of the year) and for one half or less of an earlier income year (being any of the four preceding income years other than the immediately preceding income year) provided:

(a) the period in the present income year combined with that in the earlier income year exceeds 182 days (excluding any days in the earlier year taken into account in determining rebate entitlements under ITAA36 s 79B or 23AB)

(b) the taxpayer has actually resided (as distinct from merely being present) in a zone area (not necessarily the same zone area) from the beginning of the period in the earlier income year to the end of the period in the present income year, and

(c) the taxpayer did not qualify for a zone rebate in that earlier income year.

▶ Example 1

Josh moves to a zone area on 1 February 2014 and stays until 30 November 2014. He qualifies as a zone resident in the 2014/15 income year as he has spent more than 182 days in a zone area over a period of two consecutive income years.

▶ Example 2

Caitlin arrives in a zone area on 1 February 2013 and resides there continuously until 30 November 2014. Under the test in para (5), she qualifies as a zone resident in the 2014/15 income year. Under the test in para (1), she would also qualify as a zone resident in the 2013/14 year.

A taxpayer will qualify as a resident of a ''special area'' in a zone if he/she meets the residency tests set out above in relation to the special area itself, eg the taxpayer must reside or actually be in the special area for more than half the income year. Even where these tests are not satisfied, the taxpayer will nevertheless benefit from any time spent in the special area in calculating the amount of the rebate allowable.

▶ Example 3

Kate resides in Zone A for the whole of the 2014/15 income year and actually lives in a special area in the zone from 1 November 2014 to 30 June 2015. Kate qualifies as a resident of the special area as she has actually been in the special area for more than half the income year.

Separate rates apply to ''non-transport'' gaseous fuels. For further details, see ''Fuel tax credits rates and eligible fuels'' at www.ato.gov.au.

Blended fuels

Except where blends are treated as entirely petrol or diesel (¶40-100), fuel tax credits apply to the extent that the blend is taxable, ie petrol or diesel. The carbon charge which operated from 1 July 2012 until 30 June 2014 did not apply to the biodiesel or ethanol component of such blends. For further details, see ''Fuel tax credits rates and eligible fuels'' at www.ato.gov.au.

Calculation of Credit

¶40-400 Basic formula for calculating fuel tax credit

The fuel tax credit is calculated as:

Number of eligible litres of fuel × Applicable rate

However, as different credit rates apply to different types of business activity, it will often be necessary to identify how many litres of fuel have been used in each of those activities. The claim will be the total of these separate calculations.

From 1 July 2012, the applicable rate of credit is generally determined as at the date the fuel is acquired. However, for heavy vehicles travelling on public roads, taxpayers should continue to use the rate in effect when completing the relevant BAS. For guidelines on correcting earlier credit claims, see ID 2014/4.

¶40-410 ATO methods of calculating eligible litres

The Commissioner says that an apportionment method that is fair and reasonable may be used to determine the credit that is available for the taxable fuel that is acquired. Where there is more than one fair and reasonable way of apportioning, the taxpayer may choose any of those methods. In the following situations, a taxpayer will generally have to perform separate calculations:

- where there is one type of taxable fuel in multiple activities that attract differential rates or the credit is subject to reduction, eg by road user charge
- where there is more than one type of taxable fuel in the same activity
- where there is more than one type of taxable fuel for multiple activities that attract differential rates or the credit is reducible.

However, in certain circumstances, a taxpayer may find it fair and reasonable to perform a single calculation, eg if the same type of equipment uses two types of taxable fuel and has the same average hourly consumption for both types (FTD 2010/1; PS LA 2010/3). For substantiation methods, see FTD 2006/2. For further ATO guidelines, see *Keeping records and calculating eligible litres* (NAT 15230).

Under former guidelines, the ATO said that you could use any method that is fair and reasonable to work out the amount of taxable fuel for which a credit can be claimed. Examples of acceptable methods were given in former FTD 2006/1.

Chapter 41 Pending Legislation

Bills

¶41-000 Summary of pending legislation

Details of pending legislation are usually integrated into the text of the relevant chapters so that readers do not overlook these potential changes to the law. The coverage in this chapter provides an additional point of reference for readers who wish to see an overview of the proposed tax measures introduced into parliament in Bill form or released by Treasury as draft legislation by 31 December 2014.

¶41-100 Tax Laws Amendment (Research and Development) Bill

The Tax Laws Amendment (Research and Development) Bill 2013 was introduced into the House of Representatives on 14 November 2013, and is before the Senate.

The Bill proposes to deny access to the research and development (R&D) tax incentive for companies with an aggregated assessable income of $20b or more in an income year for income years starting from 1 July 2013 (¶20-160).

The Bill was referred to the Senate Economics Legislation Committee which recommended that the Bill be passed, subject to the recommendation that the government further consider the definition of ''aggregated assessable income'' with a view to addressing any potential anomalies that the use of the term may create for life insurance companies and petroleum retailers.

¶41-200 Australian Charities and Not-for-profits Commission Repeal Bill

The Australian Charities and Not-for-profits Commission (Repeal) (No 1) Bill 2014 was introduced into the House of Representatives on 19 March 2014, and is before the Senate.

The Bill is the first of two Bills to repeal the Australian Charities and Not-for-profits Commission (ACNC). The Bill proposes to repeal the *Australian Charities and Not-for-profits Commission Act 2012*, thereby abolishing the ACNC (¶10-610 and ¶16-942).

However, this Bill will not take effect until the enactment of a later Bill, which will provide the details of the arrangements to replace the ACNC.

This Bill also provides for transitional arrangements for matters such as transferring to the Chief Executive of a successor agency records held by the ACNC, any outstanding Ombudsman investigations, and certain annual reporting requirements.

¶41-250 Labor 2013–14 Budget Savings (Measures No 1) Bill

The Labor 2013–14 Budget Savings (Measures No 1) Bill 2014 was introduced into the House of Representatives on 16 July 2014.

The Bill amends the *Clean Energy (Income Tax Rates Amendments) Act 2011* to repeal the personal income tax cuts and the associated amendments to the low-income tax offset that were legislated to commence on 1 July 2015 (¶42-000, ¶42-015 and ¶15-300).

The measures in this Bill were formerly contained in the Clean Energy (Income Tax Rates and Other Amendments) Bill 2013, as part of the package of carbon tax repeal Bills. That Bill was previously rejected twice by the Senate.

¶41-350 Tax and Super Laws No 5 Bill

The Tax and Superannuation Laws Amendment (2014 Measures No 5) Bill 2014 was introduced into the House of Representatives on 4 September 2014, and is before the Senate.

Mature age worker tax offset

As announced in the 2014/15 Federal Budget, the Bill abolishes the mature age worker tax offset for the 2014/15 income year and later income years (¶15-245).

Seafarer tax offset

The Bill abolishes the seafarer tax offset for the 2015/16 and later income years (¶3-020).

R&D tax offset

The Bill reduces the rates of tax offsets available under the R&D tax incentive by 1.5 percentage points for income years starting on or after 1 July 2014. The higher (refundable) rate of the tax offset will be reduced from 45% to 43.5% and the lower (non-refundable) rates of the tax offset will be reduced from 40% to 38.5% (¶20-160).

¶41-400 Treasury Legislation Amendment (Repeal Day) Bill

The Treasury Legislation Amendment (Repeal Day) Bill 2014 was introduced into parliament on 22 October 2014, and is before the Senate.

Payslip reporting

The Bill amends the *Superannuation Industry (Supervision) Act 1993* (SISA) to repeal the payslip reporting provisions. Those provisions require employers to include in employee payslips information prescribed by the regulations but the regulations have not been made. There are, however, existing requirements in the *Fair Work Act 2009* and the Fair Work Regulations 2009 for employers to include in payslips the amount of superannuation contributions they are liable to make (¶39-530).

Consolidation and repeal of tax provisions

The Bill proposes to:

- consolidate duplicated tax administration provisions contained in various taxation Acts into a single set of provisions in *Taxation Administration Act 1953* (TAA) Sch 1
- repeal spent or redundant taxation laws, and
- move longstanding regulations into the primary law.

The amendments generally apply from the day the Bill receives assent. However, the repeal of the duplicated taxation administration provisions and the transfer of certain regulations to the primary law are delayed till 1 July 2015 to give the Commissioner time to make any necessary changes to administrative systems.

Tax law rewrite: definition of Australia

The Bill also rewrites provisions from ITAA 1936 into ITAA 1997 and the TAA. The rewritten provisions define ''Australia'' for income tax purposes. The income tax concept applies across other taxes, with amendments as required in order to retain intended policy differences.

The rewritten provisions include drafting changes needed to conform to the legislative approach used in ITAA 1997, to simplify how the law is expressed, and to remove any ambiguity about the operation of the law. In particular, the Bill rewrites ITAA 1936 s 6AA and 7A into ITAA 1997. These amendments also ensure that the new definition of ''Australia'' is then cross-referenced across taxation laws with appropriate and clearly articulated adjustments being made to the definition in order to preserve intended policy differences.

This rewrite applies to tax periods or quarters commencing on or after 1 July 2015.

¶41-450 Tax and Super Laws No 7 Bill and excess exploration credit tax Bill

The Tax and Superannuation Laws Amendment (2014 Measures No 7) Bill 2014 (''No 7 Bill'') and the Excess Exploration Credit Tax Bill 2014 were introduced into Parliament on 4 December 2014.

Exploration development incentive

The No 7 Bill, together with the Excess Exploration Credit Tax Bill 2014, introduces an exploration development incentive to encourage investment in small mineral exploration companies undertaking greenfields mineral exploration in Australia. Australian resident investors of these companies will receive a tax incentive where the companies choose to give up a portion of their losses relating to their exploration expenditure in an income year.

The amendments allow companies to issue exploration credits to their shareholders up to a capped amount. The total value of the tax incentives available to taxpayers in respect of expenditure in an income year is restricted to $25m for greenfields minerals expenditure incurred by eligible companies in 2014/15, $35m for greenfields minerals expenditure incurred in 2015/16 and $40m for greenfields minerals expenditure incurred in 2016/17. To give effect to this cap, the Bills require companies that issue exploration credits in excess of their maximum entitlement to pay excess exploration credit tax on the amount of the excess.

The measure applies to expenditure in 2014/15, 2015/16 and 2016/17 income years, allowing the distribution of exploration credits in the 2015/16, 2016/17 and 2017/18 income years.

Excess non-concessional contributions

The No 7 Bill allows an individual who has non-concessional contributions (¶13-780) in excess of their cap to elect to release an amount equal to those excess contributions plus 85% of an associated earnings amount for those contributions from their superannuation. The full earnings amount will be included in the individual's assessable income and taxed at the individual's marginal tax rate. The individual will be entitled to a non-refundable tax offset equal to 15% of the associated earnings amount that is included in their assessable income.

The measure will apply for the 2013/14 and later financial years.

Transferring tax investigation function to IGT

The No 7 Bill proposes to transfer the tax investigative and complaint handling function of the Commonwealth Ombudsman to the Inspector General of Taxation (IGT) and merging that function with the IGT's existing function of conducting systemic reviews. This means that the IGT will be given all of the powers and functions necessary to comprehensively investigate and handle complaints relating to the administration of taxation law (of both a systemic and individual nature). It will provide taxpayers with a specialised complaint handling process for taxation matters and aligns the systemic review role of the IGT with the correlative powers and functions of the Ombudsman (¶1-200).

CGT exemption for compensation and insurance

The No 7 Bill contains amendments to ensure a CGT exemption will be available in respect of compensation or damages received by:

- a trustee (other than a trustee of a complying superannuation entity) for a wrong or injury a beneficiary suffers in their occupation, or a wrong, injury or illness a beneficiary or their relative suffers personally; and a beneficiary that subsequently receives a distribution that is attributable to such compensation or damages from the trustee
- a taxpayer (other than a trustee of a complying superannuation entity) for a policy of insurance on the life of an individual or an annuity instrument if the taxpayer is the original owner of the policy or instrument, and
- a trustee of a complying superannuation entity for a policy of insurance for an individual's illness or injury.

The No 7 Bill also contains amendments to ensure that the CGT primary code rule applies to capital gains and capital losses that are disregarded by complying superannuation entities arising from injury and illness insurance policies, life insurance policies and annuity instruments.

The amendments are consistent with the Commissioner's administrative practice and ensure that taxpayers that could have benefited by relying on the Commissioner's administrative practice are not disadvantaged by this change.

The amendments apply to 2005/06 and later income years.

Super fund mergers

The No 7 Bill contains amendments relating to superannuation fund mergers to:

- ensure individuals whose superannuation benefits are involuntarily transferred from one superannuation plan to another plan without their request or consent are not disadvantaged through the transfer, and
- remove the need for a rollover benefit statement to be provided to an individual whose superannuation benefits are involuntarily transferred.

The amendments will take effect on 1 July 2015.

Disclosing tax information relating to proceeds of crime orders

The No 7 Bill contains amendments to allow taxation officers to record or disclose protected information to support or enforce a proceeds of crime order. It also clarifies that all orders relating to unexplained wealth made under a state or territory law are included in the definition of ''proceeds of crime order''.

The measure applies to disclosures made on or after the date of assent.

Miscellaneous amendments

Finally, the No 7 Bill contains a number of miscellaneous amendments to the tax and super laws. They include style changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts.

Draft Legislation

¶41-500 Exposure draft legislation

Exposure draft legislation released by Treasury by 31 December 2014 includes the following:

- *Investment Manager Regime (Element 3)* — this is the third exposure draft of the final element of the Investment Manager Regime. It is designed to remove tax impediments to foreign investment into or through Australia by foreign managed funds. Under this measure, the gains of qualifying foreign funds from the disposal of certain financial arrangements will be exempt from Australian tax. The measures will take effect from the date of assent of the amending legislation (¶22-122)
- *Special conditions for tax concession entities* — the measures amend the tax concession provisions by:

  (1) restating the ''in Australia'' special conditions for income tax exempt entities, ensuring that they generally must be operated principally in Australia and for the broad benefit of the Australian community with some exceptions (¶10-604)

  (2) centralising and simplifying the other special conditions entities must meet to be income tax exempt, eg as complying with all the substantive requirements in their governing rules ¶10-605, and

  (3) codifying the ''in Australia'' special conditions for deductible gift recipients ensuring that they must generally operate solely in Australia, and pursue their purposes solely in Australia (with some exceptions, such as overseas aid funds, some environmental organisations, some touring arts organisations and medical research institutes) (¶16-950).

  The measures will take effect on the day after assent of the amending legislation.

Income year	Car limit
2002/03	$57,009
2003/04	$57,009
2004/05	$57,009
2005/06	$57,009
2006/07	$57,009
2007/08	$57,123
2008/09	$57,180
2009/10	$57,180
2010/11	$57,466
2011/12	$57,466
2012/13	$57,466
2013/14	$57,466
2014/15	$57,466

¶43-115 Capital works deductions for buildings and structural improvements

A special system of tax deductions applies to capital expenditure incurred on the construction of buildings and structural improvements (¶20-470).

The table below shows the rates of deduction for capital works expenditure on residential and non-residential buildings, and structural improvements.

Construction start date	Capital works deduction rate (%)
Non-residential buildings	
Industrial	
27.2.92 onwards[1]	4
Non-industrial	
16.9.87 onwards	2.5[2,3]
22.8.84 – 15.9.87	4
20.7.82 – 21.8.84	2.5
Residential buildings	
Short-term traveller accommodation	
27.2.92 onwards	4
16.9.87 – 26.2.92	2.5[2]
22.8.84 – 15.9.87	4
22.8.79 – 21.8.84	2.5
Other residential accommodation	
16.9.87 onwards	2.5[2]
18.7.85 – 15.9.87	4
Structural improvements	
27.2.92 onwards	2.5[4]

(1) An industrial building constructed before 27 February 1992 qualifies for a capital works deduction under the rates given for non-industrial non-residential buildings.

(2) Where the construction relates to certain pre-16.9.87 contracts, the rate is 4%.

(3) This includes expenditure on R&D buildings where construction started on or after 21 November 1987.

(4) This includes environment protection earthworks expenditure incurred after 18 August 1992.

hapter 44 Tax Checklists

00 Instruction: Individual tax return 2014

These instructions enable you to find explanations of each item in the 2014 dual Tax Return. It also directs you to the relevant explanations in the ATO *dual tax return instructions 2014*, *Individual tax return instructions supplement* and *Business and professional items instructions 2014*. The ATO website has the occupation codes for 2014 and the ATO codes for CGT exemptions and roll-overs.

For lodgment requirements, see ¶24-010.

		Return form label	Explanation	Individual tax return instructions 2014 page
	Taxpayer details			
	Tax file number		¶33-000	
	Residence		¶21-010	
	Income			
	Salary or wages	C–G	¶10-050	9
	Allowances, earnings, tips, director's fees, etc	K	¶10-060 – ¶10-076	10

Return form item		Return form label	Explanation	Individual tax return instructions 2014 page
3	Employer lump sum payments	R, H	¶14-720, ¶14-730	11
4	Employment termination payments	I	¶14-610	12
5	Australian Government allowances and payments	A	¶10-195, ¶10-197	13
6	Australian Government pensions and allowances	B	¶10-190, ¶10-200	14
7	Australian annuities and superannuation income streams	J, N, Y, Z	¶14-120, ¶14-500	15
8	Australian superannuation lump sum payments	Q, P	¶14-120	17
9	Attributed personal services income	O	¶30-610	18
10	Gross interest	L M	¶10-470 ¶33-030	19
11	Dividends	S–U V	¶4-100, ¶4-800 ¶33-030	20
12	Employee share schemes	D–G, A C	¶10-085 – ¶10-089 ¶26-640	21
	Deductions			
D1	Work-related car expenses	A	¶16-310	25
D2	Work-related travel expenses	B	¶16-220	26
D3	Work-related and/or protective clothing, laundry and dry cleaning expenses	C	¶16-180	27
D4	Work-related self-education expenses	D	¶16-450	29
D5	Other work-related expenses			31
	generally	E	¶16-170	
	subscriptions	E	¶16-430	
	meals	E	¶16-175	
	seminars and conferences	E	¶16-450	
	home office	E	¶16-480	
	telephone expenses	E	¶16-400	
	personal insurance policies	E	¶16-560	
	books and trade magazines	E	¶16-170	
	computers	E	¶16-725	
	tools and equipment	E	¶16-170	
D6	Low-value pool deduction	K	¶17-810	32
D7	Interest deductions	I	¶16-660	33
D8	Dividend deductions	H	¶16-660, ¶4-180	33

Return form item		Return form label	Explanation	Individual tax return instructions 2014 page
09	Gifts or donations	J	¶16-940	34
010	Cost of managing tax affairs	M	¶16-850	35
	Losses			
11	Tax losses of earlier income years	Q, F R, Z	¶16-880 ¶16-895 ¶18-020	37
	Tax offsets			
71	Spouse (without dependent child or student)	P	¶15-100, ¶15-130	38
72	Senior Australians and pensioners	N, Y	¶15-310	40
73	Australian superannuation income stream	S	¶14-220, ¶14-240	43
	Medicare levy related items			
M1	Medicare levy reduction or exemption	Y, V, W	¶2-330, ¶2-340	46
M2	Medicare levy surcharge	E, A	¶2-335	49
	Private health insurance policy details			
	Private health insurance	B, C, J, K, L	¶15-330	52
	Adjustments			
A1	Under 18	J	¶2-160	55
A2	Part-year tax-free threshold	N	¶2-130	56
A3	Superannuation co-contribution	F, G, H	¶13-760	57
	Income tests			
T1	Total reportable fringe benefits	W	¶35-055	62
T2	Reportable employer superannuation co-contributions	T	¶13-730	63
T3	Tax-free government pensions or benefits	U	¶10-195	63
T4	Target foreign income	V	¶2-133	64
T5	Net financial investment loss	X	¶2-133	64
T6	Net rental property loss	Y	¶2-133	66
T7	Child support paid	Z	¶2-133	67
T8	Number of dependent children	D	¶15-030	67

The *Individual tax return instructions supplement 2014* is only available online; it is available in print.