

EXPOSURE DRAFT

TAX LAWS AMENDMENT (REPEAL OF INOPERATIVE PROVISIONS) BILL 2006

EXPLANATORY MATERIAL

(Circulated by authority of the
Treasurer, the Hon Peter Costello MP)

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
GST	goods and services tax
IT (TP) Act 1997	<i>Income Tax (Transitional Provisions) Act 1997</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
PAYG	pay as you go
TAA 1953	<i>Taxation Administration Act 1953</i>
Tax Crimes Act	<i>Crimes (Taxation Offences) Act 1980</i>
the Board	Board of Taxation

General outline and financial impact

Repeal of inoperative material in the tax laws

This exposure draft repeals over 4,100 pages of provisions in the tax laws that have been identified as inoperative. This exposure draft also repeals a number of tax Acts that have been identified as inoperative.

An inoperative provision or Act is one which no longer applies to taxpayers, either because it has no effect after a date in the past or because all the transactions it did affect have now concluded.

Date of effect: This exposure draft has three main dates of effect. Schedules 1, 5 and 6 commence on Royal Assent. Schedule 2 commences on Royal Assent but generally applies to the 2006-07 and later income years. Schedules 3 and 4 commence on 1 January 2008, with Schedule 4 applying to the 2008-09 and later income years.

Proposal announced: This measure was announced in the Treasurer's Press Release No. 102 of 24 November 2005.

Financial impact: Nil.

Compliance cost impact: This measure is expected to reduce compliance costs for taxpayers.

Chapter 1

Board of Taxation report: *Identification and Possible Repeal of the Inoperative Provisions of the 1936 and 1997 Income Tax Assessment Acts*

History of the measure

1.1 The Board of Taxation (the Board) is a non-statutory advisory body which provides the Treasurer with a business and community perspective about improving the design of taxation laws and their operation.

1.2 In 2003, in accordance with the Government's general aim of reducing complexity in, and the compliance costs associated with, the tax laws, the Board began to consider how the *Income Tax Assessment Act 1936* (ITAA 1936) and the *Income Tax Assessment Act 1997* (ITAA 1997) could be rationalised to reduce the volume of tax legislation and improve its ease of use for taxpayers, their advisers and those involved in tax administration.

1.3 The Board considered that a useful first step in any rationalisation of the two assessment Acts would be to remove the inoperative material. So, in 2004, it engaged a consultant to identify the provisions of those Acts that were inoperative.

1.4 The consultant's report showed that the inoperative material was extensive (up to 50 per cent of the ITAA 1936 fell into that category). Given the extent of inoperative material in the law, the Board believed that repealing it had the potential to substantially reduce the volume of the published income tax legislation, making it easier to use, and contributing to reducing its complexity.

1.5 Towards that end, in January 2005 the Board engaged further consultants to confirm the inoperative status of provisions and identify all references to the identified provisions in Commonwealth Acts, so that necessary amendments could be developed for each repealed provision.

1.6 The Board subsequently reported to the Treasurer in October 2005, recommending repeal of the inoperative provisions

identified. On 24 November 2005, the Treasurer released the Board's report and announced the Government's intention to repeal the inoperative material after draft legislation had been through a public consultation process. At that stage, more than 2,000 pages were expected to be repealed.

1.7 Since then, the Treasury and the Australian Taxation Office (ATO) have reviewed the inoperative material identified by the Board. They identified some further inoperative material, partly as a result of developing the amendments that would be needed to the law when other inoperative material was repealed. But the main extra material identified was the 60 or so wholly inoperative taxation Acts (eg, the many sales tax Acts, both those from the 1930s and those from the early 1990s). Taking all these Acts into account, this Bill will repeal more than 4,100 pages of Australian taxation laws.

1.8 As well as repealing inoperative material, this exposure draft makes a few small improvements to the law. These are explained in more detail later but largely involve removing duplicated definitions; replacing them instead with cross-references to the single definition. This promotes consistent terminology across the taxation laws, and forms part of the Government's continuing efforts to reduce unnecessary complexity in the tax laws.

What are the practical benefits of repealing the inoperative material?

1.9 Repealing the inoperative material in the tax laws is important because it can often be quite difficult to work out whether or not a provision is inoperative. Many provisions being repealed by this draft legislation at first glance seem to be operative. It is only when they are analysed in detail (often involving very extensive analysis of other provisions they interact with or gathering information about the environment they apply to), that they can be understood to be inoperative. Getting to that understanding can be a lengthy and difficult task, even for experienced tax practitioners.

1.10 There is also a cost associated with retaining inoperative material in the law because, to know that a particular provision is inoperative, at least involves reading it and, with income tax provisions, that can take some time.

1.11 For those reasons, repealing the inoperative tax law provisions will produce a material benefit for those who read, interpret and apply the tax laws.

1.12 Another benefit arises because removing several thousand pages of inoperative material will shorten the published versions of the tax law. Shorter legislation is easier to access and to work with.

1.13 Shorter published legislation is possible because the Board consulted with the two major commercial publishers. The publishers advised that they would relocate repealed provisions into a separate, less frequently published, hard copy or on-line archive volume, rather than continuing to reproduce them in smaller font their annual reprints. That will significantly shorten their annual reprints of the tax laws. The electronic versions of the legislation that many people are using these days (whether the version produced by the Attorney-General's Department or one of the commercial versions) would also be shorter.

Chapter 2

Repealing current inoperative provisions

Outline of chapter

2.1 Schedule 1 to this exposure draft repeals the provisions in the tax laws that have been identified as inoperative. Schedule 2 makes consequential amendments required to various pieces of Commonwealth legislation because those inoperative provisions are repealed.

Context of amendments

What are inoperative provisions?

2.2 Provisions are inoperative when they no longer apply to taxpayers, either because they have no effect after a date in the past or because all the transactions or events they did affect have now concluded.

Example 2.1: Examples of inoperative provisions

Section 124ZC of the *Income Tax Assessment Act 1936* (ITAA 1936), which allowed a deduction for certain expenditure on a hotel, is inoperative because it is in Division 10C and section 124ZAPA says that Division 10C has no effect for income years after 1996-97.

Section 53F, which allows a deduction for the cost of converting plant for decimal currency use, is inoperative because no one is likely to convert plant for that use now, 40 years after Australia changed its currency.

2.3 In some cases, like the currency conversion case, a judgment is involved in considering whether the transactions or events to which the provision applies have finally concluded. If there is doubt, this exposure draft generally errs on the conservative side, retaining provisions that might still be operative even if the chances of that are only small.

Example 2.2: Caution in judging inoperativeness

Section 36AAA of the ITAA 1936 allows the compensation for cattle destroyed because of brucellosis or tuberculosis to be assessed over 10 years. Since it only applies to cattle destroyed in 1996-97 or earlier income years, and given that Australia was declared free of bovine brucellosis in 1989 and bovine tuberculosis in 1997, the chances of section 36AAA still being needed are slight. Nevertheless, section 36AAA is retained until it could have no further role (after 2006-07). This exposure draft therefore only repeals it on 1 January 2008.

Can we be sure that the repealed provisions are inoperative?

2.4 Every effort has been taken to ensure that the provisions repealed are truly inoperative provisions. The provisions were identified by a consultant engaged by the Board of Taxation (the Board) and have been through several verification processes, including checking of each provision by the Treasury and the Australian Taxation Office (ATO). The process of public consultation, for which this explanatory material has been prepared, is another step in the verification process.

2.5 However, even though the greatest care has been taken to ensure that the provisions repealed are truly inoperative, there is always a chance that one of the repealed provisions might still be operative. For instance, that might occur because conclusions were based on facts that prove to be wrong.

Example 2.3: Depreciation of trading ships

One of the repealed provisions is section 57AM of the ITAA 1936. Section 57AM allows Australian trading ships to be depreciated over five years if they were Grants Act ships delivered before 1 July 1997 or were subject to a manning notice sought before 22 December 1986. Depreciation for Grants Act ships finished in 2002. However, it is theoretically possible that some of the manning notice ships have yet to be depreciated because they have not yet been launched even though their manning notice was sought 19 or more years ago. This exposure draft is based on Commonwealth records showing that there are no such ships but, if the records are inaccurate, some of those ships could still be on a slipway somewhere.

Why do we have so many inoperative provisions?

2.6 It was common legislative practice in the past to stop a provision operating by adding a subsection that stops it applying after a particular date or applying to new transactions or events after that date. Sometimes the subsection was included when the provision was first added to the law, because it was always intended to have a limited life, and sometimes the subsection was added later, when Parliament decided to bring the provision to an end.

2.7 The practice of turning a provision off in that way, rather than repealing it, facilitated the transition from the old provision because it left the old provision in the Act where it could be easily found when needed (eg, for objecting against an assessment for a past year when the provision was still operative). However, another consequence of that practice was that old provisions tended to stay in the law well after their usefulness was past.

Report by the Board of Taxation

2.8 In 2004 and 2005, the Board (a non-statutory advisory body that contributes a business and community perspective to improving the design and operation of taxation laws) investigated the extent of inoperative provisions in the income tax laws.

2.9 The Board reported to the Treasurer in October 2005 that it had identified over 2,000 pages of inoperative provisions in the income tax law and recommended repealing them.

2.10 Since that time, Treasury and the ATO have reviewed the provisions identified by the Board and identified some further inoperative material, including outside the income tax law. The exposure draft, in total, repeals over 4,100 pages of inoperative material from the tax laws.

Detailed explanation of new law

2.11 The provisions listed in Schedule 1 of this exposure draft are repealed. In each case, the provision was analysed as having no operation for future years or as being so unlikely to have an operation for future years that it was inoperative in any practical sense.

Some particular inoperative provisions

2.12 For most of the provisions being repealed, it is clear why they are inoperative (if sometimes only after detailed examination).

2.13 However, in a few cases, why a particular provision is inoperative is not so obvious. Those cases are discussed here.

Paragraph 23(kd) — Papua New Guinea residents' pensions

2.14 Paragraph 23(kd) of the ITAA 1936 exempts the pensions of residents of Papua New Guinea so long as the pensions of Australian residents are exempt under the laws of Papua New Guinea.

2.15 That paragraph no longer operates because the same result is achieved by Australia's double taxation agreement with Papua New Guinea (which became law in Australia when it was added as Schedule 29 to the *International Agreements Act 1959* in 1989).

Paragraph 23(r) — foreign residents' foreign income

2.16 Paragraph 23(r) is another inoperative paragraph. It exempts amounts that a foreign resident derives from sources outside Australia except where another provision includes them in assessable income on a basis other than their source.

2.17 It is clear that the paragraph performs no function because amounts of ordinary or statutory income that a foreign resident derives from a non-Australian source are never included in assessable income in the first place unless a specific provision does so on a basis other than their source (see subsections 6-5(3) and 6-10(5) of the ITAA 1997). The fact that those provisions stop amounts of ordinary income from being included in assessable income makes them exempt income (see subsection 6-20(2)) and amounts of statutory income are not 'income' in the first place.

Applying income tax law to external territories

2.18 Australia's income tax law generally extends to the external territories of Norfolk Island, the Cocos (Keeling) Islands and Christmas Island (see section 7A of the ITAA 1936). However, that extension is subject to Division 1A of Part III of the ITAA 1936 and, at one time, Division 1A significantly limited how the income tax law applied to those territories.

2.19 Since then, the enactment of sections 24BA and 24BB brought first Christmas Island and then the Cocos (Keeling) Islands more directly within the normal income tax law (although preserving the treatment of some consequences arising from past events). They did that by deeming the definition of ‘prescribed territory’ (ie, Norfolk Island, the Cocos (Keeling) Islands and Christmas Island) to no longer include the territories that had been brought within the normal income tax law.

2.20 This exposure draft simplifies that by repealing sections 24BA and 24BB and defining ‘prescribed territory’ to mean only Norfolk Island [*Schedule 1, item 42, sections 24BA and 24BB of the ITAA 1936; Schedule 2, item 152, subsection 24B(1) of the ITAA 1936, definition of ‘prescribed Territory’*]. Consequential amendments maintain the existing treatment for the consequences of past events [*Schedule 2, items 153 to 158, 164, 165, 176 and 177, subsections 24L(5), 24P(5), 27A(14) and 27A(14A), paragraphs 24P(1)(b), 26AD(12)(b) and 26AD(13)(b) and subparagraphs 24P(1)(c)(i), (iii) and (iv) of the ITAA 1936*].

Subsection 25(2) — mortgages of Australian property

2.21 Subsection 25(2) of the ITAA 1936 treats interest paid on money secured by a mortgage of Australian property as having an Australian source.

2.22 This mainly affects foreign residents because they are not generally taxed on an amount unless it has an Australian source. The subsection does also have a possible relevance to Australian residents when determining whether they are entitled to a credit for any foreign tax they pay on interest. However, in both those cases, source rules in Australia’s double tax treaties would often determine the issue, overriding or replicating the result produced by subsection 25(2).

2.23 The subsection predates the levying of withholding tax on such interest and, in practice, interest paid to foreign residents from Australia is either subject to withholding tax or exempt from income tax altogether. It is generally not current practice to use subsection 25(2) to tax such interest after it has been excluded from the withholding tax system.

2.24 Since Australia adopted the withholding tax system for interest in 1973, subsection 25(2) has not been necessary and its presence can only confuse foreign residents.

Paragraph 26(b) — beneficial interests

2.25 Section 26 of the ITAA 1936 is repealed and those of its paragraphs that are still operative are rewritten into the ITAA 1997. One of the paragraphs that is not rewritten is 26(b). It includes in assessable income beneficial interests that taxpayers derive under wills, deeds or

other trust instruments, unless they are included under another provision that taxes a trust amount.

2.26 There have long been doubts about the relationship between paragraph 26(b) and the assessment provisions for trust amounts in Division 6 of Part III of the ITAA 1936. An apparent role for 26(b) was revealed by the courts in the 1950s and 1960s when they identified problems with the application of Division 6 to foreign-sourced trust amounts.

2.27 Those problems were corrected by amendments made in 1979. They also addressed the relationship between 26(b) and Division 6 by amending 26(b) to stop it applying to amounts included in assessable income by another trust provision.

2.28 Since that time, paragraph 26(b) has played no apparent role (see Burns, L. and Krever, R. *Interests in Non-resident Trusts*, 1997, at pp. 10 to 13).

Subdivision C of Division 2 of Part III — source of profits

2.29 Subdivision C of Division 2 of Part III of the ITAA 1936 (sections 38 to 43) ascertains the part of a profit that is derived in Australia when imported goods are sold here and includes it in assessable income.

2.30 These provisions can be traced historically to a time before Australia imposed taxation on the basis of the taxpayer's residence and, as the late Professor Parsons said in his seminal work *Income Taxation in Australia*, 1985, (paragraph 4.201), '... they are imperfectly adapted to the present assertions of jurisdiction'.

2.31 Even if those provisions had a role before 1982, for all intents and purposes they ceased to perform it after the enactment in that year of the transfer pricing provisions of Division 13 of Part III of the ITAA 1936.

Income from surrendered firearms

2.32 Subsection 51(2B) of the ITAA 1936 allows taxpayers to deduct assessable income they derive from surrendering a firearm which is also trading stock.

2.33 Subsection 51(2B) is inoperative because section 59-10 of the ITAA 1997 provides that compensation paid under firearms surrender arrangements is *not* assessable income. Therefore, the precondition for

subsection (2B) to apply — that the taxpayer derive assessable income from surrendering the firearm — could no longer be satisfied.

2.34 This exposure draft also contains some consequential amendments to surrendered firearms depreciation provisions. These are discussed later (see paragraphs 2.140 and 2.141).

Secrecy of farm management deposits information

2.35 Section 221ZXL of the ITAA 1936 imposes an obligation of secrecy upon officers of ‘the Department of Primary Industries and Energy’ (now the Department of Agriculture, Fisheries and Forestry under current departmental arrangements¹) in relation to information acquired in the course of considering applications for deduction exemption certificates under the old farm management deposit provisions. Those provisions are inoperative but the obligation to preserve the secrecy of information acquired is a continuing one.

2.36 However, the general secrecy provision in the income tax law, section 16 of the ITAA 1936, is wide enough to cover the same ground as section 221ZXL. In particular, it imposes the same obligation of secrecy (see subsection 16(2)) and that obligation extends to anyone appointed or employed by, or performing services for, the Commonwealth (see the subsection 16(1) (definition of ‘officer’) and subsection 16(1A)), which includes any officer of the Department of Agriculture, Fisheries and Forestry. Therefore, section 221ZXL merely duplicates the effect of other provisions and so is unnecessary.

Section 260 — the old general anti-avoidance rule

2.37 Section 260 of the ITAA 1936 is a general anti-avoidance rule that countered tax avoidance schemes entered into before 28 May 1981. Schemes entered into afterwards are dealt with by Part IVA of that Act. It might seem that section 260 still has some work to do because a scheme entered into before 28 May 1981 might still be being carried on.

2.38 However, section 260 is inoperative because the way it worked was to render every scheme to which it applied ‘... absolutely void, as against the Commissioner, or in regard to any proceeding under this Act ...’. That is, any scheme still being carried out that section 260 applied to was rendered void for tax purposes when it was entered into and does not stop being void if section 260 is repealed.

¹ See the *Administrative Arrangements Order* of 27 January 2006.

Savings, application and transitional provisions

Savings provisions

2.39 Although in practice, repealing an inoperative provision will usually mean that it can be consigned to history, there are two reasons why that may not always be so.

2.40 First, although repealing an inoperative provision means that it has no role for future periods, it may still have a role for the past. Preserving some of that role is achieved by section 8 of the *Acts Interpretation Act 1901*, which, amongst other things, provides that the repeal of a provision does not affect its previous operation, the existence of any rights or liabilities it created or any investigation of, or penalties for, breaches of the provision.

2.41 However, section 8 of the *Acts Interpretation Act 1901* may not be wide enough to preserve all necessary effects of the past operation of a repealed provision. For instance, it may not allow the Commissioner to issue or amend an assessment in the future to take into account a repealed provision's past operation and it may not be enough to preserve a taxpayer's right to object against any such assessment issued or amended in the future.

2.42 Second, an operative provision might still rely on something an inoperative provision does (eg, on a term it defines). If that dependency were not recognised, a necessary amendment might have been missed.

2.43 To deal with the possibility of cases like these, this exposure draft contains four general savings provisions and two specific savings provisions.

2.44 Neither the existence nor the content of the savings provisions changes the scope or application of section 8 of the *Acts Interpretation Act 1901*. [*Schedule 6, item 10*]

General savings provisions

2.45 The main general savings provision prevents an assessment being affected by anything that is repealed or amended by this exposure draft, if the assessment relates to a period or event before the repeal or amendment. [*Schedule 6, item 6*]

Example 2.4: Amending an assessment

In 2007, an audit of Gaurav's affairs uncovered the fact that he had not declared \$1,200 earned from employment as a casual fruit picker in 1995.

Not declaring an amount of income is evasion, so even though Gaurav's 1994-95 assessment is 12 years old, there is no time limit for amending it to take the \$1,200 into account. But the relevant provision for assessing the undeclared amount was section 25 of the ITAA 1936. Can the Commissioner still amend an assessment for 1994-95, relying on section 25, given that it is an inoperative provision repealed under this exposure draft?

Yes. The general savings provision preserves the power to issue an assessment for a period when section 25 was still operative. As section 25 only ceased to apply for 1997-98 and later income years, the savings provision allows an assessment based on section 25 to be amended for 1994-95.

2.46 The main general savings provision also preserves powers, duties, rights and obligations in relation to the time before the repeal or amendment. If the power, duty, right or obligation already existed before the repeal or amendment, section 8 of the *Acts Interpretation Act 1901* would probably already preserve it. However, the main general savings provision goes further. It ensures that those powers, duties, rights and obligations can still come into existence after that time if they relate to an earlier period or event. [*Schedule 6, item 6*]

Example 2.5: Penalty for not lodging income tax returns

In January 2007, the Commissioner identified Nicole as having not lodged a tax return since she entered the work force in 1987. When contacted by the Commissioner, Nicole lodged tax returns for all the years from 1986-87 to 2005-06.

Subsection 222(1) of the ITAA 1936 creates a penalty for late lodgement of returns for 1994-95 and earlier income years. Does section 222 still create a penalty even after it is repealed by this exposure draft?

Yes. The general savings provision makes it clear that repealed provisions still have their effect for periods before they were repealed, so section 222 still creates the penalty for not lodging a return.

Example 2.6: Assessing penalty for non-lodgement

Continuing the previous example, relying on subsection 227(1), the Commissioner assessed Nicole to a penalty under section 222 for each year up to 1994-95. The assessment included a partial remission, relying on a power granted by subsection 227(3).

Can the Commissioner still use subsection 227(1) to make assessments of the penalty for years up to 1994-95, and still exercise his remission power under subsection 227(3), even after section 227 is repealed?

Yes. The general savings provision ensures that the Commissioner can still use section 227 to make an assessment of the section 222 penalty and to remit whatever part of the penalty he or she considers appropriate. Nicole, of course, would be able to object to the assessment under section 175A of the ITAA 1936.

For 1995-96 and later years, the imposition and remission of the late lodgement penalty is dealt with by other provisions of the tax law.

Example 2.7: Remitting a penalty

In 2007, the Commissioner advised HK Corp (HK) that, in 1999, it remitted \$10,000 less than it had withheld from its employees' salaries. HK immediately sends the Commissioner a cheque for the shortfall.

The Commissioner then advised HK that in 1999 it was a large remitter under section 220AAB of the ITAA 1936 and, therefore, was required by section 220AAF to remit withheld amounts by electronic transfer. Since it did not do so, the Commissioner advised HK that it was also liable for a penalty under section 220AAW.

HK wrote to the Commissioner asking him to use the power, granted by subsection 220AAW(2) of the ITAA 1936, to remit the penalty. The Commissioner declined to do so.

Paragraph 220AAZF(g) grants a right to object against the Commissioner's refusal to remit this penalty but that section is repealed by this exposure draft. Does HK still have the right in 2007 to object to the decision?

Yes. HK's right to object to the Commissioner's decision is preserved by the general savings provision because it relates to a time, before the repeal, when HK failed to remit the withheld amounts.

2.47 The main general savings provision also preserves powers, duties, rights and obligations arising under a regulation or other legislative instrument as well as those arising under a provision of an Act. *[Schedule 6, item 6]*

Effect of assessments

2.48 Some provisions repealed by this exposure draft provide for assessments to have a particular effect. The second general savings provision ensures that, despite the repeal of those provisions, they continue to have that effect in relation to the assessments they would otherwise have covered. *[Schedule 6, item 7]*

Example 2.8: Evidentiary effect of a franking assessment

Section 160ARS of the ITAA 1936, which is repealed by this exposure draft, provides that section 177 also applies to franking assessments. Section 177 of the ITAA 1936 provides that, when the Commissioner produces a notice of assessment, it is to be concluded that the assessment was duly made and (except in a review of the assessment) that the amounts are correct. The second general savings rule ensures that, when the Commissioner produces a notice of a franking assessment in the future, it will continue to have that evidentiary impact.

General interest charge

2.49 Some provisions repealed by this exposure draft create a liability for general interest charge on old unpaid debts (eg, subsection 221YD(3) creates a liability for general interest charge on an unpaid amount of provisional tax which arose before the 2000-01 income year). To the extent that such debts remain unpaid, those provisions still operate to accrue the liability to the general interest charge.

2.50 The provisions are of limited future value because they only apply to old unpaid debts, so will become inoperative at some time. The solution adopted for this exposure draft is to repeal the provisions but to include a general savings provision that preserves their operation in relation to those old debts. *[Schedule 6, item 8]*

Dependent provisions

2.51 The fourth general savings provision is included as a precaution against the possibility that a repealed provision was an element in the operation of another provision that is still operative. It ensures that the repealed provision continues to have the effect necessary to support the still operative provision. No examples of any provision that would require this savings provision have been identified. *[Schedule 6, item 9]*

2.52 Like the main general savings provision, it also applies to a provision in a regulation or other legislative instrument if it depends upon something that is repealed or amended. *[Schedule 6, item 9]*

Specific savings provisions

2.53 This exposure draft includes a small number of savings provisions particular to specific provisions that are repealed by Schedule 1 to this exposure draft.

Section 215

2.54 Section 215 of the ITAA 1936 provides for obligations imposed on liquidators, receivers and certain agents winding up a business. It only applies to those people if they were appointed before July 2000 (see subsection 215(7)). People appointed after then are covered by the similar rules in Division 260 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

2.55 Although it may be unusual, it is possible that these people are still acting under an appointment from before July 2000. Therefore, even though it does only have a limited future, section 215 is not strictly inoperative. This exposure draft adopts the solution of repealing section 215 but including a savings provision to ensure that section 215 continues to apply to anyone appointed before July 2000. [*Schedule 1, item 149, section 215 of the ITAA 1936; Schedule 6, item 11*]

Sections 216 and 220

2.56 Sections 216 and 220 of the ITAA 1936 deal with the application of the income tax law to people who died before July 2000. Equivalent rules, for people who have died since that time, are in Subdivision 260-E in Schedule 1 to the TAA 1953.

2.57 Again, it would be unusual but possible for the affairs of a deceased estate covered by section 216 or 220 to still not be finalised. Therefore, for the same reasons as section 215, this exposure draft repeals those sections but preserves their existing operation for the estates of people who died before July 2000. [*Schedule 1, items 149 and 150, sections 216 and 220 of the ITAA 1936; Schedule 6, item 12*]

Application provisions

General application rule

2.58 The commencement date for the repeal and amendment of provisions under Schedules 1 and 2 of this exposure draft is when Royal Assent is given [*subclause 2(1), items 2 and 3 of the table*]. For assessment cases, where it is possible that the timing of the repeal could matter, both the repeal and any consequential amendments apply from the start of the 2006-07 income year [*Schedule 6, item 1(a)*].

2.59 For other cases, the repeal and consequential amendments apply to any states of affairs and acts done after commencement. *[Schedule 6, item 1(b)]*

2.60 One case that would probably be covered by the general application rule is the rewrite of the rule about how the withholding rules for not quoting a tax file number apply to investments of qualifying securities. However, to avoid any doubt, this exposure draft makes clear that the repeal of the original rule and its replacement by the rewrite applies at commencement. *[Schedule 6, subitem 3(1)]*

Specific application rules

2.61 There are two specific application rules to deal with cases where the general rule would not work. The first ensures that the repeal of the rule exempting interest and dividends paid to foreign superannuation funds (which, under the general application rule, would have applied from the start of the 2006-07 income year) matches the introduction of the equivalent rules in the withholding provisions (which, under the general application rule, would have applied from commencement). *[Schedule 6, item 2]*

2.62 The second deals with the rewrite of the rules for ‘withholding’ amounts from interest that has accrued but not been paid when the investor has not quoted a tax file number. The general application rule would not cover those provisions because such amounts are not assessments and there is no act done (because the interest has not yet been paid). Instead, the repeal of the existing rule and the addition of the rewrite apply from the start of the 2006-07 income year. *[Schedule 6, subitem 3(2)]*

Transitional provisions

Section 221B

2.63 Section 221B of the ITAA 1936 allows a council or other local governing body to resolve to have its members treated, in effect, as employees for various tax purposes (eg, to have pay as you go (PAYG) amounts withheld from their remuneration).

2.64 This exposure draft rewrites section 221B into Schedule 1 to the TAA 1953 *[Schedule 2, item 921, section 446-5 of Schedule 1 to the TAA 1953]*. A transitional provision ensures that there is no change to the effect of resolutions made under section 221B by treating them as having been made under the rewritten provision *[Schedule 6, item 13]*.

Section 259

2.65 Section 259 of the ITAA 1936 gives taxpayers who pay tax they are jointly liable for with other taxpayers a right to recover a share of the tax from those other taxpayers. Section 259 only applies to tax debts that arose before July 2000. An equivalent provision (section 265-45 in Schedule 1 to the TAA 1953) applies to debts that arose after that time.

2.66 As this exposure draft repeals section 259, its result is preserved by extending the operation of the equivalent provision in the TAA 1953 to cover tax debts that arose before July 2000 but are paid after commencement [*Schedule 6, item 14*]. Rights created by section 259 before the exposure draft repeals it are preserved by section 8 of the *Acts Interpretation Act 1901*.

TFN withholding amounts

2.67 Another transitional rule ensures that the rewrite of the rules about ‘withholding’ amounts from interest that has accrued but not been paid when the investor has not quoted a tax file number also apply to withholding tax that was payable under the old rules that are repealed by this exposure draft but has not yet been paid. [*Schedule 6, subitem 3(3)*]

Consequential amendments

2.68 Repealing as many provisions as this exposure draft does, it is inevitable that many other provisions which refer to the repealed provisions, or depend on them in some way, have to be amended. Some of those consequential amendments are in non-taxation Acts.

2.69 The consequential amendments in this exposure draft fall into four broad categories:

- removing references to provisions that are being repealed;
- changing references to repealed provisions so that they instead point either to equivalent provisions that are still operative or to the ‘former’ provisions;
- rewriting operative material from repealed provisions; and
- making other changes to preserve particular outcomes that would otherwise be affected by the repeals.

References

2.70 Many still operative provisions, both in the tax laws and elsewhere, refer to provisions repealed by this exposure draft. Sometimes they do that because they are part of a broad legislative arrangement that needed to take the repealed provisions into account. Sometimes they do that because they are just using a tax law concept for reasons of convenience or standardisation.

References to the future operation of the repealed provision

2.71 When the provision referred to is repealed, the reference needs to be changed so that it still makes sense. If it was merely taking into account the future operation of the repealed provision, the reference can usually just be removed because there is no longer any such future operation.

Example 2.9: Calculating attributable income

Section 102AAW of the ITAA 1936 lists a number of provisions that should be disregarded in working out a trust's attributable income. The list includes sections 38 to 43, which are inoperative and repealed by this exposure draft. Because section 102AAW is only taking the future operation of those sections into account and they have no future operation, the reference to them in section 102AAW is removed. *[Schedule 2, item 267, subsection 102AAW(1) of the ITAA 1936]*

2.72 In some cases, that would leave a provision with nothing to do, so the whole provision is repealed. If that sort of provision is in one of the main taxation Acts, this exposure draft includes its repeal in the Schedules repealing inoperative taxation provisions. If it is in another Act, this exposure draft includes it in the Schedules dealing with consequential amendments.

Example 2.10: Treating CFC provisions as part of Part IIIA

Section 407 provides that, when applying Part IIIA (the old capital gains provisions) in working out a CFC's attributable income, references in Part IIIA to 'provisions of this Part' also include references to Subdivision C of Division 7 of Part X (which modifies how the CGT rules apply to CFCs). As the exposure draft repeals Part IIIA, and it will no longer affect the calculation of attributable income, section 407 no longer has any role to play. Therefore, the exposure draft repeals it. *[Schedule 1, item 162, section 407 of the ITAA 1936]*

References to the past operation of the repealed provision

2.73 If a provision refers, not to the future operation of the repealed provision, but to its past operation, it is not enough to just remove the reference because that past operation still needs to be taken into account. In most cases, this exposure draft changes the reference to the ‘former’ provision, so that the continuing provision can take account of what was done by the repealed provision.

Example 2.11: Destroyed capital works

Section 43-40 of the ITAA 1997 allows a deduction when a capital work is destroyed if, among other things, a deduction had been allowed for the work under Division 10C or 10D of Part III of the ITAA 1936. Those Divisions are inoperative and are repealed by this exposure draft but section 43-40 may operate in the future by reference to whether Divisions 10C or 10D allowed a deduction in the past. Therefore, it still has to refer to those Divisions but now refers to them as ‘former’ Divisions. [*Schedule 2, item 639, paragraph 43-40(1)(a) of the ITAA 1997*]

References to equivalent provisions

2.74 In some cases, a repealed provision might have been replaced by a new provision that does the same work. This was common in the products of the Tax Law Improvement Project of the 1990s, which set out to rewrite old style provisions into a new style in the ITAA 1997, but it has also happened in some other areas.

Example 2.12: Shares in a pooled development fund

Subsection 124ZM(1) of the ITAA 1936 exempts so much of a dividend paid by a pooled development fund as has not been franked in accordance with section 160AQF of that Act. Section 160AQF is an inoperative imputation provision that is repealed by this exposure draft. Its equivalent is section 202-5 of the ITAA 1997, so this exposure draft changes the reference from section 160AQF to section 202-5. [*Schedule 2, item 309, subsection 124ZM(1) of the ITAA 1936*]

2.75 In a few instances of this sort, consequential amendments to change references from old provisions to their rewrites had been missed in previous measures, so are also included in this exposure draft.

2.76 This exposure draft also amends some definitions in the ITAA 1936 so that they point to equivalent definitions in the ITAA 1997 that have the same meaning. By standardising definitions, these amendments form part of the ongoing process of simplifying the tax laws wherever possible.

Example 2.13: Definition of ‘child’

The ITAA 1936 defines a *child* this way: ‘*child*, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of that person’.

The ITAA 1997 defines it like this: ‘*child* of a person includes the person’s adopted child, step-child or ex-nuptial child’.

To indicate that the terms are indeed meant to be the same, and to preserve that outcome, the definition in the ITAA 1936 is changed so that it ‘has the meaning given by the ITAA 1997’. [*Schedule 2, item 111, subsection 6(1) of the ITAA 1936, definition of ‘child’*]

References to ‘associate’

2.77 A particular instance of changing a reference to a definition in an inoperative provision in the ITAA 1936 to an equivalent definition in the ITAA 1997 arises with the definition of ‘associate’ in section 26AAB of the ITAA 1936. That section is an inoperative provision but its definition of that term is used in many provisions that are still operative (eg, see subsection 6F(5) of the ITAA 1936).

2.78 Some terms in the income tax law are defined several times and often in several different ways. For example, the ITAA 1936 defines ‘associate’ in over one dozen ways, the most commonly used being those in sections 26AAB and 318. The approach adopted in the rewrite of the ITAA 1936 during the 1990s was to reduce the number of different definitions of the same idea wherever possible. This is consistent with current efforts to reduce the complexity of the law by pursuing a ‘one idea, one term’ approach, which has broad community support (see, for instance, the 2006 Institute of Chartered Accountants in Australia report *Research and Recommendations on Definition of Small Business*).

2.79 Consistently with that approach, whenever a provision that uses the term ‘associate’ has been rewritten from the ITAA 1936 to the ITAA 1997, it has taken the meaning of the single definition used in the ITAA 1997 (which follows that in section 318 of the ITAA 1936 rather than that in section 26AAB). Indeed, the rewrite of section 26AAB itself now uses that new definition (see section 20-110 of the ITAA 1997).

2.80 This exposure draft replaces all instances of a definition of ‘associate’ based on section 26AAB with one based on the definition in section 318. [*Schedule 2, items 95, 103, 137, 172, 198, 218, 237 to 239, 270, 282, 284, 335, 336, 346, 375, 381, 877, 878 and 938, subsections 136(1) (definition of ‘associate’) and 159(4) of the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986); subparagraphs 82AAD(1)(a)(ii), 108(3)(c)(ii) and 109(2)(b)(ii), subsections 6F(5) (definition of ‘associate’), 26AJ(11), 51AD(1) (definition of ‘associate’), 73B(1) (definition of ‘associate’), 82AAC(3) (definition of ‘associate’), 82AAF(4) (definition of*

‘associate’), 102A(1) (definition of ‘associate’), 159GE(1) (definition of ‘associate’), 159GZZC(1) (definition of ‘associate’) and 159ZR(1) (definition of ‘associate’) and sections 139GE and 140C (definition of ‘associate’) of the ITAA 1936; subparagraphs 24(4)(a)(ii) and 25(2)(a)(ii) of the Superannuation Guarantee (Administration) Act 1992; and subsection 3(1) (definition of ‘associate’) of the Trust Recoupment Tax Assessment Act 1985]

2.81 The two definitions are essentially the same, although there are small differences that make the section 318 definition slightly wider in some respects and slightly narrower in others. These differences are summarised in the explanatory memorandum to the Tax Law Improvement Bill 1997. As that memorandum notes, the differences are minor.

Expenditure on scientific research

2.82 Section 73A of the ITAA 1936 provides for deductions for expenditure on scientific research. If the expenditure is on a research building, a balancing adjustment may assess some of the compensation the taxpayer receives when the building is sold or destroyed, in the same way balancing adjustments apply under other capital allowances (see subsection 73A(4)).

2.83 In working out the balancing adjustment, section 73A relies on the meaning of ‘the consideration receivable in respect of the disposal, loss or destruction’ in subsection 59(3) of the ITAA 1936, an inoperative provision that is repealed by this exposure draft. This exposure draft removes references to that term and instead points to the meaning of ‘termination value’ in section 40-300 of the ITAA 1997. *[Schedule 2, items 211 to 215, subsections 73A(4) and (6) of the ITAA 1936]*

2.84 The two expressions have essentially the same meanings for the purposes of research buildings. One formal difference is that, when a taxpayer disposes of another asset together with the research building, section 40-310 of the ITAA 1997 would apportion the consideration between the assets on a reasonable basis, while section 59 relies on the Commissioner’s apportionment (compare section 40-310 of the ITAA 1997 with subparagraph 59(5)(a)(ii) of the ITAA 1936). In practice, there would be no difference.

2.85 Another small difference is that section 59 provides for the market value to be what the Commissioner thinks is fair and reasonable, when there is insufficient evidence of the real market value, while section 40-300 assumes that the market value can always be determined. Again, there would be no difference in practice because the Courts have shown a willingness to determine a market value even in difficult cases. Even if they had not, there would seldom be insufficient evidence of the market value of real property like a research building.

Rewrites

2.86 This exposure draft includes a small number of rewrites of tax law provisions. These fall into two types.

2.87 First, there are cases where a continuing provision relies on a calculation, concept or term created by a repealed provision. If that calculation, concept or term is still needed by the continuing provision, this exposure draft usually removes the reference to the repealed provision's calculation, term or concept and incorporates it directly into the continuing provision.

Example 2.14: Definitions of 'employee' and 'employer'

Section 16 of the ITAA 1936 requires taxpayers' information to be kept secret. Paragraph 16(4)(ga) creates an exception to allow the Commissioner to provide the Commonwealth Statistician with industry information about employers, including the numbers of their employees. The paragraph relies on the meaning of the terms 'employer' and 'employee' given by section 221A of the ITAA 1936, a provision repealed by this exposure draft. To replace them, this exposure draft moves definitions of those terms directly into section 16. *[Schedule 2, items 138 and 139, subsection 16(4AA) of the ITAA 1936, definitions of 'employee' and 'employer']*

2.88 Secondly, some Divisions of the ITAA 1936 are inoperative except for a single section. In most of those cases, this exposure draft repeals the whole Division and rewrites the single operative provision, either into the ITAA 1997 or into a different place in the ITAA 1936. That will mean that Divisions are not left with only one section in them and sometimes will also mean that the Division's quite extensive definitions do not have to be kept to support that one section.

Example 2.15: Credits to cancel double taxation

Division 4 of Part VI of the ITAA 1936 has mostly been inoperative since June 2000. However, section 221YSA in that Division is still operative. It provides for credits to cancel the effect of withholding tax on a payment of interest that has already been taxed under Division 16E of Part III. So that the whole Division can be repealed, section 221YSA is rewritten into Division 11A. *[Schedule 2, item 329, section 128NBA of the ITAA 1936]*

2.89 The same approach has been taken with lengthy sections of the ITAA 1936 (eg, section 26) that are inoperative but for one or two paragraphs. This exposure draft repeals those sections and rewrites the operative paragraphs into the ITAA 1997.

Do the rewrites change the law?

2.90 There is no change to the substantive content of any of the rewritten provisions. That result is reinforced by section 1-3 of the ITAA 1997, which explains that rewritten material expressing the same idea as the original material, but in a different form, is not to be taken to be different because of the change in form.

Effect on rulings

2.91 Repealing provisions and rewriting them as another provision elsewhere obviously has implications for rulings issued by the Commissioner that refer to the repealed provision rather than to the rewrite.

2.92 Those implications are dealt with by section 357-85 in Schedule 1 to the TAA 1953. That section provides that a ruling about a repealed provision is taken to also be a ruling about the rewrite to the extent that the ideas are the same. Over time, of course, the Commissioner may remake his rulings to refer to the new provisions but, in the interim, section 357-85 ensures that the existing rulings will bind the Commissioner in relation to the rewrite.

Local government election expenses

2.93 Section 74A of the ITAA 1936 allows a deduction of up to \$1,000 for expenses incurred in contesting a local government election. Section 74B ensures that the deduction does not include expenditure incurred in providing non-public entertainment. ‘Providing entertainment’ takes the meaning given by section 51AE (see subsection 74B(3)), which is an inoperative provision that is being repealed.

2.94 To avoid the need to either retain the inoperative section 51AE or to rewrite its definition of ‘providing entertainment’, this exposure draft repeals sections 74A and 74B. It rewrites section 74A into the ITAA 1997 [*Schedule 2, item 635, section 25-65 of the ITAA 1997*]. That rewrite picks up the effect of section 25-70 (a version of section 74B, rewritten in 1997 to support section 25-60), and extends it to also cover entertainment expenses incurred in local government elections [*Schedule 2, item 636, subsection 25-70(1) of the ITAA 1997*].

2.95 The definition of ‘local governing body’ in the ITAA 1997, which presently relies on the meaning given by section 74A in the ITAA 1936, is amended to move the content of that definition directly into the ITAA 1997. [*Schedule 2, item 737, subsection 995-1(1) of the ITAA 1997, definition of ‘local governing body’*]

2.96 The amendments to accommodate the rewrite of section 74A of the ITAA 1936 apply from 2006-07 and treat expenditure deducted under section 74A as if it had been deducted under the rewrite. That ensures that the \$1,000 limit applies properly to expenditure already partly deducted under section 74A. [*Schedule 2, item 635, section 25-65 of the ITAA 1997*]

Exempt foreign income

2.97 Subparagraphs 23(a)(ii) and (vi) and paragraphs 23(b), (c), (u), (v) and (ya) of the ITAA 1936 are rewritten into a tabular format in the ITAA 1997. [*Schedule 2, items 719 and 726, section 768-100 and Subdivision 842-B of the ITAA 1997*]

2.98 Those rewrites largely reproduce the wording of the original paragraphs and subparagraphs, except that they exempt amounts of ordinary income and statutory income rather than just ‘income’. This is consistent with the terminology used in the ITAA 1997 and removes an ambiguity present in the ITAA 1936 provisions.

2.99 The rewrite of subparagraph 23(a)(vi) (which exempts the official salary and foreign sourced income of an officer of a British Commonwealth country who is in Australia under an inter-governmental arrangement) replaces a reference to an arrangement with the Commonwealth or a State with one to an ‘Australian government agency’ [*Schedule 2, item 719, item 2 in the table in section 768-100 of the ITAA 1997*]. As well as covering the Commonwealth and the States, this term also covers the Territories and the authorities of all those governments. Since subparagraph 23(a)(vi) was originally enacted, the Territories have acquired autonomous governments and international agreements of this sort are no longer always entered into by governments directly. The rewrite reflects those changes by explicitly covering agreements entered into by Territories and governmental authorities.

2.100 Unlike subparagraph 23(c)(iv) (which exempts the income of representatives of various societies attending conferences in Australia), its rewrite mentions *international* conferences but not *Commonwealth* conferences [*Schedule 2, item 726, item 3 in the table in section 842-100 of the ITAA 1997*]. Analysis of the history of the paragraph shows that these conferences were British Commonwealth conferences, not Commonwealth of Australia conferences. On that basis, they are clearly covered by the modern understanding of ‘international’ conferences.

2.101 The rewrite of subparagraph 23(c)(v) (which exempts the income of foreign press who are in Australia to report on visits by foreign government representatives or on international conferences) uses the expression ‘media’ rather than the original ‘press’. This change in

terminology is based on the view that the subparagraph (enacted in 1936) was intended to extend to all foreign journalists covering the events. The change removes any possible argument that the exemption deliberately distinguishes between print and other journalists. *[Schedule 2, item 726, item 4 in the table in section 842-100 of the ITAA 1997]*

2.102 The rewrite of paragraph 23(v) (which exempts the income of foreigners in Australia to help with our defence) changes the precondition that their income must not be exempt in their own country, from being a matter for the Treasurer's opinion to being a question of fact. This change reflects the view that whether someone is exempt from tax is a matter of fact and law rather than of judgment. However, whether or not the foreigner is here to help with Australia's defence is a matter of judgment, so the rewrite still leaves that for the Treasurer to determine. *[Schedule 2, item 726, item 6 in the table in section 842-100 of the ITAA 1997]*

2.103 The rewrite of paragraph 23(ya) (which exempts foreign students in Australia on any Commonwealth scholarship they receive) specifically mentions that the exemption only covers foreign residents. This was done for reasons of clarity. It is clear from the original provision's wording and context, that it did not exempt the scholarships of Australian residents. Their scholarships were instead exempted by paragraph 23(z), which was rewritten as section 51-10 of the ITAA 1997 in 1997. *[Schedule 2, item 726, item 7 of the table in section 842-100 of the ITAA 1997]*

Foreign superannuation funds

2.104 Paragraph 23(jb) of the ITAA 1936 (which exempts the interest and dividends of foreign superannuation funds) is rewritten into the dividend, interest and royalty withholding tax provisions (Division 11A of Part III of the ITAA 1936). An amendment to section 128D of the ITAA 1936 ensures that interest and dividends paid to foreign superannuation funds are non-assessable non-exempt income of the fund. *[Schedule 2, items 321, 327 and 328, paragraph 128B(3)(jb) and section 128D of the ITAA 1936]*

2.105 The rewrite does not reproduce the words 'provident, benefit, superannuation or retirement fund' from paragraph 23(jb), because they are already within the definition of 'foreign superannuation fund' in subsection 6(1) of the ITAA 1936.

2.106 An existing rule in subparagraph 128B(3)(a)(i) exempts from withholding tax the amounts described by paragraph 23(jb), but only if the receipt is exempt in the country where the superannuation fund is resident. That existing rule is removed and incorporated into the rewrite instead. *[Schedule 2, items 319 and 321, subparagraph 128B(3)(a)(i) and paragraph 128B(3)(jb) of the ITAA 1936]*

2.107 These amendments result in a small change to the existing treatment. Amounts covered by paragraph 23(jb) are exempt income but amounts covered by section 128B are generally non-assessable non-exempt income (see section 128D). Unlike exempt income, non-assessable non-exempt income does not reduce a taxpayer's losses for tax purposes. Making foreign superannuation funds' dividend and interest payments, non-assessable non-exempt income is consistent with the treatment of those payments for other foreign residents. In practice though, the change is unlikely to affect foreign superannuation funds and would only be to their advantage if it did.

World War II compensation

2.108 Paragraphs 23(kc) and (kca) and section 23AL of the ITAA 1936 are rewritten into the ITAA 1997. [*Schedule 2, item 719, section 768-105 of the ITAA 1997*]

2.109 Those provisions provide Australian residents with an exemption for various foreign compensation payments they receive relating to World War II.

2.110 The rewrite amalgamates the three provisions into a single section. It generally follows the format of section 23AL (the most general of the three). For instance, it exempts all compensation 'payments' without mentioning specific types, such as pensions, annuities or allowances. It also does not specifically cover payments that are based on treating a period when someone was the victim of persecution as a period of contribution to a fund, on the basis that loss of the ability to contribute to a fund is a 'detriment' that the general words of the rewrite would cover. The rewrite includes a note to that effect. [*Schedule 2, item 719, note to subsection 768-105(1) of the ITAA 1997*]

Allowances for services

2.111 Section 26 of the ITAA 1936 is repealed by this exposure draft as an inoperative provision. Some of the paragraphs are still operative though and they are rewritten into the ITAA 1997. Two of them are paragraphs 26(e) and 26(ea).

2.112 Paragraphs 26(e), which includes in a taxpayer's assessable income any allowances (in money or in kind) provided in relation to the taxpayer's employment or to services the taxpayer renders. At one time, this paragraph was significant in the income tax law but most of its role was supplanted by the fringe benefits tax law in 1986. It does, however, still have a small residual operation.

2.113 The rewrite no longer excludes fringe benefits and exempt fringe benefits from its scope, on the basis that any fringe benefits and exempt fringe benefits that the rewrite covers will still be exempt income or non-assessable non-exempt income under section 23L of the ITAA 1936. *[Schedule 2, item 610, section 15-2 of the ITAA 1997]*

2.114 The rewrite also incorporates the effect of paragraph 26(ea) (which assesses the value of allowances provided to members of the defence forces). It does so without reproducing the current list of examples of particular forms of allowance, on the basis that the word 'allowances' already covers all forms. *[Schedule 2, item 610, section 15-2 of the ITAA 1997]*

Reimbursed car expenses

2.115 This exposure draft rewrites paragraph 26(eaa) of the ITAA 1936 (which includes in assessable income any car expense reimbursement that is an exempt fringe benefit). *[Schedule 2, item 611, section 15-70 of the ITAA 1997]*

Life insurance bonuses

2.116 The final operative paragraph of section 26 that this exposure draft rewrites is paragraph 26(i). It includes life assurance bonuses (except reversionary bonuses) in assessable income. The rewrite removes an ambiguity in the original paragraph by making clear that it only assesses *life assurance* bonuses, rather than all bonuses. *[Schedule 2, item 611, section 15-75 of the ITAA 1997]*

Superannuation levies and charges

2.117 Section 51 of the ITAA 1936 (which was the general deduction provision before 1998) is largely inoperative. However, subsections (8) and (9) (which deny deductions for the superannuation guarantee charge and the late lodgement amount of the superannuation supervisory levy) are still operative and so are rewritten into the ITAA 1997. *[Schedule 2, item 637, sections 26-90 and 26-95 of the ITAA 1997]*

Tax-related expenses by deceased estates

2.118 Section 69 of the ITAA 1936 deals with deductions for tax-related expenses. It was largely rewritten into the ITAA 1997 in 1997 but subsection (7) (about the deceased's final assessment including deductions incurred by the estate after the death) was not included. This exposure draft rewrites subsection (7). *[Schedule 2, item 634, subsection 25-5(8) of the ITAA 1997]*

Does ‘income tax’ include withholding tax?

2.119 Subsections 128A(4) and 128U(2) of the ITAA 1936 provide that, except for a number of listed provisions, the expressions ‘income tax’ and ‘tax’, when used in the ITAA 1936, do not include either withholding tax or mining withholding tax. This exposure draft repeals all the provisions mentioned in each list of exceptions. Rather than removing those lists and leaving the two subsections just to limit the meaning of ‘income tax’, this exposure draft repeals those subsections and moves the limitations directly into the definition of ‘income tax’ in subsection 6(1) of the ITAA 1936. *[Schedule 1, item 118, subsection 128A(4) of the ITAA 1936; Schedule 2, items 119 and 331, subsections 6(1) (definition of ‘income tax or tax’) and 128U(2) of the ITAA 1936]*

PAYG and local governing bodies

2.120 This exposure draft repeals large portions of Part VI of the ITAA 1936 (which contains the tax collection provisions) because they have been inoperative since 1 July 2000 when the same rules were rewritten into Schedule 1 to the TAA 1953 in 1999.

2.121 One part of Part VI that is still operative is section 221B. Section 221B allows councils and other local governing bodies to choose, in effect, to make PAYG withholding payments for the remuneration paid to their members. If they make that choice, various other consequences also apply to the local governing body as if its members were employees (eg, for purposes of the fringe benefits tax law and the child support law).

2.122 This exposure draft rewrites section 221B into the TAA 1953. *[Schedule 2, item 921, section 446-5 of Schedule 1 to the TAA 1953]*

Tax File Number

2.123 Another part of Part VI of the ITAA 1936 that is not inoperative is Subdivision C of Division 3B (which deals with collecting the tax payable for not quoting a tax file number for investments such as deferred interest securities). Rather than leave it in place, this exposure draft repeals all of Division 3B and rewrites Subdivision C into the TAA 1953. *[Schedule 1, item 151, Division 3B of Part VI of the ITAA 1936; Schedule 2, item 906, Subdivision 14-B of Schedule 1 to the TAA 1953]*

2.124 The rewritten provisions reproduce the effect of Subdivision C, although they do it in a way that is easier to understand and more consistent with the existing PAYG withholding rules. Indeed, the rewrite relies on existing provisions in the TAA 1953 rather than rewriting subsection 221YHZX(1) and sections 221YHZXB and 221YHZY of the ITAA 1936. *[Schedule 2, items 906 and 907, paragraph 14-65(b) and subsection 16-70(3) of Schedule 1 to the TAA 1953]*

2.125 Section 221YHZZC of the ITAA 1936, which provides that Subdivision C binds the Crown in its various capacities, is not rewritten. The Crown (in each of its capacities) is generally bound by the provisions in Schedule 1 to the TAA 1953 and the specific exclusion in the rewrite of the Commonwealth and its untaxable entities (because the Commonwealth cannot tax itself) leaves no room to infer that the Crown in its other capacities (eg, the States and Territories) was not meant to be bound. For those reasons, it was not necessary to rewrite section 221YHZZC.

Credits for withholding tax on qualifying security payments

2.126 Another provision in Part VI that is still operative is section 221YSA. It deals with credits to remove double taxation if an amount of accrued interest that has been included in a taxpayer's assessable income by Division 16E of Part III is also subject to withholding tax because the taxpayer is a foreign resident when the interest is paid.

2.127 To allow Division 4 of Part VI to be repealed, section 221YSA is rewritten into Division 11A of Part III (which contains the rules about interest withholding tax). *[Schedule 2, item 329, section 128NBA of the ITAA 1936]*

Gold mining provisions

2.128 Division 16H of Part III of the ITAA 1936 deals with the removal, after 1990, of the exemption of income from gold mining. Along with other provisions that deal with that former exemption, this exposure draft repeals Division 16H. *[Schedule 1, items 35, 40 and 134, paragraph 23(o), section 23C and Division 16H of Part III of the ITAA 1936]*

2.129 Subdivision D of Division 16H (which deals with the capital gains tax consequences of assets used in gold mining before 1991) may still be operative because the gold mining assets it deals with might still be in use. Therefore, Subdivision D is rewritten by this exposure draft. *[Schedule 2, item 807, section 112-100 of the IT (TP) Act 1997]*

2.130 The rewrite is in the IT (TP)Act 1997, rather than in the ITAA 1997, because the provision affects only a small potential class of assets and only for the short time into the future before all these assets will be finally disposed of, lost or abandoned by the gold miners.

Privatisations

2.131 Subdivision 57-I in Schedule 2D to the ITAA 1936 deals with how the capital allowance provisions apply to the plant of an entity that stopped being exempt from income tax before 4 August 1997 (see section

57-130 of Schedule 2D). Subdivision 57-J of that Schedule deals with how the capital allowance provisions apply to other capital assets of such an entity. Division 58 of the ITAA 1997 covers assets under all later privatisations.

2.132 Subdivisions 57-I and 57-J provide, in essence, that the depreciable assets of a privatising entity are brought into the tax system at the depreciated values they would have had if the income tax law had applied to the entity during the time it owned the assets.

2.133 Subdivisions 57-I and 57-J contain many references to capital allowance provisions in the ITAA 1936 and the ITAA 1997 that are repealed by this exposure draft. One approach could have been to change all those references to ‘former’ provisions. However, it would have been difficult for those entities to apply the law to their assets for the potentially many years during which they are still to be written off.

2.134 Therefore, this exposure draft instead repeals Subdivision 57-I and expands Subdivision 57-J to cover all the depreciable assets of those entities. *[Schedule 1, item 177, Subdivision 57-I in Schedule 2D to the ITAA 1936; Schedule 2, items 507 and 510, section 57-90 and subsection 57-130(1) in Schedule 2D to the ITAA 1936]*

2.135 Subdivision 57-J is amended so that, in working out the depreciated values of its assets when it privatised, an entity would apply Division 40 of the ITAA 1997 instead of the old depreciation provisions. In practice, that will make little, if any, difference to the values but will mean that the law supporting them will be simpler to apply and easier to find. It is the same approach used for entities that have privatised since 4 August 1997, which are instead covered by Division 58 of the ITAA 1997. *[Schedule 1, items 178 and 179, subsection 57-85(3) in Schedule 2D to the ITAA 1936, items 2 to 6, 7A, 8, 10 to 12 and 14A to 17 in the table; Schedule 2, item 506, subsection 57-85(3) in Schedule 2D to the ITAA 1936, item 19 in the table]*

Other changes to maintain outcomes

2.136 The depreciation provisions of the ITAA 1936 were rewritten into the ITAA 1997 in 1997 and those rewrites were themselves rewritten into the uniform capital allowances rules in Division 40 of the ITAA 1997 in 2001.

2.137 This history suggests that the original depreciation provisions must be inoperative. But, in fact, they still operate for two limited categories that were never transitioned into the ITAA 1997: trading ships and surrendered firearms (see subsections 53I(2) and (3) of the ITAA 1936).

Trading ships

2.138 The original cost of trading ships has been fully deducted by now because it was eligible for a 5-year write-off. However, the original depreciation provisions still apply to writing-off any later improvements to the ships and to the treatment of any proceeds from their eventual sale.

2.139 To preserve those treatments when the original depreciation provisions are repealed from the ITAA 1936, this exposure draft includes provisions in the IT (TP) Act 1997 to ensure that writing-off the cost of improvements to trading ships, and how the ships are treated on disposal, are dealt with by the uniform capital allowance rules in Division 40 of the ITAA 1997. [*Schedule 2, item 779, section 40-830 of the IT (TP) Act 1997*]

Surrendered firearms

2.140 The Commonwealth entered into an agreement with the States and Territories in 1996 to require certain firearms to be surrendered and to provide compensation for those who surrendered them. Because firearms might have been depreciated, some part of the compensation could have been assessable income under the depreciation provisions of the ITAA 1936. Subsection 59(2AAA) of that Act was enacted to prevent any of the compensation being assessable under the depreciation provisions, and continues to do that today because of subsection 53I(3).

2.141 To maintain the effect of subsection 59(2AAA) when the depreciation provisions of the ITAA 1936 are repealed, this exposure draft includes a rule in the IT (TP) Act 1997 replicate that effect [*Schedule 2, item 776, section 40-289 of the IT (TP) Act 1997*].

Chapter 3

Future repeal of inoperative provisions

Outline of chapter

3.1 Schedule 3 to this exposure draft repeals the provisions in the income tax laws that have been identified as becoming inoperative in the immediate future. Schedule 4 makes consequential amendments to various pieces of Commonwealth legislation that will be required when those inoperative provisions are repealed.

Context of amendments

3.2 It became obvious in examining the income tax law for inoperative provisions that some provisions were not yet inoperative but would become so in the immediate future.

3.3 The more inoperative material that is repealed, the greater the benefits of the measure because users of the law can have greater faith that the provisions they read are still operative. Opportunities to clean up the law by removing inoperative provisions only come along infrequently, so it is worth taking this opportunity to deal with material that can be identified as about to become inoperative.

Detailed explanation of new law

3.4 The provisions listed in Schedule 3 to this exposure draft are repealed on 1 January 2008. [*Schedule 3, items 1 to 16*]

Timing

3.5 These provisions become inoperative at different times. Some become inoperative because they say that they only apply before a stated future date. Some become inoperative because the transactions they cover will have expired within the next year or so.

3.6 One possibility, therefore, would have been to enact legislation to repeal each of the provisions as it reached its own inoperative date. This exposure draft opts instead to repeal all of these future inoperative provisions at a *single* future date: 1 January 2008.

3.7 Having just one date for repealing all of the provisions identified as becoming inoperative in the immediate future makes it easier for users and publishers of the income tax law to keep track of when the provisions are repealed.

3.8 1 January 2008 was chosen as that single date because it is the first day after the 2006-07 income year ends for taxpayers with late balancing accounting periods. The last of the future inoperative provisions becomes inoperative at the end of that income year.

Savings, application and transitional provisions

3.9 The commencement date for the repeal and amendment of provisions under Schedules 3 and 4 of this exposure draft is 1 January 2008 *[subclause 2(1), items 4 and 5 of the table]*. For assessment cases, where it is possible that the timing of the repeal could matter, both the repeal and any consequential amendments apply from the start of the 2007-08 income year *[Schedule 6, item 4(a)]*.

3.10 For other cases, the repeal and consequential amendments apply to any states of affairs and acts done after commencement on 1 January 2008. *[Schedule 6, item 4(b)]*

3.11 The savings provisions applying to the repeal of the inoperative Acts and the related consequential amendments are described in paragraphs 2.39 to 2.52.

Consequential amendments

3.12 Various amendments are made to a number of Commonwealth statutes to remove references to the inoperative provisions repealed by Schedule 3. *[Schedule 4, items 1 to 12]*

Chapter 4

Repealing current inoperative Acts

Outline of chapter

4.1 Schedule 5 to this exposure draft repeals the Acts in the tax laws that have been identified as inoperative. Schedule 5 also makes consequential amendments to various pieces of Commonwealth legislation required because those inoperative Acts are repealed.

Context of amendments

4.2 For reasons similar to those expressed in Chapter 2, Acts (like provisions of Acts) are also inoperative when they no longer apply to taxpayers, either because they have no effect after a date in the past or because all the transactions or events they did affect have now concluded.

Example 4.1: Examples of inoperative Acts

With the introduction of the goods and services tax on 1 July 2000, the sales tax law shortly thereafter became inoperative as it generally ceased to apply to new transactions after that time.

Commonwealth payroll tax ceased to apply to wages paid after 1 September 1971 which is the date the Commonwealth transferred responsibility for payroll tax to the States. Shortly after that date the payroll tax Acts become inoperative as they had no future application to taxpayers.

4.3 Over 1,500 pages of inoperative Acts have been repealed, resulting in a significant reduction in size of the Commonwealth statute book.

Summary of new law

4.4 The Acts listed in Part 1 of Schedule 5 to this exposure draft are repealed. In each case, the Act was analysed as having no operation for future years or as being so unlikely to have an operation for future years that it was inoperative in any practical sense.

Detailed explanation of new law

4.5 The Acts listed in Part 1 of Schedule 5 to this exposure draft are repealed on Royal Assent. [*Schedule 5, item 1*]

Crimes (Taxation Offences) Act 1980

4.6 The *Crimes (Taxation Offences) Act 1980* (Tax Crimes Act) makes it an offence to enter into arrangements that are intended to avoid paying tax debts.

4.7 The Tax Crimes Act applies to most Commonwealth taxes administered by the Commissioner of Taxation (Commissioner). It does that by setting up the model offences in relation to the pre-1992 sales tax law in one part and then, in separate parts, applying the sales tax part to each other tax as if, the words ‘old sales tax’ were replaced by ‘income tax’, ‘fringe benefits tax’ and so on.

4.8 In order to remove the references to the inoperative Acts from the application of the Tax Crimes Act, the model offence provisions are changed so that the base for the model is income tax instead of the pre-1992 sales tax law. As a result of changing the base in the model provisions, the rules applying that model to other taxes are also modified. [*Schedule 5, items 47 to 113*]

4.9 The definition of ‘Australian installation’ in subsection 3(1) of the Tax Crimes Act is amended. Instead of deriving its meaning from the sales tax law it now refers to an equivalent definition in the *Customs Act 1901*. Despite some differences in expression, the meaning in the sales tax law is the same as that in the *Customs Act 1901*.

4.10 Despite the numerous amendments required to remove the redundant references, the Tax Crimes Act still operates to create the same offences as it did before the amendments.

Savings, application and transitional provisions

4.11 The commencement date for the repeal and amendment of provisions under Schedule 5 of this exposure draft is when Royal Assent is given [*subclause 2(1), item 6 of the table*]. The repeals and consequential amendments apply to any states of affairs and acts done after commencement. [*Schedule 6, item 5*]

4.12 The savings provisions applying to the repeal of the inoperative Acts and the related consequential amendments are described in paragraphs 2.39 to 2.52.

Consequential amendments

4.13 Various amendments are made to a number of Commonwealth statutes to remove references to provisions in redundant Acts and their related concepts. *[Schedule 5, items 2 to 169]*

Chapter 5

Finding tables

Outline of chapter

5.1 This chapter contains *finding tables* to enable you to locate quickly the provisions in the *Income Tax Assessment Act 1997* (ITAA 1997), the *Taxation Administration Act 1953* (TAA 1953) or the *Income Tax Assessment Act 1936* (ITAA 1936) (the new law) that correspond to a particular provision repealed from the ITAA 1936 (the old law) and vice versa.

Finding table — old law to new law

5.2 In the finding table:

- *omitted* means that the provision of the old law has not been included in the new law; and
- *transitional* means that effect of the provision of the old law has been picked up by a provision in this exposure draft or in the *Income Tax (Transitional Provisions) Act 1997*.

<i>Old law</i>	<i>New law</i>
23(a)(ii)	768-100 of the ITAA 1997 (item 1 in the table)
23(a)(vi)	768-100 of the ITAA 1997 (item 2 in the table)
23(b)	842-100 of the ITAA 1997 (item 1 in the table)
23(c)	842-100 of the ITAA 1997 (items 2 to 4 in the table)
23(jb)	128B(3)(jb) of the ITAA 1936
23(kc)	768-105 of the ITAA 1997
23(kca)	768-105 of the ITAA 1997
23(kd)	omitted

<i>Old law</i>	<i>New law</i>
23(kf)	omitted
23(kg)	omitted
23(o)	omitted
23(pa)	omitted
23(r)	omitted
23(u)	842-100 of the ITAA 1997 (item 5 in the table)
23(v)	842-100 of the ITAA 1997 (item 6 in the table)
23(ya)	842-100 of the ITAA 1997 (item 7 in the table)
23AL	768-105 of the ITAA 1997
26(e)	15-2 of the ITAA 1997
26(ea)	15-2 of the ITAA 1997
26(eaa)	15-70 of the ITAA 1997
26(i)	15-75 of the ITAA 1997
51(2B)	transitional
51(7)	omitted
51(8)	26-90 of the ITAA 1997
51(9)	26-95 of the ITAA 1997
51(10)	omitted
51(11)	omitted
57AM	transitional
69(7)	25-5(8) of the ITAA 1997
74A	25-65 of the ITAA 1997
159GZZZBB	transitional
159GZZZBC	transitional
159GZZZBD	transitional
159GZZZBE	transitional
221B	446-5 in Schedule 1 to the TAA 1953
221YHZP	995-1 of the ITAA 1997
221YHZQ	14-55(1) and (6) in Schedule 1 to the TAA 1953
221YHZR	14-55(1) in Schedule 1 to the TAA 1953

<i>Old law</i>	<i>New law</i>
221YHZS	14-55(2) in Schedule 1 to the TAA 1953
221YHZT	14-55(3) and (4)(a) in Schedule 1 to the TAA 1953
221YHZU	14-55(4)(b) in Schedule 1 to the TAA 1953
221YHZV	14-60 in Schedule 1 to the TAA 1953
221YHZW	14-55(5) in Schedule 1 to the TAA 1953
221YHZX(1)	16-70 and 16-80 in Schedule 1 to the TAA 1953
221YHZX(2)	omitted
221YHZX(3)	14-65, 18-15(1), 18-20 and 18-25 in Schedule 1 to the TAA 1953
221YHZXA	14-65, 18-15(1), 18-20 and 18-25 in Schedule 1 to the TAA 1953
221YHZXB	16-70 and 16-80 in Schedule 1 to the TAA 1953
221YHZY	14-65 and 18-80 in Schedule 1 to the TAA 1953
221YHZZ	14-75 in Schedule 1 to the TAA 1953
221YHZZA	omitted
221YHZZB	14-85 in Schedule 1 to the TAA 1953
221YHZZC	omitted
221YSA	128NBA of the ITAA 1936
221ZXL	omitted
259	transitional

Finding table — new law to old law

<i>New law</i>	<i>Old law</i>
15-2 of the ITAA 1997	26(e)
15-2 of the ITAA 1997	26(ea)
15-70 of the ITAA 1997	26(eaa)

<i>New law</i>	<i>Old law</i>
15-75 of the ITAA 1997	26(i)
26-90 of the ITAA 1997	51(8)
26-95 of the ITAA 1997	51(9)
25-5(8) of the ITAA 1997	69(7)
25-65 of the ITAA 1997	74A
128NBA of the ITAA 1936	221YSA
768-100 of the ITAA 1997 (item 1 in the table)	23(a)(ii)
768-100 of the ITAA 1997 (item 2 in the table)	23(a)(vi)
842-100 of the ITAA 1997 (item 1 in the table)	23(b)
842-100 of the ITAA 1997 (items 2 to 4 in the table)	23(c)
128B(3)(jb) of the ITAA 1936	23(jb)
768-105 of the ITAA 1997	23(kc)
768-105 of the ITAA 1997	23(kca)
842-100 of the ITAA 1997 (item 5 in the table)	23(u)
842-100 of the ITAA 1997 (item 6 in the table)	23(v)
842-100 of the ITAA 1997 (item 7 in the table)	23(ya)
768-105 of the ITAA 1997	23AL
995-1 of the ITAA 1997	221YHZZ
446-5 in Schedule 1 to the TAA 1953	221B
14-55(1) and (6) in Schedule 1 to the TAA 1953	221YHZQ
14-55(1) in Schedule 1 to the TAA 1953	221YHZZ
14-55(2) in Schedule 1 to the TAA 1953	221YHZZ
14-55(3) and (4)(a) in Schedule 1 to the TAA 1953	221YHZZ
14-55(4)(b) in Schedule 1 to the TAA 1953	221YHZZ
14-55(5) in Schedule 1 to the TAA 1953	221YHZZ

<i>New law</i>	<i>Old law</i>
14-60 in Schedule 1 to the TAA 1953	221YHZV
14-65, 18-15(1), 18-20 and 18-25 in Schedule 1 to the TAA 1953	221YHZX(3)
14-65, 18-15(1), 18-20 and 18-25 in Schedule 1 to the TAA 1953	221YHZXA
14-65 and 18-80 in Schedule 1 to the TAA 1953	221YHZY
16-70 and 16-80 in Schedule 1 to the TAA 1953	221YHZXB
14-75 in Schedule 1 to the TAA 1953	221YHZZ
14-85 in Schedule 1 to the TAA 1953	221YHZZB
16-70 and 16-80 in Schedule 1 to the TAA 1953	221YHZX(1)

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Clauses

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Clause 2	2.58, 3.9, 4.11

Schedule 1: Inoperative provisions repealed on Royal Assent

<i>Bill reference</i>	<i>Paragraph number</i>
Item 35, paragraph 23(o) of the ITAA 1936	2.128
Item 40, section 23C of the ITAA 1936	2.128
Item 134, Division 16H of Part III of the ITAA 1936	2.128
Item 42, sections 24BA and 24BB of the ITAA 1936	2.20
Item 118, subsection 128A(4) of the ITAA 1936	2.119
Item 149, section 215 of the ITAA 1936	2.55, 2.57
Item 150, section 220 of the ITAA 1936	2.57
Item 151, Division 3B of Part VI of the ITAA 1936	2.123
Item 162, section 407 of the ITAA 1936	2.72
Item 177, Subdivision 57-I in Schedule 2D to the ITAA 1936	2.134
Items 178 and 179, subsection 57-85(3) in Schedule 2D to the ITAA 1936, items 2 to 6, 7A, 8, 10 to 12 and 14A to 17 in the table	2.135

Schedule 2: Consequential amendments relating to Schedule 1 repeals

<i>Bill reference</i>	<i>Paragraph number</i>
Item 95, subsection 136(1) (definition of 'associate') of the FBTA 1986	2.80
Item 103, subsection 159(4) of the FBTA 1986	2.80
Item 111, subsection 6(1) of the ITAA 1936, definition of 'child'	2.76

Bill reference	Paragraph number
Item 119, subsection 6(1) (definition of 'income tax or tax') of the ITAA 1936	2.119
Item 137, subsection 6F(5) (definition of 'associate') of the ITAA 1936	2.80
Items 138 and 139, subsection 16(4AA), definitions of 'employee' and 'employer' of the ITAA 1936	2.87
Item 152, subsection 24B(1) of the ITAA 1936, definition of 'prescribed Territory'	2.20
Items 153 to 158, subsections 24L(5), 24P(5), paragraph 24P(1)(b) and subparagraphs 24P(1)(c)(i), (iii) and (iv) of the ITAA 1936	2.20
Items 164 and 165, paragraphs 26AD(12)(b) and 26AD(13)(b) of the ITAA 1936	2.20
Item 172, subsection 26AJ(11) of the ITAA 1936	2.80
Item 176 and 177, subsections 27A(14) and 27A(14A) of the ITAA 1936	2.20
Item 198, subsection 51AD(1) (definition of 'associate') of the ITAA 1936	2.80
Items 211 to 215, subsections 73A(4) and (6) of the ITAA 1936	2.83
Item 218, subsection 73B(1) (definition of 'associate') of the ITAA 1936	2.80
Items 237 to 239, subsection 82AAC(3) (definition of 'associate'), subparagraph 82AAD(1)(a)(ii) and subsection 82AAF(4) (definition of 'associate') of the ITAA 1936	2.80
Item 267, subsection 102AAW(1) of the ITAA 1936	2.71
Item 270, subsection 102A(1) (definition of 'associate') of the ITAA 1936	2.80
Item 282, subparagraph 108(3)(c)(ii) of the ITAA 1936	2.80
Item 284, subparagraph 109(2)(b)(ii) of the ITAA 1936	2.80
Item 309, subsection 124ZM(1) of the ITAA 1936	2.74
Items 319 and 321, subparagraph 128B(3)(a)(i) and paragraph 128B(3)(jb) of the ITAA 1936	2.106
Items 321, 327 and 328, paragraph 128B(3)(jb) and section 128D of the ITAA 1936	2.104
Item 329, section 128NBA of the ITAA 1936	2.88, 2.127
Item 331, subsection 128U(2) of the ITAA 1936	2.119
Item 335, section 139GE (definition of 'associate') of the ITAA 1936	2.80
Item 336, section 140C (definition of 'associate') of the ITAA 1936	2.80

<i>Bill reference</i>	<i>Paragraph number</i>
Item 346, subsection 159GE(1) (definition of 'associate') of the ITAA 1936	2.80
Item 375, subsection 159GZZZC(1) (definition of 'associate') of the ITAA 1936	2.80
Item 381, subsection 159ZR(1) (definition of 'associate') of the ITAA 1936	2.80
Item 506, item 19 in the table in subsection 57-85(3) in Schedule 2D to the ITAA 1936,	2.135
Items 507 and 510, section 57-90 and subsection 57-130(1) in Schedule 2D to the ITAA 1936	2.134
Item 610, section 15-2 of the ITAA 1997	2.113, 2.114
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Item 726, items 3, 4, 6 and 7 in the table in section 842-100 of the ITAA 1997	2.97, 2.100, 2.101, 2.102, 2.103
Item 737, subsection 995-1(1) of the ITAA 1997, definition of 'local governing body'	2.95
Item 776, section 40-289 of the IT (TP) Act 1997	2.141
Item 779, section 40-830 of the IT (TP) Act 1997	2.139
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Items 877 and 878, subparagraphs 24(4)(a)(ii) and 25(2)(a)(ii) of the <i>Superannuation Guarantee (Administration) Act 1992</i>	2.80
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Item 921, section 446-5 of Schedule 1 to the TAA 1953	2.64, 2.122
Item 938, subsection 3(1) (definition of 'associate') of the <i>Trust Recoupment Tax Assessment Act 1985</i>	2.80

Schedule 3: Inoperative provisions repealed on 1 January 2008

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<i>Bill reference</i>	<i>Paragraph number</i>
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