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No. 175 2002–03

## Taxation Laws Amendment Bill (No. 6) 2003

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INFORMATION AND RESEARCH SERVICES

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No. 175 2002-03

Taxation Laws Amendment Bill (No. 6) 2003

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17 June 2003

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# Taxation Laws Amendment Bill (No. 6) 2003

**Date Introduced:** 29 May 2003

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** While the majority of the Bill commences on Royal Assent, the various measures apply from different dates as detailed below.

## Purpose

To:

- Increase the income thresholds for the Medicare levy and Medicare levy surcharge under the *Medicare Levy Act 1986* and *A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Act 1999*
- Provide an exemption from the general value shifting rules under the *Income Tax Assessment Act 1997* ('ITAA 1997') to help companies convert to the new consolidation regime
- Refine the consolidation regime by:
  - limiting the extent to which a linked asset's tax cost can change when it comes into a consolidated group
  - modifying the cost setting rules to ensure that they apply appropriately to a partner's interest in a partnership, and
  - aligning the membership rules for multiple entry consolidation groups with the current membership rules for consolidated groups
  -
- Amend Commonwealth taxation legislation and the *Administrative Appeals Tribunal Act 1975* to simplify the process for obtaining release from taxation on the grounds of serious hardship

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- Remove double taxation from Australian and New Zealand shareholders by allowing New Zealand companies to enter the Australian imputation system under ITAA 1997 (as part of a reciprocal arrangement with New Zealand)
- Amend the *A New Tax System (Goods and Services Tax) Act 1999* ('the **GST Act**') and the *A New Tax System (Goods and Services Tax Transition) Act 1999* ('the **GST Transition Act**') to apply the Goods and Services Tax ('GST') insurance provisions to payments and supplies made in settlement of claims arising under a third party scheme,<sup>1</sup> and
- Amend ITAA 1997 to include 'harm prevention charities' as 'deductible gift recipients'.

## Glossary

AAT	Administrative Appeals Tribunal
ATO	Australian Taxation Office
CGT	Capital Gains Tax
CTP	Compulsory Third Party
DGR	Deductible Gift Recipient
GST	Goods and Services Tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
GST Transition Act	<i>A New Tax System (Goods and Services Tax Transition) Act 1999</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
IT(TP) Act	<i>Income Tax (Transitional Provisions) Act 1997</i>
MEC group	Multiple entry consolidated group
TAA 1953	<i>Taxation Administration Act 1953</i>

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## Background

As there is no central theme to the Bill the background to the various measures will be discussed below.

## Main Provisions

### Medicare levy thresholds

The Bill will increase the income thresholds for the Medicare levy and Medicare levy surcharge. This proposal was announced in the 2003-04 Federal Budget.

The *Medicare Levy Act 1986* provides that no Medicare levy is payable where taxable income or combined family taxable income does not exceed stated threshold amounts. The basic rate of the Medicare levy is 1.5% of the taxpayer's taxable income. Relief from the Medicare levy is provided to certain low income earners. The Medicare levy shades in at a rate of 20 cents in the dollar where the taxable income or combined family taxable income exceeds the threshold amounts.

### Schedule 1 – Increasing Medicare Levy Thresholds

**Schedule 1** amends the Medicare Levy Act by increasing the Medicare levy thresholds for individuals, married couples and sole parents for the 2002-2003 year of income and subsequent years.

**Item 4 of Schedule 1** increases the individual threshold amount specified in **subsection 3(1)** of the Medicare Levy Act from \$14 539 to \$15 062. **Items 5, 7 and 8** increase the 'family income threshold' referred to in **subsections 8(5) to (7)** of the Act from \$24 534 to \$25 417. **Item 6** amends **subsection 8(5)** of the Act by raising the family income threshold by a further \$2334 for each dependent child or student instead of the previous amount of \$2253.

According to the *Explanatory Memorandum*, these increases are in line with movements in the Consumer Price Index.<sup>2</sup>

**Schedule 1 Item 3** amends **subsection 3(1)** of the Medicare Levy Act by increasing the threshold amount for pensioners below age pension age from \$16 570 to \$17 164. The increase ensures that such pensioners do not have a Medicare levy liability until they are liable for income tax. This complements a similar measure for senior Australians introduced in Taxation Laws Amendment (Personal Income Tax Reduction) Bill 2003.<sup>3</sup>

Application: From the 2002-2003 year of income onwards (**Item 15**).

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## Medicare levy surcharge thresholds

The Medicare Levy Act also applies a Medicare levy surcharge of 1 per cent where taxpayers do not have private patient hospital cover and where the taxpayer's taxable income and reportable fringe benefits exceed certain thresholds. Under *A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Act 1999* (the '**Medicare Levy Surcharge-Fringe Benefits Act**'), this surcharge also applies to reportable fringe benefits in certain cases. A married person is not required to pay the surcharge where the total of the person's taxable income and reportable fringe benefits do not exceed the individual low income medicare threshold amount.

### Schedule 1 – Increasing the Medicare Levy Surcharge Threshold

**Schedule 1 Items 9 to 12** increase the individual threshold for the Medicare levy surcharge in **sections 8D and 8G** of the **Medicare Levy Act** from \$14 539 to \$15 062. The individual threshold for the surcharge on reportable fringe benefits in **sections 15 and 16** of the **Medicare Levy Surcharge-Fringe Benefits Act** is also increased from \$14 539 to \$15 062.

Application: From the 2002-2003 year of income onwards (**Item 15**).

## Value Shifting

The introduction of a general value shifting regime was a key recommendation of the [Ralph Review of Business Taxation](#)<sup>4</sup> in order to overcome deficiencies in the former value shifting rules. The Review noted that value shifting provides taxpayers with the opportunity to defer or avoid tax liabilities. It is possible, for example, to bring forward losses and defer gains by shifting value out of assets that are due to be realised in the short term and into assets that are not due to be realised until some time later.

Value shifts that happen on or after 1 July 2002 are subject to a general value shifting regime under ITAA 1997.

The general value shifting rules mainly affect interests in companies and trusts that are not consolidated but meet control or common ownership tests. Entities dealing at arm's length or on market value terms are not subject to the value shifting rules.

There are three main areas covered by the value shifting rules:

- direct value shifting involving equity or loan interests in companies and trusts
- direct value shifting creating rights in respect of non-depreciating assets, and
- indirect value shifting involving non-arm's length dealings.

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The general value shifting regime may apply to value shifting schemes even if there is no tax avoidance purpose.<sup>5</sup>

### Schedule 2 – Modifying the Value Shifting Regime

**Schedule 2** amends the *Income Tax (Transitional Provisions) Act 1997 ('IT(TP) Act')* to modify the general value shifting regime in ITAA 1997. The amendments are part of special transitional rules intended to assist the conversion of companies to the consolidation regime (see 'Consolidation Regime' section below).

This measure was announced by the Minister for Revenue and Assistant Treasurer on 6 March 2003.<sup>6</sup>

**Schedule 2 Item 1** inserts **proposed subsection 727-230(1)** in the IT(TP) Act to provide that most indirect value shifts, where at least 95 per cent of the market value of the benefits provided by the losing entity are services, will be excluded from the consequences of the general value shifting regime if those value shifts occur before:

- the beginning of a losing entity's 2003-2004 income year, or
- if a losing entity's 2002-2003 income year ends before 30 June 2003, the beginning of the losing entity's 2004-2005 income year.

Application: as described in previous paragraph.

### Consolidation Regime

The aim of the Commonwealth Government's new consolidation regime is to allow wholly-owned groups of companies to consolidate and be treated as a single entity for income tax purposes.

For general background on the consolidation regime refer to the Bills Digests for the New Business Tax System (Consolidation) Bill 2002 ([No. 173, of 2001-02](#)) and the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002 ([No. 56, of 2002-03](#)).

The final of four bills dealing with the consolidation regime passed through Parliament on 6 March 2003 and received Royal Assent on 11 April 2003. The measures in **Schedules 3 to 8** of this Bill provide refinements to what is a very technical and complex area of tax legislation. The consolidation regime has applied from 1 July 2002 and the measures in **Schedules 3 to 7** will also apply from 1 July 2002. The technical amendments in **Schedule 8** will commence from the date this Bill receives Royal Assent.

The refinements included in this Bill were foreshadowed in a press release from the Minister for Revenue and Assistant Treasurer when the last piece of legislation relating to

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the consolidation regime, the New Business Tax System (Consolidation and Other Measures) Bill 2003, was passed by Parliament on 6 March 2003. It stated:

While [the New Business Tax System (Consolidation and Other Measures) Bill 2003] is the final consolidation bill, some further interactions are still to be finalised including assets previously owned by exempt entities, finance leases, partners and partnerships, commercial debt forgiveness, bad debts and demergers.<sup>7</sup>

Given the very technical nature of the consolidation legislation and the willingness of the Parliament to pass previous consolidation legislation while noting that it would need later rectification, some of which is contained in this Bill, this Digest will only provide a broad overview of the measures contained in the Bill. It may also be noted that the six Schedules in this Bill that relate to the consolidation regime contain no major changes to the consolidation regime. However, while not all the amendments in **Schedules 3 to 8** in this Bill were announced in the press release, the refinements of the consolidation regime they implement are the result of extensive consultation with the industry to ensure that the transition to the consolidation regime is as smooth and practical as possible.

### **Schedule 3 – Consolidation: Treatment of Linked Assets and Liabilities**

**Schedule 3** amends the application of a capital gains tax (CGT) event and inserts two new sections into ITAA 1997 which effect the application of that CGT event. The **proposed sections 705-58 and 705-59 in item 3** stipulate the cost setting rules for the application of CGT Event L3 where the accounting standards allow assets and liabilities to be set off against each other with only the net value of the linked assets and liabilities being shown in the balance sheet of the consolidated group.

The amendment to paragraph 104-510(1)(a) in **item 1** refines the application of CGT Event L3 so the cost setting rules for CGT Event L3 better reflect the accounting standards that relate to linked assets and liabilities.

Application: from 1 July 2002.

### **Schedule 4 – Consolidation: Partnerships**

**Item 1 of Schedule 4** inserts a new subdivision into **Division 713 of ITAA 1997** to deal with a partner in a partnership or a partnership itself becoming part of a consolidated group. Partnerships are taxed differently in the tax system to other forms of corporate entities. A partnership is not taxed as an entity, but rather, a partner is taxed individually on their share of the net partnership income (or able to claim a deduction for a net partnership loss).

As a result the normal rules in the consolidation regime are not suited for dealing with a partner or partnership entering a consolidated group. **Proposed Subdivision 713-E** modifies the tax cost setting rules in the consolidation regime to take account of the characteristics of partnerships where one of two situations occurs:

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- a partner in a partnership becomes a subsidiary of a consolidated group, or
- the partnership becomes a subsidiary of the consolidated group.

The consequences are:

- where a partner becomes a subsidiary of a consolidated group the head company is treated as the partner, i.e. the partner's share of the assets of a partnership becomes the consolidated groups share of the assets of the partnership, and
- where a partnership becomes a subsidiary of a consolidated group the partnership loses its separate tax identity and the assets of the partnership become the assets of the head company.

While the rules in **proposed sections 713-210 to 713-230** apply to both a partner joining a consolidated group and a partnership joining a consolidated group the rules in **proposed sections 713-235 to 713-245** apply specifically to situations where a partnership joins the consolidated group.

The *Explanatory Memorandum* mentions that the provisions introduced in the **proposed Subdivision 713-E** do not deal with the consequences of a partner or partnership leaving a consolidated group and that further refinements dealing with these situations will be required.<sup>8</sup>

**Item 2 in Schedule 4** inserts into **subsection 995-1(1) of ITAA 1997** the definition of partnership cost setting interest. The definition refers to the meaning given in **proposed section 713-210**.

Application: from 1 July 2002.

### **Schedule 5 – Consolidation: Transitional Foreign-Held Membership Structures**

**Items 1 to 3 of Schedule 5** make amendments to **section 719-10 of ITAA 1997** by amending references to and moving the tests for a foreign entity to be part of a multiple entry consolidated group (a MEC group) from the ITAA 1997 to the IT(TP) Act.

**Items 4 to 6 of Schedule 5** align the membership rules of MEC groups with the consolidated group membership rules in the IT(TP) Act 1997. In particular the amendments clarify that the membership rules for consolidated groups that include non-resident entities interposed between a subsidiary member and other members of the consolidated group also apply to MEC groups.

As part of the transitional process **item 10** inserts **proposed section 719-10** to prevent MEC groups formed after 1 July 2004 from having non-resident entities interposed between a subsidiary member and other members of the MEC group.

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**Items 6 to 9** make minor technical amendments to **sections 710C-30 and 710C-35** to ensure consistency of terms used in Subdivision 710C-C of the IT(TP) Act.

Application: from 1 July 2002.

#### **Schedule 6 – Consolidation: Application of Rules to MEC Groups**

**Item 1 of Schedule 6** inserts **proposed subsection 719-2(3)** so that application of Part 3-90 of the IT(TP) Act affects MEC groups in the same way as consolidated groups.

Application: from 1 July 2002.

#### **Schedule 7 – Consolidation: General Application Provision**

**Item 1 of Schedule 7** repeals subsection 700-1(1) of the IT(TP) Act and replaces it with **proposed subsection 700-1(1)** to ensure that the provisions in Part 3-90 of the ITAA 1997 as inserted by the *New Business Tax System (Consolidation) Act (No. 1) 2002* and subsequently amended by other Acts and this Bill apply from 1 July 2002.

Application: from 1 July 2002.

#### **Schedule 8 – Consolidation: Technical Corrections**

**Item 1 of Schedule 8** makes some minor technical amendments to **Schedule 15** of the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*.

Application: from Royal Assent.

### **Serious hardship**

The Bill amends Commonwealth taxation legislation and the *Administrative Appeals Tribunal Act 1975* to streamline the procedures under which an individual taxpayer can be released from a tax liability where payment would entail serious hardship.

The existing authority to grant release will be transferred from tax relief boards to the Commissioner of Taxation. The amendments will also introduce a new right to have tax relief decisions reviewed internally under the ATO objections process, and externally by the Administrative Appeals Tribunal sitting as the Small Taxation Claims Tribunal.

The current tax relief boards comprise the Commissioner, the Secretary of the Department of Finance and Administration and the Chief Executive Officer of the Australian Customs Service. According to the Explanatory Memorandum:

The current arrangements, with their requirement for convening regular meetings of tax relief boards, are unduly resource intensive and inflexible. A significant ongoing

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commitment by the 3 represented agencies is required in order to avoid the recurrence of backlogs and the associated delays in responding to applicants.

Further, the single stage relief board process is out of step with contemporary review practices. The interests of applicants are better served by a genuinely independent merits review.<sup>9</sup>

### **Schedule 9 – Refining the Serious Hardship Procedure**

**Schedule 9 Item 1** inserts **new Part 4-50** into **Schedule 1 of the *Taxation Administration Act 1953*** ('TAA 1953') to provide a new process by which individuals facing serious hardship can seek release from certain tax liabilities.

**Item 1 proposed section 340-10** in TAA 1953 adds fringe benefits tax and PAYG ('Pay As You Go') instalments to the existing liabilities from which an individual may be released, i.e:

- income tax – including Medicare levy, Medicare levy surcharge, withholding tax and tax payable where an infrastructure borrowing certificate is cancelled
- penalties associated with the above liabilities, and
- charges associated with the above liabilities.

Release from liabilities arising from an assessment is final (subject to the overriding power of the Commissioner to amend assessments). However, where an individual is released (wholly or in part) from instalment liabilities, permanent release will require further consideration of the full year's assessment against the taxpayer's circumstances at the time of the assessment (**Item 1, proposed sections 340-20 and 340-25 TAA 1953**).

**Schedule 9 Item 3** amends the **Administrative Appeals Tribunal Act** to allow the AAT, sitting as the Small Taxation Claims Tribunal, to review the Commissioner's refusal to grant release for serious hardship.

Application: The later of 1 September 2003 or the date of Royal Assent.

### **Trans-Tasman Imputation**

The *Explanatory Memorandum* notes that Australian shareholders of New Zealand companies that earn Australian income are currently unable to access Australian franking credits arising from company tax paid on that income. The same problem exists with New Zealand shareholders of Australian companies that earn New Zealand income. In effect, both groups of shareholders are taxed twice on such income. This is known as 'triangular taxation'. The problem arises because Australia and New Zealand allow only resident companies to maintain imputation accounts.<sup>10</sup>

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In a joint statement on 19 February 2003, the Australian Treasurer and the New Zealand Minister for Finance and Revenue announced measures to resolve the 'triangular tax' issue:

To resolve this problem, Australia and New Zealand will extend their imputation systems to include companies resident in the other country.

Under this reform, Australian and New Zealand shareholders of trans-Tasman companies that choose to take up these reforms will be allocated imputation credits, representing New Zealand tax paid, and franking credits, representing Australian tax paid, in proportion to their ownership of the company. However, each country's credits will be able to be claimed only by its residents.<sup>11</sup>

The proposal is also designed to further strengthen the bilateral relationship between Australia and New Zealand formalised under the Closer Economic Relations agreement.

The triangular reform proposal arose directly from a recommendation of the [Review of Business Taxation](#).<sup>12</sup> On 6 March 2002, the Australian and New Zealand governments jointly released a [Trans-Tasman Triangular Tax Discussion Paper](#)<sup>13</sup> to serve as a basis for business consultation on the feasibility of implementing a pro-rata solution to triangular taxation.

The Explanatory Memorandum estimates that between 500 to 1,000 New Zealand companies will choose to enter the Australian imputation system, and about 50 to 100 large Australian companies may benefit from reciprocal New Zealand reforms.<sup>14</sup>

### **Schedule 10 – Including New Zealand Companies in the Australian Imputation System**

**Schedule 10** amends **ITAA 1997** by applying Australian imputation rules to New Zealand companies that choose to enter the imputation system. New Zealand will make reciprocal changes to its imputation system to allow Australian companies to maintain a New Zealand imputation account.<sup>15</sup>

**Schedule 10 Item 1** inserts **new Division 220** in **ITAA 1997** providing that the imputation rules in Part 3-6 of **ITAA 1997** will generally apply to a New Zealand company that has chosen to enter the Australian imputation system in the same way as the rules apply to a company that is an Australian resident. There are some modifications to these rules for New Zealand companies, set out in **new Subdivision 220-C**.

**Proposed section 220-35** requires a New Zealand company that wishes to enter the Australian imputation system to notify the Commissioner.

**Proposed section 220-50** enables the Commissioner to cancel a New Zealand company's choice to enter the Australian imputation system if the company does not pay its franking deficit tax or over-franking tax liability by the due date or fails to provide a franking return to the Commissioner.

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**Proposed section 220-800** imposes joint and several liability on Australian and New Zealand companies in a wholly-owned trans-Tasman group for the payment of franking-related tax obligations. This means that the Commissioner will be able to recover the franking-related liability of the New Zealand company directly from an Australian entity or another New Zealand company that is a member of the same wholly-owned group.<sup>16</sup>

Application: From 1 April 2003 (**Item 24 proposed section 220-1**).

## Goods and Services Tax

The amendments in this Bill to the GST Act remove compulsory third party insurance schemes (CTP schemes) and the settlement sharing arrangements that are associated with CTP schemes from the application of the provisions in Division 78 of the GST Act. Since the commencement of the GST Act the application of the GST to the supply of and payments from CTP schemes has been governed by Division 78 of the GST Act, which deals with the application of the GST to insurance premiums and payments.

However it has become evident that the GST provisions for insurance do not cover the peculiarities associated with CTP schemes and settlement sharing arrangements. The Explanatory Memorandum notes that

after consultation with members of the CTP industry, it has been established that the GST insurance provisions do not apply as intended to some payments or supplies made in settlement of claims under a CTP scheme. Furthermore, there are a number of other insurance related payments or supplies made by CTP insurers that should be subject to the GST insurance provisions. For example, these include payments of hospital and ambulance charges that arise for services that have been provided directly to injured persons involved in motor vehicle accidents, that are paid by an insurer via CTP scheme wide bulk-billing arrangements.<sup>17</sup>

Consequently, the amendments in this Bill remove CTP schemes and settlement sharing arrangements from the GST insurance provisions in Division 78 and insert two new divisions into the GST Act intended to result in the GST provisions correctly applying to CTP schemes and settlement sharing arrangements.

## Schedule 11 – GST Amendments Relating to Compulsory Third Party Schemes

**Items 1 to 11 in Schedule 11** insert into various tables, which highlight the existence of special rules in the GST Act, items that direct the reader to **proposed Division 79** for CTP schemes and to **proposed Division 80** for settlement sharing arrangements.

**Items 12 and 13** amend provisions in **Division 72 of the GST Act**, which deal with the application of the GST to supplies made between associates, so that exclusions that apply to insurance policies will also apply to CTP scheme policies and claims.

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**Items 14 to 17** amend provisions in **Division 78 of the GST Act** so that payments and supplies associated with CTP schemes compensation matters are excluded from the application of the Division 78 and instead **proposed Divisions 79 and 80** will apply to those payments and supplies.

**Item 18 of Schedule 11** inserts into the GST Act **proposed Divisions 79 and 80** which aim to apply the GST insurance provisions to CTP schemes in the way intended from the commencement of the GST on 1 July 2000.

#### Division 79 - Compulsory third party schemes

**Proposed Subdivision 79-A** modifies the application of Division 78 to some CTP scheme payments and supplies made under an insurance policy. The provisions in **proposed Division 79** use provisions and concepts in Division 78 and alter them so they correctly reflect way the GST is supposed to apply to certain insurance policy payments and supplies made under a CTP scheme.

**Proposed Subdivision 79-B** extends the application of Division 78, as modified by **proposed Subdivision 79-A**, to CTP hybrid payments or supplies. **Proposed section 79-25** defines a CTP hybrid payment or supply as a payment or supply that is made in settlement of a claim for compensation under a CTP scheme where the claim would not have been made if there was no insurance policy and was not made under the insurance policy.

**Proposed Subdivision 79-C** applies to CTP compensation payments or supplies and to CTP ancillary payments or supplies.

**Proposed subsection 79-35(2)** defines a CTP compensation payment or supply as:

- a payment or supply under a CTP scheme, and
- made in settlement of a claim for compensation under the CTP scheme

but not where:

- the entity making the payment was required to do so because of the bankruptcy or insolvency of the entity who was the insurer
- Division 78 applies to the payment or supply, or
- **proposed Subdivision 79-A** and **proposed Subdivision 79-B** apply to the payment or supply.

**Proposed subsection 79-35(3)** defines a CTP ancillary payment or supply as one made under a CTP scheme specified in the regulations and could include payments made under an agreement between the entity making the payment or supply and other entities even though no actual claim is made under the CTP policy. The example given in the

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*Explanatory Memorandum* is a bulk billing arrangement between the entity operating the CTP scheme and hospital or ambulance providers. In these situations the entity operating the CTP scheme is required to make a payment even where no actual claim has been made by an injured person in the accident.<sup>18</sup>

The rest of **proposed Subdivision 79-C** deals with special rules relating to the application of the GST to CTP compensation payments or supplies and to CTP ancillary payments or supplies.

**Proposed Subdivision 79-D** sets out the method and formula for calculating a decreasing adjustment under **proposed sections 79-15 and 79-50**.

#### Division 80 - Settlement sharing arrangements

Settlement sharing arrangements occur as a result of the operations of State or Territory CTP systems. Under the arrangements, in relation to accidents that involve more than one vehicle and more than one insurer, one of the insurers is required to manage all claims arising from the accident with the other insurers being required to contribute a share of the settlement payment.<sup>19</sup>

**Proposed subdivision 80-A** defines:

- an 'insurance policy settlement sharing arrangement'
- the parties involved
- how Division 78 and **proposed Division 79** apply to the payments and supplies provided by the various parties, and
- the treatment of any adjustments relating to the payments made by the parties involved in the arrangement.

**Proposed Subdivision 80-B** defines:

- a 'nominal defendant settlement sharing arrangement'
- the parties involved, other than the uninsured party
- how Division 78 and **proposed Division 79** apply to the payments and supplies provided by the various parties, and
- the treatment of any adjustments relating to the payments made by the parties involved in the arrangement.

The difference between an 'insurance policy settlement sharing arrangement' and a 'nominal defendant settlement sharing arrangement' is that the latter involves the settlement of a claim against a driver not covered by an insurance policy.<sup>20</sup>

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**Proposed Subdivision 80-C** defines:

- a 'hybrid settlement sharing arrangement'
- the parties involved, and
- how **proposed Subdivisions 80-A and 80-B** are affected by a hybrid settlement sharing arrangement.

**Item 19 of Schedule 11** amends **section 188-22 of the GST Act** so that settlements under **proposed Divisions 79 and 80** are excluded from the annual turnover provisions in Division 188 of the GST Act.

**Items 20, 21, 23 to 31 and 34 to 39** insert new definitions into the dictionary of the GST Act (section 195-1).

**Items 22, 32 and 33** make amendments to existing definitions in the dictionary of the GST Act.

**Item 42** amends **section 22 of the *A New Tax System (Goods and Services Tax Transition) Act 1999*** to extend its application to events that occurred prior to 1 July 2000 to which **proposed Divisions 79 and 80** apply.

Application: From 1 July 2000 (**Item 43**).

## Register of Harm Prevention Charities

As part of the Government's response to the [Report of the Inquiry into the Definition of Charities and Related Organisations](#),<sup>21</sup> the Treasurer announced in August 2002 that:

The Government has decided to establish a new category of deductible gift recipient for charities whose principal activities promote the prevention and control of harmful and abusive behaviour among humans. This will assist these charities in attracting public support for their activities.<sup>22</sup>

Australian taxpayers can claim income tax deductions for certain gifts to 'Deductible Gift Recipients' ('DGRs'). To be a DGR, an organisation must fall within a category of organisations set out in Division 30 of ITAA 1997. Categories currently listed in Division 30 include Health, Education, Research, Welfare and Rights, Defence, the Environment and Cultural Organisations. Specific organisations qualifying as DGRs are listed under each category.

In addition, there are special registers for Environmental and Cultural Organisations. Donations to organisations on these registers are tax deductible.

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## Schedule 12 – Harm Prevention Charities as Deductible Gift Recipients

**Schedule 12** amends **Subdivision 30** of ITAA 1997 to include harm prevention charities as DGRs.

**Schedule 12 Item 4** inserts **proposed section 30-287** in ITAA 1997 which requires the Secretary of the Department of Family and Community Services to keep a register of harm prevention charities. **Proposed section 30-289** states that 'harm prevention charities' are charitable institutions whose principal activity is to promote the prevention or the control of 'behaviour that is harmful or abusive to human beings'.

**Schedule 12 Item 6** inserts **proposed subsection 995-1(1)** which defines 'behaviour that is harmful or abusive' as one or more of the following:

- emotional abuse
- sexual abuse
- physical abuse
- suicide
- self-harm
- substance abuse, or
- harmful gambling.

Application: applies to gifts made on or after 1 July 2003 (**Schedule 12 Item 3**).

## Endnotes

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- 1 Hon. Peter Slipper MP, Second Reading Speech, 29 May 2003, *House Hansard*, p. 14926.
- 2 *Explanatory Memorandum*, p. 10.
- 3 Passed House of Representatives, 4 June 2003.
- 4 <http://www.rbt.treasury.gov.au/>, pp. 261–266.
- 5 See: *2003 Australian Master Tax Guide* at [13-800].
- 6 Senator Helen Coonan, Minister for Revenue and Assistant Treasurer, 'Consolidation Legislation Passed', [Press Release No. C014/03](#), 6 March 2003.
- 7 *ibid.*
- 8 *Explanatory Memorandum*, p. 34.

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- 9 *ibid.*, p. 60.
- 10 *ibid.*, p. 72.
- 11 [Treasurer's Press Release No. 7 of 19 February 2003](#), at:  
<http://www.treasurer.gov.au/tsr/content/pressreleases/2003/007.asp>.
- 12 <http://www.rbt.treasury.gov.au/>, Recommendation 20.6.
- 13 <http://www.treasury.gov.au/contentitem.asp?pageId=022&ContentID=304>.
- 14 *Explanatory Memorandum*, p. 94.
- 15 *ibid.*, p. 6.
- 16 *ibid.*, p. 86.
- 17 *ibid.*, p. 98.
- 18 *ibid.*, p. 110.
- 19 *ibid.*, p. 99.
- 20 ATP, *Weekly Tax Bulletin No. 23*, p. 828.
- 21 <http://www.cdi.gov.au/html/report.htm>.
- 22 [Treasurer's Press Release No 49 of 2002](#)

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