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Tax Laws Amendment (2004 Measures No. 4) Bill 2004

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Glossary

The following abbreviations and acronyms are used throughout this Bills Digest

Abbreviation	Definition
Bill	Tax Laws Amendment (2004 Measures No.4) Bill 2004
ACA	allocable cost amount
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
DGR	deductible gift recipient
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MEC groups	multiple entry consolidated groups
SIS	simplified imputation system
TAA 1953	<i>Taxation Administration Act 1953</i>
tax cost	tax cost setting amount

Tax Laws Amendment (2004 Measures No. 4) Bill 2004

Date Introduced: 24 June 2004

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions of the Tax Laws Amendment (2004 Measures No. 4) Bill 2004 ('the [Bill](#)') commence on Royal Assent. The measures contained in the Bill have various application dates, which are referred to in the Main Provisions section.

Purpose

There are 5 Schedules to this Bill and the main purpose of each Schedule as stated in the General Outline and Financial Impact section of the [Explanatory Memorandum](#) to the Bill is set out below.

1. **Schedule 1** to this bill provides greater flexibility, clarifies certain aspects of the consolidation regime and ensures that the regime interacts appropriately with other aspects of the income tax law.
2. **Schedule 2** to this bill amends the *Income Tax Assessment Act 1997* (ITAA 1997), the *Income Tax (Transitional Provisions) Act 1997* (ITTP 1997) and the *Taxation Administration Act 1953* (TAA 1953) to:
 - ensure that copyright collecting societies are not taxed on any copyright income that they collect and hold on behalf of members, pending allocation to them;
 - minimise compliance costs for copyright collecting societies by ensuring that they are not taxed on the non-copyright income they derive, provided that the amount of non-copyright income derived falls within certain limits; and
 - ensure that any copyright and non-copyright income collected or derived by copyright collecting societies that is exempt from income tax in their hands, is included in the assessable income of members upon distribution.
3. **Schedule 3** to this bill:

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- makes consequential amendments to the income tax laws which will:
 - replace references to the former imputation provisions in Part IIIAA of the *Income Tax Assessment Act 1936* (ITAA 1936) to those of the simplified imputation system (SIS) in Part 3-6 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - update terminology of the former imputation system to equivalent terms of the SIS;
 - makes various technical amendments in relation to the SIS and other imputation related provisions; and
 - inserts into Division 207 of the ITAA 1997 anti-avoidance rules that apply in relation to certain tax exempt entities that are entitled to a refund of franking credits. These rules were previously in Division 7AA of Part IIIAA of the ITAA 1936.
4. **Schedule 4** to this bill amends the ITAA 1997 to amend the lists of specifically-listed deductible gift recipients (DGRs).
5. **Schedule 5** to this bill amends the ITAA 1997 so that the transitional period for at call loans under the debt/equity rules will extend to 30 June 2005.¹

Background

As there is no central theme to the Bill, the background to the various measures will be discussed under the Main Provisions section.

Main Provisions

Schedule 1 – Consolidation: measures to provide greater flexibility

The consolidation regime was introduced with effect from 1 July 2002. The basic concepts underlying the consolidation regime are outlined in the ATO publication [Consolidation in brief- taxing wholly owned corporate groups as single entities](#).²

On 4 December 2003, the Minister for Revenue and Assistant Treasurer foreshadowed in [Press Release No. C116/03](#)³ certain measures to provide greater flexibility and to clarify certain aspects of the consolidation regime. The Bill gives effect to those measures. A brief outline of the measures is set out below; however, readers are referred to the

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[Explanatory Memorandum](#) which provides the details of the measures with examples of their application.⁴

Clarifying beneficial ownership for consolidation membership rules

Item 2 of Part 2 of Schedule 1 inserts **proposed subsection 703-30(3)** to the ITAA 1997 to provide that entities under external administration, whether under the *Corporations Act 2001* or similar foreign law, will not be prevented from being or remaining members of consolidated groups.

Modification of tax cost setting in relation to finance leases

Item 5 of Part 3 of Schedule 1 inserts **proposed section 705-56** to the ITAA 1997 to provide special rules for setting the tax cost of assets where an entity that becomes or ceases to be a member of a consolidated group is subject to a finance lease. These rules take into account the different treatment of finance leases under accounting standards and the income tax law.

Application of cost setting rules to certain types of mining expenditure

Part 4 of Schedule 1 contains rules to clarify the operation of the cost setting rules and the inherited history rules for assets that have arisen from allowable capital expenditure, transport capital expenditure or exploration and prospecting expenditure.

Low-value and software development pools

Item 11 of Part 5 of Schedule 1 inserts **proposed Subdivision 716-G** to the ITAA 1997 to provide that the head company of a consolidated group receives the appropriate allowances for the decline in value of these pools. The rules also ensure that the head company and a leaving entity receive the appropriate allowances for the decline in value of the pools where the leaving entity takes the pool upon leaving the consolidated group.

Notice requirements for inter-entity loss multiplication rules

The amendments proposed to the ITAA 1997 by **Items 14 to 19 of Part 6 of Schedule 1** alleviate the notice requirements under the entity loss multiplication rules during the consolidation transitional period for entities that are in the same consolidation group. The Commissioner of Taxation is also given discretion to extend the time for giving notices or to waive the notice requirements in appropriate circumstances.

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Application

Item 1 of Part 1 of Schedule 1 provides that the amendments made by **Schedule 1** apply on and after 1 July 2002, except as otherwise provided.

Schedule 2 – Copyright collecting societies

Copyright collecting societies are organisations that administer certain rights of copyright on behalf of copyright owners, including authors and composers. Such societies receive income in relation to copyrights pending identification and allocation to the appropriate copyright owners.

Following the recommendations in the Simpson Report into Copyright Collecting Societies (1995),⁵ the ATO took the view that a trust relationship exists between the societies and their members. The trustee would be liable to tax under section 99A of the ITAA 1936 on income not allocated to members in a financial year at the top personal tax rate of 47% with effect from 1 July 2002. In accordance with [Taxation Ruling IT 328](#), the ATO allows, as a matter of administrative practice, a further two months to identify and allocate income to beneficiaries to minimise the impact of section 99A.⁶ However, in practice a substantial part of the income of these societies are taxed at the top marginal tax rate due to the difficulty of identifying beneficiaries within the extended two month period allowed by the ATO.

On 1 August 2002, the Minister for Revenue and Assistant Treasurer announced in [Press Release No. C081/02](#)⁷ that amendments in relation to the tax law applicable to copyright collecting societies are would ensure that they would not be taxed on the basis of the income they collect on behalf of copyright owners.

The measures in the Bill give effect to this proposal.

Exemption of copyright income and non-copyright income of copyright collecting societies under certain conditions

Item 5 of Schedule 2 inserts **proposed section 51-43** to the ITAA 1997 and exempts from income tax the following income:

- copyright income collected or derived by a copyright collecting society (society) in an income year (**proposed paragraph 51-43(2)(a)**) and
- non-copyright income derived by the society to the extent that it does not exceed the lesser of:

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- 5% of the total amount of the copyright income and non-copyright income collected and derived by the society in the income year (**proposed subparagraph 51-43(2) (b)(i)**) and
- \$5 million or such other amount that is prescribed by regulations (**proposed subparagraph 51-43(2) (b)(ii)**).

A definition of ‘copyright income’ is inserted into subsection 995-1(1) of the ITAA 1997 by **item 8 of Schedule 2** and means ordinary or statutory income of the following kinds:

- royalties or interest on royalties collected or derived by the society and
- such other amounts relating to copyright that are derived by the society as are prescribed by the regulations.

A definition of ‘copyright collecting society’ is inserted into subsection 995-1(1) of the ITAA 1997 by **item 7 of Schedule 2** and includes both copyright collecting societies declared under the *Copyright Act 1968* and non declared societies, subject to certain conditions.

A ‘member’ of a copyright collecting society means:

- any person who has been admitted as a member under the society’s constitution, or
- any person who has authorised the society to license the use of his or her copyright material (**item 9 of Schedule 2**).

Application

Item 13(1) of Schedule 2 provide that the amendments apply from 1 July 2002. However, societies may make an election to defer entry into the new taxation regime until 1 July 2004 to avoid the retrospective operation of the amendments under the transitional provisions in **proposed section 410-1** of the *Income Tax (Transitional Provisions) Act 1997* (**item 11 of Schedule 2**).

Schedule 3 – Simplified imputation system – consequential and other amendments

The simplified imputation system (SIS) which applied from 1 July 2002 was introduced by the *New Business Tax System (Imputation) Act 2002*. The background to the introduction of SIS following the *Review of Business Taxation* is set out in [Bills Digest No. 165 of 2001- 2002](#) to the New Business Tax System (Imputation) Bill 2002.⁸ The SIS replaced the former imputation system in Part IIIAA of the ITAA 1936. An overview of the SIS can

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be ascertained from the webpage [Simplified imputation snapshot view](#) on the ATO's website.

The [Explanatory Memorandum](#) to the Bill states that as a result of the introduction of SIS a number of consequential amendments are required to the following income tax laws:

- the ITAA 1997
- the ITAA 1936 and
- the TAA 1953.⁹

The amendments proposed in **Schedule 3** to these tax laws will:

- replace references to the former imputation system with those of the SIS
- update terminology of the former imputation provisions to equivalent terms of the SIS and
- ensure that the various provisions including the anti-avoidance provisions operate as intended.

The reader is referred to the [Explanatory Memorandum](#) for a detailed explanation of the new law.¹⁰

Application

Item 111 of **Schedule 3** provides that the consequential amendments and the anti-avoidance provisions will generally apply to events on or after 1 July 2002 when the SIS commenced operations.

Schedule 4 – Specific gift recipients and Application

Income tax law allows taxpayers to claim income tax deductions for certain gifts to the value of \$2 or more to deductible gift recipients (DGRs). To be a DGR, an organisation must fall within a category of organisations set out in Division 30 of the ITAA 1997, or be specifically listed under that Division. The amendments in **Schedule 4** will include the funds and organisations specified in the tables below as DGRs.

Part 1 – Fire and emergency services bodies listed as DGRs

Item 1 of **Schedule 4** inserts **proposed section 30-102** to make the following fire and emergency services as DGRs with effect from 23 December 2003.

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<i>Name of Authority or institution</i>	<i>Established under legislation of the following State or Territory</i>
Country Fire Authority	Victoria
Victoria State Emergency Service	Victoria
Queensland Fire and Rescue Service	Queensland
State Emergency Service	Queensland
Fire and Emergency Services Authority of Western Australia	Western Australia
State Emergency Service South Australia	South Australia
Tasmania Fire Service	Tasmania
State Emergency Service	Tasmania
Rural Firefighting Service	Australian Capital Territory
ACT Emergency Service	Australian Capital Territory

Source: Table 4.1 of the Explanatory Memorandum to the Bill.

The Government's decision to list fire and emergency services bodies as DGRs was announced by the Treasurer in [Press Release No. 114 of 23 December 2003](#).¹¹

Part 2 – Other specific gift recipients listed as DGRs

Items 10, 13, 14 and 17 to 21 of Part 2 of Schedule 4 lists the following funds as DGRs from the date shown in the table.

<i>Name of fund</i>	<i>Date of effect</i>	<i>Special conditions</i>
International Social Service – Australian Branch	18 March 2004	None
the Victorian Crime Stoppers Program	23 April 2004	None
the Coolgardie Honour Roll Committee Fund	2 June 2004	The gift must be made before 2 June 2006
the Tamworth Waler Memorial Fund	20 April 2004	The gift must be made before 20 April 2006
Australian Business Week Limited	9 December 2003	None

Source: Table 4.2 of the Explanatory Memorandum to the Bill.

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Extending the period for which deductions are allowed for gifts to certain DGRs

Items 11, 12, 15 and 16 extend the period for which deductions are allowed for gifts to the following funds and organisations.

<i>Name of fund</i>	<i>Extension</i>
Australian Ex-Prisoners of War Memorial Fund – Item 5.2.9 of the table in section 30-50(2) of the ITAA 1997.	Gifts must be made after 19 October 1999 and before 20 October 2005. (Previously gifts had to be made after 19 October 1999 and before 20 October 2003).
The Albert Coates Memorial Trust – Item 5.2.17 of the table in section 30-50(2) of the ITAA 1997.	Gifts must be made after 30 January 2002 and before 31 January 2006. (Previously gifts had to be made after 30 January 2002 and before 20 October 2004).
St Patrick’s Cathedral Parramatta Rebuilding Fund – Item 13.2.1 in the table in section 30-105 of the ITAA 1997.	Gifts must be made after 24 February 1998 and before 1 July 2004. (Previously gifts must be made after 24 February 1998 and before 25 February 2004).
St Paul’s Cathedral Restoration Fund – Item 13.2.5 in the table in section 30-105 of the ITAA 1997.	Gifts must be made after 22 April 2002 and before 23 April 2006. (Previously gifts must be made after 22 April 2002 and before 23 April 2004).

Schedule 5 – Debt and equity interests – at call loans

At call loans are typically loans by small business owners to their business with no fixed term and are repayable on demand. Division 974 of the ITAA 1997 sets out the debt/equity rules to determine what is a debt and what is equity for various income tax purposes applicable from 1 July 2001. A transitional rule under section 974-75 of the ITAA 1997 provides that certain at call loans entered into on or after 21 February 2001 and on or before 31 December 2002 to be a debt interest.

On 16 December 2002, the Minister for Revenue and Assistant Treasurer announced in [Press Release No. C131/02](#)¹² that the Government would extend this transitional period to 30 June 2004. A further extension to 30 June 2005 was announced by the Minister for Revenue and Assistant Treasurer by [Press Release No. C045/04 of 24 May 2004](#)¹³ to give taxpayers extra time to assess existing loans and make adjusting arrangements on the classification of their loans as debt or equity for income tax purposes. The amendments proposed by **items 1 to 3** of **Schedule 5** to subsection 974-75 (4) will provide that at call loans entered into on or before 30 June 2005 are treated as debt interests.

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Application

Item 8 of the table in **clause 2** of the bill provides that the amendments in **Schedule 5** commence on the day on which the relative Act receives Royal Assent.

Concluding Comments

Financial impact of measures in the bill

The comments made in the [Explanatory Memorandum](#) as to the financial impact of the measures in the Bill are set out in the following table:¹⁴

<i>Measures in the bill</i>	<i>Financial impact</i>
Schedule 1 – Consolidation: providing greater flexibility	Nil
Schedule 2 – Copyright collecting societies	The financial impact of the amendments is expected to be negligible
Schedule 3 – Simplified imputation system – consequential and other amendments	Nil
Schedule 4 – Specific gift recipients – adding to the list of DGRs and granting extensions to certain DGRs	These amendments have an unquantifiable, but insubstantial, cost to revenue.
Schedule 5 – Debt and equity interests – at call loans	The financial impact of the amendments is expected to be negligible.

Continuing business tax reform – Is it a nightmare to business and tax practitioners in a self assessment regime?

The measures in the Bill relating to the consolidation regime which came into operation with effect from 1 July 2002, demonstrate that tax reform is a continuing process. However, continuing tax reform without clarity and finality in a particular aspect of income taxation, such as the consolidation regime, is for business and tax practitioners a veritable nightmare given the self-assessment regime which prevails.

The ATO website lists the [Consolidation Legislation](#) that has been required to establish and clarify the consolidation regime so far.¹⁵ It has required nine Acts of Parliament which received Royal Assent between 22 August 2002 and 25 June 2004 to set up and deal with various aspects of the consolidation regime.

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The Bill, when enacted, will be the tenth Act of Parliament setting out measures in **Schedule 1** in relation to the consolidation regime. In the words of the [Explanatory Memorandum](#), the **Schedule 1** measures were made:

[T]o provide greater flexibility, clarify certain aspects of the regime and to ensure that [the regime] interacts appropriately with other areas of the income tax law.¹⁶

Indeed, when legislating for tax reform, the basic requirement is to examine how the proposed measures interact with other aspects of the existing tax law. It is also accepted that complex business arrangements call for complex tax laws to reduce the incidence of tax minimisation. However, the spate of tax legislation introduced in the last two years begs the question of whether another approach would be preferable.

The Editorial of the Financial Review of 10 May 2004 noted under the title ‘Taxation mess needs clean up’ the serious problem of complexity in the general context of tax law. Referring to the attempts to fix the Australian tax system it stated that:

There has been a comical perversity in attempts to fix it over 30 years. Report after report for the Commonwealth has earnestly rehashed Adam Smith’s taxation golden rules of equity, economy and simplicity, and government after government has piled tax on tax, concession on concession, and ruling on ruling to create a 10,000 page monster that no practitioner can master.¹⁷

The numerous changes to the consolidation regime since it took effect on 1 July 2002 offers the typical illustration of how this perverse process worked in relation to the consolidation regime reform.

A balance needs to be drawn between attempting to reduce revenue losses caused by tax avoidance through complex legislation and the need to produce simpler tax laws to ease the compliance burden on business and tax practitioners, particularly under a self assessment regime.

Recently, the Government seemed to have recognised that the simplification of taxation laws may require the modernisation of the entire self assessment regime. On 24 November 2003 the Treasurer commissioned the ‘Review of Aspects of Income Tax Self Assessment’¹⁸ The [Discussion Paper](#) was released by the Treasurer on 29 March 2004, outlining:

[A] range of issues and approaches for refining the operation of Australia’s income tax self assessment system. In doing this, the paper examines whether the right balance has been struck between protecting the rights of individual taxpayers and protecting the ability of the Australian Taxation Office to collect revenue.¹⁹

All interested parties are now invited to provide their view on the self assessment regime. But it has to seen whether the review is a first step towards simplification or whether

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another layer of rules will be added to the ‘10,000 page monster’,²⁰ making it stronger and even more unworkable.

Endnotes

- 1 [Explanatory Memorandum](#) to the Bill; General Outline and Financial Impact Section, pp. 3 to 7.
- 2 Australian Tax Authority, *Consolidation in brief – taxing wholly owned corporate groups as single entities*, ATO publication – NAT 6081-02.2004, Australian Tax Authority, 2004.
- 3 The Hon. H Coonan, Minister for Revenue and Assistant Treasurer, ‘Consolidation: Greater Flexibility Given’, [media release](#), 4 December 2003.
- 4 [Explanatory Memorandum](#) to the Bill, Chapter 1, Consolidation: Providing Greater Flexibility, pp. 9 to 55.
- 5 S Simpson, *Review of Australian Copyright Collecting Societies - A report to the Minister for Communications and the Arts and the Minister for Justice*, The Department of Communications and the Arts, Canberra, 1995.
- 6 Australian Tax Authority, *Trusts: Interpretation Of Section 101 In Relation to Sections 99 and 99a under 1964 Amending Legislation*, [Taxation Ruling IT 328](#), 20 May 1966.
- 7 The Hon. H Coonan, Minister for Revenue and Assistant Treasurer, ‘Copyright Collecting Societies’, [media release](#), 1 August 2002.
- 8 B Pulle, ‘New Business Tax System (Imputation) Bill 2002’, [Bills Digest](#), no. 165 – 166, Parliamentary Library, Canberra, 2001 – 2002.
- 9 [Explanatory Memorandum](#), Chapter 3, Simplified Imputation System – Consequential and other Amendments, p. 58.
- 10 [Explanatory Memorandum](#), Chapter 3, Simplified Imputation System – Consequential and other Amendments, pp. 58 to 65.
- 11 The Hon. P Costello, Treasurer, ‘Deductibility of Gifts to Rural Fire and Emergency Services Authorities’, [media release](#), 23 December 2003.
- 12 The Hon. H Coonan, Minister for Revenue and Assistant Treasurer, ‘More Time to Apply Debt/Equity Rules’, [media release](#), 16 December 2002.
- 13 The Hon. H Coonan, Minister for Revenue and Assistant Treasurer, ‘At Call’ Loans Red Tape to Be Cut for Small Business’, [media release](#), 24 May 2004.
- 14 [Explanatory Memorandum](#) to the Bill; General Outline and Financial Impact Section, pp. 3 to 7.
- 15 Australian Tax Authority, *Consolidation: legislation*, <http://www.ato.gov.au/print.asp?doc=/content/22427.htm>, accessed on 20 July 2004.

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- 16 [Explanatory Memorandum](#) to the Bill; General Outline and Financial Impact Section, p. 10.
- 17 Editorial, 'Taxation Mess needs clean-up', *Australian Financial Review*; 10 May 2004, p. 62.
- 18 The Hon P Costello, Treasurer, 'Review of Aspects of Income Tax Self-Assessment', [media release](#), 24 November 2003.
- 19 The Treasury, *Review of Aspects of Income Tax Self Assessment*, [Discussion paper](#), Canberra, 2004, p. iii.
- 20 Editorial, loc. cit.

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