



Tax Laws Amendment (2005 Measures No. 1) Bill 2005

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Glossary

The following abbreviations and acronyms are used throughout this Bills Digest.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
FBT	fringe benefits tax
FBTAA 1986	<i>Fringe Benefits Tax Assessment Act 1986</i>
FMD	Farm management deposit
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MAWTO	Mature Aged Worker Tax Offset

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Tax Laws Amendment (2005 Measures No. 1) Bill 2005

Date Introduced: 10 February 2005

House: House of Representatives

Portfolio: Treasury

Commencement: All provisions except Schedule 4 commence on Royal Assent. Schedule 4 commences immediately after the commencement of Schedule 1 to the *Tax Laws Amendment (2004 Measures No. 7) Act 2005* (which has not yet been passed by Parliament. However, there is an inconsistency between clause 2 of the Tax Laws Amendment (2005 Measures No. 1) Bill 2005 ([the Bill](#)) and **item 17 of Schedule 3** that says that the amendments by **Schedule 3** applies to supplies made on or after 10 February 2005.

Purpose

There are 4 schedules to the Bill. 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 amends the *Fringe Benefits Tax Assessment Act 1986* to provide a fringe benefits tax (FBT) exemption to cover the engagement of a relocation consultant to assist in the relocation of an employee.

Schedule 1 also extends the list of work-related items eligible for a FBT exemption and removes the requirement that the provision of remote area housing benefits be 'customary' in an industry to qualify for a FBT exemption.²

...

Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* to introduce statutory 'caps' that will be the effective life used to calculate the decline in value of those assets if:

- the taxpayer chooses to adopt the effective life determined by the Commissioner for a particular asset; and
- the cap (if any) that applies to that asset is shorter than the effective life determined by the Commissioner.³

...

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Schedule 3 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that the goods and services tax applies to transactions involving non-residents who supply options or rights to things which are connected with Australia.⁴

...

Schedule 4 to this Bill amends the *Income Tax Assessment Act 1997* to introduce a tax offset for workers aged 55 years and over. Eligibility for the offset will be based on age and net income from working, with a maximum annual tax offset of \$500.⁵

Background

As there is no central theme to the Bill, the background to the various measures in each Schedule will be discussed under the Main Provisions section below. This Bill was passed by the House of Representatives on 16 February 2005 and introduced into the Senate on 7 March 2005.

Main Provisions

Schedule 1—Fringe benefits tax exemptions

In a [Joint Press Release](#) of the Treasurer and the then Minister for Small Business on 11 May 2004 in connection with the 2004 Budget, it was announced that the Government would provide further FBT concessions to reduce compliance costs for small business and provide greater flexibility to taxpayers in managing their affairs. These measures were to extend the FBT exemption for:

- relocation costs to cover the engagement of relocation consultants
- work-related items such as laptop computers to include personal digital assistants and portable printers for use with portable computers, and
- employer-provided remote area housing by removing the requirement for small businesses to establish that such housing benefits are ‘customary’ in a particular industry.⁶

FBT exemption for the engagement of a relocation consultant

Item 1 of Schedule 1 to the Bill inserts **proposed section 58AA** into the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986) to exempt a benefit if it is in respect of or consists of the engagement of a relocation consultant provided certain conditions in **proposed paragraph 58AA(1)(c)** are satisfied. The conditions are that the relocation consultant must be required solely for one or more of the following reasons in connection with the relocation of an employee:

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- the employee is required to live away from his or her usual place of residence to perform the duties of the employment (the new employment duties)
- having lived away from his or her usual place of residence to perform the new employment duties, the employee is required to return there to perform them or because the employee has ceased to perform them, and/or
- the employee is required to change his or her usual place of residence to perform those duties.

In addition, the exemption applies under **proposed paragraph 58AA(1)(d)** if the relocation consultant is engaged to help a family member move or settle at or near a location where the employee performs the new employment duties.⁷

FBT exemption for work-related items

Subsection 58X(2) of the FBTA 1986 gives a list of work-related items which are exempt from FBT. These include briefcases under paragraph 58X(2)(c), calculators under paragraph 58X(2)(d) and electronic diaries or similar items under paragraph 58X(2)(g). **Item 2 of Schedule 1** inserts into paragraph 58X(2)(g) the words ‘a personal digital assistant’ to provide specifically for its exemption.

Further, **item 3 of Schedule 1** inserts **proposed paragraph 58X(2)(i)** to exempt from FBT a portable printer designed for use with a notebook computer, a laptop computer or a similar portable computer.

FBT exemption for remote area housing

Section 58ZC of the FBTA 1986 deals with remote area housing benefits that are exempt from FBT. Subsection 58ZC(2) defines what constitutes remote area housing benefit. Paragraph 58ZC(2)(c) sets out the requirement that for a housing benefit to qualify as a remote area housing benefit, it must be customary for employers in the industry in which the recipient is employed to provide residential accommodation for their employees without charge or for rent which is less than the market value of the right to occupy or use the accommodation. **Item 4 of Schedule 1** repeals paragraph 58ZC(2)(c) and in consequence the FBT exemption will be available whether it is customary or not for employers in an industry to provide remote area housing to employees.

Application

Item 5 of Schedule 1 provides that the amendments made by this Schedule apply in respect of the FBT year following the FBT year in which this Act receives the Royal Assent and in respect of all later years.

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Schedule 2—Effective life of assets declining in value

Division 40 of the *Income Tax Assessment Act 1936* (ITAA 1997) deals with capital allowances and provides that a taxpayer can deduct an amount equal to the decline in value of a depreciating asset when assessing his or her taxable income. A depreciating asset is an asset that has a limited effective life and that is reasonably expected to decline in value over the time it is used to produce income.

Broadly, the effective life of a depreciating asset is the period it can be used to produce income. Section 40-100 of the ITAA 1997 provides that the Commissioner of Taxation may make a written determination specifying the effective life of depreciating assets. Section 40-95 gives a taxpayer the choice to use an effective life determined by the Commissioner or to work out the effective life of the asset in accordance with section 40-105.

By way of background on the measures contained in **Schedule 2** to the Bill, it should be noted that in 2004 the ATO proposed extending the period over which buses, light commercial vehicles, trucks and trailers could be depreciated over 15 years. This would have been detrimental to the road freight and passenger transport industry. The industry representative body, the Australian Trucking Association, lobbied the Government to reject the ATO's proposal and to have what it saw as a fairer depreciation regime instituted. The Association commissioned Chartered Accountants KPMG to assess the consequences of the ATO's proposal. KPMG found that the proposal:

- would have a negative effect on vehicle operators equal to \$8800 per vehicle annually
- would not reflect the 'true value' of the asset, and
- contradicted government policy in other areas such as road safety, industry efficiency, and the environment.⁸

On 12 August 2004, the Government [announced](#) that it had decided to cap the periods over which the vehicles can be depreciated, thereby overriding the ATO's proposal.⁹ The statutory effective life caps proposed were as follows:

- 7.5 years for general and heavy haulage trucks
- 7.5 years for general, intercity and long distance buses
- 10 years for truck trailers
- 7.5 years for light commercial vehicles (including minibuses)

The Chief Executive Officer of the Australian Trucking Association, Mr Chris Althaus, welcomed the Government's decision:

This move recognises that efficient transport is a fundamental driver of the nation's growth and prosperity ...¹⁰

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The table below gives the revenue implications of capping the effective life of these vehicles (which is effected by the measures in **Schedule 2**).¹¹

Year	2004–05	2005–06	2006–07	2007–08
Revenue gains from Commissioner's revised Determination on effective life of assets	\$3 million	\$30 million	\$95 million	\$156 million
Tax Benefit to affected taxpayers from statutory effective life 'caps' proposed	\$2 million	\$20 million	\$64 million	\$104 million
Consequential limit on revenue gain arising from Commissioner's Determination	\$1 million	\$10 million	\$31 million	\$52 million

Note: The figures in the third row are the differences between the figures in the first row and the second row.

Measures in Schedule 2 capping the effective life of buses, light commercial vehicles, trucks and truck trailers

Section 40-102 provides for the capped life of certain depreciating assets. The taxpayer can choose the capped life specified in section 40-102 as the effective life of the asset where it is shorter than the effective life specified in the Commissioner's determination.

There is a table at the end of subsection 40-102(4) which specifies various kinds of depreciating assets and the capped life of the those assets. There are at present four items in that table. **Item 1** of **Schedule 2** amends the table in subsection 40-102(4) by inserting items numbered 5 to 9 as set out below.

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Item	Kind of depreciating asset	Period	Effective life of the asset as determined by the Commissioner (as at 1 January 2005) ¹²
5	Bus with a gross vehicle mass of more than 3.5 tonnes	7.5 years	15 years
6	Light commercial vehicle with a gross vehicle mass of 3.5 tonnes or less and designed to carry a load of 1 tonne or more	7.5 years	12 years
7	Minibus with a gross vehicle mass of 3.5 tonnes or less and designed to carry 9 or more passengers	7.5 years	12 years
8	Trailer with a gross vehicle mass of more than 4.5 tonnes	10 years	15 years
9	Truck with a gross vehicle mass of more than 3.5 tonnes (other than a truck that is used in *mining operations and that is not of a kind that can be registered to be driven on a public road in the place in which the truck is operated)	7.5 years	15 years

Item 2 of Schedule 2 inserts a definition of ‘gross vehicle mass’ into the Dictionary definitions in subsection 995-1(1) of the ITAA 1997. It means:

- (a) the road weight specified by the manufacturer of the vehicle as the maximum design weight capacity of the vehicle; or
- (b) in the absence of such a specification, the sum of:
 - (i) the weight of the vehicle; and
 - (ii) the weight of the maximum load for which the vehicle was designed (including the weight of the driver and a full tank of fuel, if applicable).

Application

Item 3 of Schedule 2 provides that the amendments made by this Schedule apply to a depreciating asset if the start time of the asset occurs on or after 1 January 2005. The start

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time of an asset is when a person begins to use the asset or when he or she has it installed ready for use.

Schedule 3—Supplies of rights or options offshore

In the Second reading speech for this Bill, the Minister for Revenue and Assistant Treasurer stated that the measure in **Schedule 3** is ‘an integrity measure addressing an unintended consequence in the GST law’.¹³ The Explanatory Memorandum (in paragraphs 3.2 and 3.3 on page 17) identifies the deficiency in the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) as follows:

3.2 The policy intent of the goods and services tax (GST) legislation broadly is to tax private consumption of most goods, services and other things in Australia, including imports. However, a deficiency has been identified in the GST Act under which certain rights or options provided offshore are not subject to the GST, even when they are for goods, services and other things that will be consumed in Australia.

3.3 Where a resident entity supplies a right or option to goods, services or other things that are for consumption in Australia, the underlying supply will generally be subject to the GST. However, where the same supply is made overseas by a non-resident, no GST applies. This is because the supply is not ‘connected with Australia’.¹⁴

To rectify this anomaly, **item 2** of **Schedule 3** amends the definition of supplies ‘connected with Australia’ in section 9-25 of the GST Act. The effect of the insertion of **proposed paragraph 9-25(5)(c)** into the GST Act is that the offshore supply of a thing which is a right or option to acquire another thing will be connected with Australia if the supply of the other thing would be connected with Australia. By way of example, reference is made in **proposed paragraph 9-25(5)(c)** to the idea that a holiday package for Australia that is supplied overseas might be connected with Australia under this new paragraph.

The Explanatory Memorandum (in paragraph 3.5 on page 17) points out that non-resident tour operators have been the main beneficiaries of the existing loophole. It states:

Typically, these operators acquire Australian package holidays from resident tour wholesalers and then on-supply them to tourists. If these supplies constitute supplies of rights or options to acquire things to be consumed in Australia they will not be connected with Australia as required under the GST Act. This is contrary to the policy intent that GST should be paid on supplies of Australian package holidays to both Australian residents and non-residents.¹⁵

While the amendment by **item 2** amends the definition of ‘connected with Australia’, it has also the effect of upsetting the present ‘reverse charge’ arrangements in Divisions 83 and 84 of the GST Act. Under Division 83, the GST on taxable supplies made by non-residents can, with the agreement of the recipients, be ‘reverse charged’ to the recipients.

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Under Division 84, in some limited cases, supplies of things other than goods or real property, taking place outside Australia are brought within the GST system by a 'reverse charge' mechanism. The amendments to Divisions 83 and 84 ensure that these 'reverse charge' mechanisms work as intended.

The need for amendments to Division 84 to ensure the continued operation of the 'reverse charge' arrangements under that Division is explained in the Explanatory Memorandum (in paragraphs 3.12 and 3.13 on page 20) as follows:

3.12 Because Division 84 requires that the supplies must *not* be connected with Australia, any broadening in the meaning of 'connected with Australia' for supplies of things, other than goods or real property, could potentially result in Division 84 having a correspondingly narrower operation. This is not desirable because it would reduce the circumstances in which supplies are reverse charged under the GST Act.

3.13 To prevent this outcome, this Bill will replace subsection 84-5(1) so that supplies connected with Australia because of paragraph 9-25(5)(c) will continue to be reverse charged. *[Schedule 3, items 7 and 8, subsections 84-5(1) and (2)]¹⁶*

Similarly, the need to amend Division 83 in consequence of widening the meaning of 'connected with Australia' is explained in the Explanatory Memorandum (in paragraphs 3.17 and 3.18 on page 21) as follows:

3.17 Division 83 only applies to a supply that is 'connected with Australia'. As the amendment to subsection 9-25(5) will widen the meaning of 'connected with Australia', it may potentially broaden the operation of Division 83. A number of these supplies will continue to be reverse charged under the expanded Division 84 and would have otherwise been eligible to be also reverse charged under Division 83. However, Division 83 is not intended to apply where Division 84 imposes a reverse charge.

3.18 To prevent this outcome, this Bill amends Division 83 to ensure that where Division 84 applies, Division 83 will not have application. *[Schedule 3, item 4, paragraph 83-5(2)(a)]¹⁷*

Application

Item 17 of Schedule 3 provides that the amendments made by **Schedule 3** apply to supplies made on or after the day on which the Bill for this Act was introduced into the Parliament, which was 10 February 2005.

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Schedule 4—Mature age worker tax offset

In a [Press Release](#) on 9 September 2004, the Prime Minister announced the *Mature Aged Worker Tax Offset* (MAWTO) as part of the Coalition's 2004 election policy. The features of this tax offset detailed in that Press Release were as follows:

- the MAWTO will take effect from the start of the 2004–05 financial year and will be payable on assessment
- it will be payable to people over the age of 55
- it will provide a maximum annual rebate (tax offset) of \$500 on their earned income.
- it is estimated that more than 750 000 mature age Australian workers will benefit from the MAWTO
- the cost to revenue will be \$1.039 billion over the forward estimates period, making no allowance for potential behavioural responses
- the MAWTO will phase in at 5 per cent from the first dollar of assessable earned income, so that the full \$500 rebate will be available when earned income reaches \$10 000
- the offset will phase out gradually (at 5 per cent) for those mature age workers whose earned income exceeds \$48 000, so that no offset is available when earned income exceeds \$58 000
- in 2005–06 and beyond the tax offset will start to phase out once earned income exceeds \$53 000, so that no offset is available when earned income exceeds \$63 000
- the *Mature Age Worker Tax Offset* will operate in combination with the existing \$6000 tax-free threshold and the Low Income Tax Offset. Taken together, this means that eligible workers aged 55 or more will pay no tax on their earned income up to \$10 323.

The amendment by **item 2 of Schedule 4** inserts proposed **Subdivision 61-K** into the ITAA 1997 to give effect to this policy.

Although the press release indicated that the maximum annual tax offset would be \$500 on 'earned income', the Bill relates the tax offset to 'net income from working', defined in **proposed section 61-570**. **Proposed subsection 61-570(1)** of this definition includes:

- personal services income, which is the income from the taxpayer's personal efforts or skills,
- assessable income from a business carried on by the taxpayer,
- the farm management deposit (FMD) withdrawal amounts of a taxpayer, and
- the reportable fringe benefits of the taxpayer.

Proposed subsection 61-570(2) excludes from the definition of 'net income from working' the following:

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- an eligible termination payment,
- certain amounts received on retirement or termination of employment in lieu of annual leave or long service leave, and
- passive income, which generally includes income from dividends, unit trust dividends, annuities, interest income, rental income, royalties and attributable income from trust estates.

The reader is referred to paragraphs 4.8 to 4.29 on pages 25 to 32 of the Explanatory Memorandum which gives examples of 'net income from working' and the calculation of the MAWTO.¹⁸

Application

Item 5 of Schedule 4 states that the amendments made by this **Schedule** apply to assessments for the 2004–05 income year and later income years.

Concluding Comments

Financial impact of measures in the Bill

The comments made on pages 3 to 5 of the Explanatory Memorandum as to the financial impact of the measures in the Bill are set out in the following table.

Measures in the Bill	Financial impact			
Schedule 1—Fringe benefits tax – improving access for small business	The financial impact is unquantifiable but expected to be insignificant.			
Schedule 2—Effective life of assets declining in value	Loss to revenue by capping effective life of buses, light commercial vehicles, trucks and truck trailers.			
	2004–05	2005–06	2006–07	2007–08
	\$2 million	\$20 million	\$ 64 million	\$104 million
Schedule 3—Supplies of rights or options offshore	This measure is expected to result in a gain to revenue as follows:			
	2004–05	2005–06	2006–07	2007–08
	\$50 million	\$140 million	\$ 140 million	\$150 million
Schedule 4—Mature Age worker Tax Offset	The cost to revenue will be as follows:			
	2005–06	2006–07	2007–08	
	\$ 460 million	\$ 490 million	\$ 490 million	

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Wider GST implications of the change in the definition of ‘connected with Australia’ in the GST Act

There have been concerns that while the amendment to the definition of ‘connected with Australia’ in **Schedule 3** was intended to ensure that GST is paid on Australian holiday packages sold by overseas tour operators, there may be wider implications which may not have been fully considered prior to its introduction. An article on the [website](#) of Minter Ellison on 18 February 2005 pointed out that the changes may apply to the supply of other types of rights and options, not just rights to receive services included in holiday packages. The article highlights the following:

For example the amendments may have unintended consequences to the GST treatment of some guarantees, warranties and insurance contracts provided by non-residents where those contracts involve the supply of rights to acquire other things, the supply of which will be consumed in Australia.

The amendments are also likely to impact non-residents who are parties to tripartite arrangements that involve services being provided in Australia. The amendments could result in GST being payable on supplies made by non-residents under these contracts, which previously may not have been subject to GST. This may also require non-resident parties to register for Australian GST.¹⁹

Further amendments to put right these unintended consequences may therefore be expected. This illustrates one of the ways in which tax law grows in length and complexity where closing a gap on one unintended consequence may give rise to the need for more amendments.

Endnotes

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- 1 [Explanatory Memorandum](#) to the Tax Laws Amendment (2005 Measures No. 1) Bill 2005. This Bills Digest draws extensively from the Explanatory Memorandum.
 - 2 *ibid.*, p. 3.
 - 3 *ibid.*, p. 4.
 - 4 *ibid.*, p. 4
 - 5 *ibid.*, p. 5.
 - 6 The Hon Peter Costello MP, the Treasurer and the Hon Joe Hockey, the then Minister for Small Business, ‘Small Business Tax Simplification’, [Press Release No. 036](#), 11 May 2004.
 - 7 Explanatory Memorandum, *op.cit.* p. 10, paragraph 1.9.
 - 8 NSW Road Transport Association, *Transbiz*, 13 August 2004, at <http://www.nswrta.com.au/transbiz/TRANSBIZ%20%20162.doc> .

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- 9 Hon. Mal Brough, MP, Minister for Revenue and the Assistant Treasurer, 'New measures to support the trucking industry', press release no. 003, 12 August 2004.
- 10 NSW Road Transport Association, op. cit.
- 11 Explanatory Memorandum to the Bill - The figures in this table have been taken from the details under the sub-heading '*Financial Impact*' on page 4 of the Explanatory Memorandum.
- 12 [Unofficial Consolidated Taxation Ruling TR 2000/18C8](#) which gives the effective life of depreciating assets determined by the Commissioner as at 1 January 2005.
- 13 Hon Mal Brough MP, Minister for Revenue and Assistant Treasurer, '[Second reading speech](#): Tax Laws Amendment (2005 Measures No. 1) Bill 2005, House of Representatives Debates, 10 February 2005, pp. 1–2.
- 14 Explanatory Memorandum, op. cit., p. 17, paragraphs 3.2 and 3.3.
- 15 *ibid.*, p. 17, paragraph 3.5.
- 16 *ibid.*, p. 20, paragraphs 3.12 and 3.13.
- 17 *ibid.*, p. 21, paragraphs 3.17 and 3.18.
- 18 *ibid.*, pp. 25 to 32, paragraphs 4.8 to 4.29.
- 19 Minter Ellison, [News Alert - Crucial amendments to the GST Act](#), 18 February 2005.

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