



Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006

Bernard Pulle
Economics Section

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Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006

Date introduced: 22 June 2006

House: House of Representatives

Portfolio: Treasury

Commencement: The Act commences on Royal Assent. The commencement and application of the Schedules are dealt with in the Main Provisions section of this Bills Digest.

Purpose

The Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006 ([the Bill](#)) does more than merely repeal inoperative provisions of tax law. It has very stringent savings measures to enable the repealed provisions to be operational under certain circumstances. The Bill also rewrites certain provisions of income tax law and makes amendments of a housekeeping nature.

- The Bill has six Schedules and the purpose of each Schedule is briefly as follows.
- **Schedule 1** repeals identified inoperative provisions in ten tax acts.
- **Schedule 2** makes consequential amendments to forty-one acts arising from the repeals made by **Schedule 1**.
- **Schedule 3** repeals certain inoperative provisions in four tax acts.
- **Schedule 4** makes consequential amendments to 3 tax Acts arising from repeals made by **Schedule 3**.
- **Schedule 5** is comprised of two Parts. Part 1 repeals sixty eight inoperative Acts and Part 2 makes consequential amendments to thirty Acts arising from the proposed repeal of Acts in Part 1.
- **Schedule 6** is titled 'Application and saving provisions' and is in three Parts.

Part 1 provides for the application of the amendments made by **Schedules 1 to 5**.

Part 2 has general saving provisions and Part 3 has other saving provisions and transitional arrangements.

In the Second Reading Speech, the Treasurer elaborated further on the break down of the repeals as between inoperative provisions and Acts as follows.

The Bill now repeals over 4,100 pages of inoperative law, including about 2,600 pages of income tax law. That comes to almost a third of the income tax law and over

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half of the *Income Tax Assessment Act 1936*. The Bill also repeals about 1,500 pages of other Acts (including 48 sales tax statutes) that are wholly inoperative.¹

In consequence of the repeal of inoperative provisions and Acts, the [Explanatory Memorandum](#) to the Bill states, at page 3, that this measure will reduce compliance costs for tax practitioners and provide material benefits to practitioners and taxpayers, who have to read, interpret and apply tax laws.²

Background

This section of the Bills Digest will give a brief outline of the problem which the measures in this Bill seek to alleviate. It will also briefly refer to the attempts made so far to deal with the problem in recent years.

The problem – the ever increasing complexity and volume of tax legislation

The ever increasing complexity and growth in volume of tax law together with the additional compliance costs which it entails has been the subject of continuing concerns for taxpayers and tax practitioners. The problem has been exacerbated in recent years as each wave of tax reform has given rise to new forms of tax minimisation practices and further tax legislation to curb such tax minimisation practices. Each attempt to curb tax minimisation practices has led to added complexity and volume in tax legislation.

Mr Gary Banks, Chairman of the Productivity Commission, in an address titled – [The good, the bad and the ugly: economic perspectives on regulation in Australia](#) - to the Conference of Economists, Business Symposium, in Canberra on 2 October 2003 summed up the cause and effect of the growth in income tax regulation as follows:

The Income Tax Assessment Act—often taken as a regulatory ‘barometer’—has grown particularly rapidly since its inception. At nearly 7,000 pages, the ITAA (the 1936 and 1997 statutes together) is now nearly 60 times longer than the paltry 120 pages that did the job when it was first introduced in 1936—notwithstanding admirable recent attempts at simplification. To take a fanciful turn, were this rate of growth to continue unabated, I am informed that by the end of this century the paper version of the Tax Act would amount to 830 billion pages; it would take over 3 million years of continuous reading to assimilate and weigh the equivalent of around 20 aircraft carriers!

There is of course a reason for the increasing regulatory detail and complexity—us. Regulations that limit choice or impose costs on people invite evasive responses as much as compliant ones, sometimes more so. Hence the endless quest for tax loopholes (and the commensurate growth of tax consulting services) and the inevitable page-lengthening defensive responses by government. So complexity

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should not just be seen as something ‘done to us’ by naïve or incompetent regulators, but as part of a strategic environment.³

The increase in volume with the addition of a second Australian Income Tax Assessment Act

The following paragraphs outline the reasons for the increase in volume over the last twenty years and provide a brief background why Australian income tax law has been provided in two Assessment Acts since 1997. Attachments A, B and C to this Bills Digest set out the patterns of increase in volume, by pages, of the ITAA 1936, the ITAA 1997 and the combined ITAA 1936 and ITAA 1997 respectively over time.⁴

First period of sharp increase in the volume of income tax law

It will be seen from Attachment A that there was a sharp increase in the volume of income tax law in the ITAA 1936 after 1986, and this coincided with the legislation to implement the tax reforms of 1985 which included the introduction of the imputation system, the capital gains tax (CGT) regime and the fringe benefits tax (FBT).⁵

The period after 1986 saw the progressive introduction of the self assessment regime when the onus of reading, understanding, and interpreting and applying tax law was placed on taxpayers and tax practitioners. Prior to the introduction of the self assessment regime the onus of making an assessment based on facts disclosed by taxpayers in tax returns was on the Commissioner.

Second period of sharp increase in the volume of income tax law

The second period of sharp growth in volume of income tax legislation and the ITAA 1936 in particular, as can be seen from Attachment A, is the period June 1997 to date.

There was an expectation that on the introduction of the *Income Tax Assessment Act 1997* (ITAA 1997) in 1997 that it would progressively take in the rewritten sections of the ITAA 1936, and that in consequence the ITAA 1936 would shrink in volume at the same time.

However, this has not taken place and it can mainly be attributed to the fact that some of the provisions that implemented the reforms to income tax law in the [A New Tax System](#) package proposed in 1998 were included in the ITAA 1936.⁶ This was followed by the ITAA 1936 containing many provisions to implement the New Business Tax System in the report [A Tax System Redesigned](#) of the Ralph Review from 1999.⁷

Attachment B shows that the ITAA 1997 grew in volume between 1997 and 1999. The increase in volume of the ITAA 1997 can be attributed to taking in the rewrites of parts of the ITAA 1936 and the balance of the legislation required for the implementation of the *A New Tax System* and the New Business Tax System.

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The path to solving the problem of increased volume and complexity of income tax law taken since 1993 resulting in the enactment of the *Income Tax Assessment Act 1997* in addition to the *Income Tax Assessment Act 1936*

Some of the significant attempts to meet the concerns of taxpayers and tax practitioners arising from the growth in volume as well as complexity of income tax law will be briefly referred to below.

1993 report of the Joint Committee of Public Accounts recommended the rewrite of the income tax law

The Joint Committee of Public Accounts in its report titled '*An Assessment of Tax: A Report of an Inquiry into the Australian Taxation Office*' Report No. 326, AGPS, Canberra, p. 91, recommended (Recommendation 22) that the Government should set up a task force to rewrite the income tax law. In addition, Recommendation 23 required the Government commit sufficient resources to the task force as will allow it to complete a priority simplification redraft within two years and the full simplification of the Act within five years.⁸

In response the Government set up the Tax Law Improvement Project (TLIP) on 17 December 1993.

The initial work of the Tax Law Improvement Project (TLIP)

The approach to rewriting the new tax law is well described in an Information Paper titled [*Building the New Tax Law*](#) in the website of the Office of Parliamentary Counsel. This Information Paper adds that it was intended to be a three year project, funded from 1 July 1994.⁹ This Information Paper also gives the rationale for the progressive replacement of the ITAA 1936, in several stages over the project's life.¹⁰

The introduction of the *Income Tax Assessment Act 1997*- the first instalment of bills by TLIP

The first instalment of a major package of bills by TLIP were the Income Tax Assessment Bill 1995 when it was introduced by the previous Labor Government on 30 November 1995 together with the Income Tax (Transitional Provisions) Bill 1995 and the Income Tax (Consequential Amendments) Bill 1995. This package of bills was intended to a new income tax law which would progressively replace the ITAA 1936. These bills lapsed when Parliament was prorogued on 29 January 1996.

The present Government introduced the following bills on 19 June 1996, which were broadly the same as those introduced by the previous Government, although they did contain some changes:

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- Income Tax Assessment Bill 1996 (enacted as the *Income Tax Assessment Act 1997* (ITAA 1997))
- Income Tax (Transitional Provisions) Bill 1996 (enacted as the *Income Tax Transitional Provisions Act 1997*)
- Income Tax (Consequential Amendments) Bill 1996 (enacted as the *Income Tax (Consequential Amendments) Act 1997*)

The Bills received Royal Assent on 18 April 1997 and have had effect since the 1997-1998.

Intention of Government to progressively replace the *Income Tax Assessment Act 1936*

The Explanatory Memorandum to the package of bills introduced on 19 June 1996 indicated in Chapter 1 that the Income Tax Assessment Bill 1996 is the first instalment in the rewrite of the *Income Tax Assessment Act 1936* (ITAA 1936).¹¹

Progressive enactment of the new law

The income tax law is considered too large to rewrite and enact in a single stage. The Income Tax Assessment Bill 1996 is founded on the basis that the old law will be rewritten and replaced progressively.

How it will happen

It is proposed to enact the rewritten law in annual instalments. The first instalment comprises the Bills in this package, in particular the Income Tax Assessment Bill 1996. It is to apply first for the 1996-97 income year.

From the commencement of this package of Bills until the completion of the rewrite, the income tax law will be spread over two Assessment Acts – the *Income Tax Assessment Act 1936* and the proposed *Income Tax assessment Act 1997*.

As each instalment of the rewritten law starts to apply, the corresponding provisions in the 1936 Act will cease. The proposed new Act will grow progressively and the operative provisions in the 1936 Act will correspondingly shrink. When the final instalment of the rewritten law starts to apply, the 1936 Act will have no ongoing operation.

The Income Tax Assessment Bill 1996 was amended to make it applicable from the year 1997-98.

A user's view of the achievement of the first instalment of the rewritten income tax law

A [user's view](#) of what was achieved by the first instalment of Bills produced by the efforts of TLIP is set out below.¹²

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The Tax Law Improvement Project (TLIP), whose main objective was to rewrite the 1936 Act in a more readable, simplified manner, has pursued this objective through the following measures:

The use of plain English that does not get bogged down in the legal formality of the 1936 Act.

The use of the word 'you' throughout the Act which makes the Act easier to read as well as cutting down considerably the size of the Act.

The implementation of a new numbering system, which is far simpler to follow.

The use of 'method statements' that assist in illustrating how to make certain decisions. These statements are often accompanied by tables and diagrams which make the interpretation of the Act much easier.

The provision of a Dictionary to define key terms (in Section 995).

The reduction in reliance on the 'Commissioner's discretion'.

Doubts that the instalment method would achieve total replacement of the *Income Tax Assessment Act 1936*

Doubts were expressed by commentators in 1997 as to whether the *Income Tax Assessment Act 1936* (ITAA 1936) would ever be replaced by a single Income Tax Assessment Act with some taking the view that TLIP should have worked towards achieving the outcome of replacing the ITAA 1936 in one big bang approach.

Paul Martin for example wrote the following:

The method of implementation of the new Act has been the subject of considerable debate. Some critics have suggested that the 'big bang' method would have been the best option, whereby the Act would have been rewritten in full before being released.

Instead, the Act is being released in stages so that each tax year a new part of the Act takes effect.

In the transitional period, until this process is complete, there will undoubtedly be complications and much paper chasing.

To start with we have:-

The Income Tax Assessment Act 1997

Income Tax (Consequential Amendments) Act 1997

Income Tax (Transitional Provisions) Act 1997

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[The Tax Law Improvement Act 1997](#)

Whether the collection of new Acts ever fully replaces the 1936 Act is in itself debatable. Section 1-3 of the 1997 Act states that, if the rewritten Act expresses the same idea in a different form of words, the ideas are not to be taken differently. In other words, any interpretation of the new Act will require some consideration of what was previously intended!¹³

Umbilical cord that ties the new income tax law to the *Income Tax Assessment Act 1936*

Section 1-3 of the ITAA 1997 remains the umbilical cord that appears to have given the provisions of the ITAA 1936 that were rewritten into the ITAA 1997 a life of their own. When it comes to the interpretation of income tax law, as long as section 1-3 remains in place in the ITAA 1997, the old provisions of the ITAA 1936 may not be taken as repealed.

It must be mentioned that section 15AC of the *Acts Interpretation Act 1901* too would appear to have produced the same result. Section 15AC states that where an Act has expressed an idea in a particular form of words and a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style, the ideas shall not be taken to be different merely because different forms of words were used.

Thus in interpreting the provisions of the ITAA 1997 in the future, the question may arise whether an idea in that Act was the same as the idea in the ITAA 1936.

Program of the rewrite of the income tax law subsumed with the *A New Tax System* package and the New Business Taxation package

TLIP undertook further rewrites in the *Tax Law Improvement Act 1997* (TLIA 1997) and the *Tax Law Improvement Act (No. 1) 1998*. The rewrites dealt mainly with exempt income provisions and the major part of the capital gains provisions respectively.

However, the program of rewrites was overtaken by other areas of tax reform.

The first was the need to shift emphasis in 1998 to the package of bills that became necessary for the implementation of the proposals in the *A New Tax System*. This included the replacement of the wholesale sales tax (WST) with the goods and services tax (GST). The second was the package of bills needed to implement the recommendations of the Ralph Review of Business Taxation from 1999. These two sets of bills placed a severe strain on tax instructing and drafting resources and left few resources for the rewriting of the income tax laws as planned earlier.

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Review of aspects of income tax self assessment

In the context of continuing taxpayer and tax practitioner concerns on the complexity and volume of tax law, on [24 November 2003](#), the Treasurer called for a review of the self-assessment system to examine whether the right balance has been struck between protecting the rights of individual taxpayers and protecting the revenue for the benefit of the whole Australian community. The review was expected to identify whether there were refinements to the present arrangements that would reduce the level of uncertainty for taxpayers, reduce compliance costs and enhance the timeliness of ATO audits and amendments to assessments.¹⁴

In paragraph 7.9, of the [report](#) of the review, it was suggested that the repeal of inoperative provisions may be one of the options that Treasury should pursue to make tax law easily accessible to individuals and small business with very simple affairs.¹⁵

7.9 Volume of the tax law

Many submissions identified the volume of income tax law as an issue. However elegantly written, well laid out or helpfully structured, the sheer volume of information in tax laws can be a barrier to their usefulness. While it is true that few taxpayers ever need to deal with more than a few provisions of the law, nevertheless those parts are scattered throughout the Acts, amongst more obscure and sometimes inoperative material.

The Board of Taxation is currently in the process of identifying the inoperative provisions in the income tax law and will report its recommendations to Government. These recommendations could potentially include repealing some inoperative provisions.

Another approach suggested is to collect the relevant operative provisions for individuals and small business into a separate Part. That is, it may be possible to place all of the material required by large numbers of taxpayers with simple affairs together in one spot. This could reduce the number of provisions these taxpayers and their advisers need to be aware of and understand in order to fulfil their obligations under self assessment.

Recommendation 7.3 of the report required the Treasury to examine the possibility of reducing the volume of law that needs to be accessed by individuals and small businesses with very simple affairs.

Steps taken prior to introducing the measures proposed in the Bill

The measures in the Bill indicated that the Government gave priority to the repealing of inoperative provision and Acts as a first step to reduce the volume of income tax law.

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The steps taken by the Board of Taxation (the Board) since 2004 to rationalise the ITAA 1936 and the ITAA 1997 by selecting inoperative provisions and Acts for repeal are set out in paragraphs 1.1 to 1.15 on pages 5 to 7 of the Explanatory Memorandum. It also states that the Treasury and the Australian Taxation Office (ATO) independently reviewed the inoperative provisions identified by the Board. For ease of reference the contents of these paragraphs are set in Attachment D.

The Government's acceptance of the Board's recommendation to repeal inoperative provisions, subject to further consultation, was announced by the Treasurer in [Press Release No. 102 of 24 November 2005](#).¹⁶ On 4 April 2006, the Treasurer released draft legislation for the repeal of inoperative provisions with his [Press Release No. 018](#).¹⁷

Financial implications

The Explanatory Memorandum to the Bill states at page 3 that the financial impact of the measures is nil.

Main provisions

Benchmark for identifying inoperative provisions

The benchmark of identifying inoperative provisions and Acts is stated in the Explanatory Memorandum to the Bill as follows at page 3:¹⁸

'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.'

It is not within the scope of this Bills Digest, to comment whether this benchmark has been met by the repeals covered by each of the items in **Schedules 1 to 5**. This is a task that has not even been attempted by the Explanatory Memorandum to the Bill.

However, some examples of the effect of the repeals of inoperative provisions will be considered in this section of the Bills Digest.

Further, the effectiveness of the repeal will be judged against the savings provisions in **Schedule 6** as well as the Part III of the *Acts Interpretation Act 1901*.

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Schedule 1 – Inoperative provisions repealed on Royal Assent

Item 1 of Schedule 1 provides that the provisions and parts of provisions specified in the Schedule are repealed.

There are 317 other items in **Schedule 1** which repeal inoperative provisions or parts of provisions in the ten Acts listed in **Schedule 1**.

Item 153 of Schedule 1 which repeals Parts IIIAA and IIIA of the ITAA 1936, deal with franking of dividends and capital gains respectively.

Part IIIAA dealing ceased to have application after 1 July 2002 and therefore satisfied a criterion of the benchmark for inclusion as an inoperative provision in this Bill. Part IIIA ceased to have application working out net capital gains and net capital losses for assessments for the 1998-99 year of income or later years. Part IIIA therefore satisfies a criterion of the benchmark for inclusion as an inoperative provision in this Bill.

As an example, given the limits to the scope of this Bills Digest, it is proposed to consider only the impact of the repeal of Part IIIAA in the following section.

Implications of the repeal of Part IIIAA of the ITAA 1936 dealing with the franking of dividends

The effect of the repeal of Part IIIAA is examined by considering the case of company Greg Ltd mentioned in Example 1 in item 7 of **Part 2 of Schedule 6** of the Bill. Here the Commissioner undertakes an audit of Greg Ltd after the repeal of Part 111AA and concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year. In consequence Greg Ltd had a franking account deficit for that franking year. The Commissioner can amend the assessment under former section 160ARN in the repealed Part 111AA of the ITAA 1936 to collect the franking deficit tax and a penalty by way of additional tax because of the savings provisions in **item 7 of Part 2**.

Item 7 of Part 2 provides that even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended).

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Thus, the Commissioner can make an amended assessment under repealed subsection 160ARN (3) at any time where the Commissioner is of the opinion that the under assessment is due to fraud or evasion, because of **item 7 of Part 2 of Schedule 6**.

Greg Ltd, if dissatisfied with the franking assessment made by the Commissioner may because of **item 7 of Part 2 of Schedule 6** object against it under repealed and saved section 160ART.

This example illustrate that Part IIIAA of the ITAA 1936, which will be repealed as inoperative under the measures in the Bill, may have an application well into the future.

Commencement and Application

Items 1 and 2 in Column 1 of the table in **proposed section 2** of the Bill provide that **Schedule 1** commences on the day on which this Act receives the Royal Assent.

Under **item 1 of Part 1 of Schedule 6**, the repeals and amendments made by **Schedule 1** apply:

- (a) in so far as they affect assessments—to assessments for the 2006-07 income year and later income years, and
- (b) otherwise—to acts done, or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

Schedule 6 also deals with the saving and transitional provisions relating to the repeals and amendments proposed in **Schedules 1 to 5** of this Bill. The application of the repeals made by **Schedule 1** is therefore subject to the savings and transitional provisions in **Schedule 6** which are considered below.

Schedule 2 – Consequential amendments relating to Schedule 1 repeals etc.

Schedule 2 has two Parts which contain consequential amendments arising from the proposed repeal of provisions and parts of provisions by **Schedule 1**. As will be seen below it includes amendments of a housekeeping nature and rewrites as well.

Part 1 contains 1016 items which effect consequential to 41 Acts.

Item 288 of Schedule 1 repeals the heading of Division 1 of Part IIA of the *Taxation Administration Act 1953*.

The present heading of Part IIA of the *Taxation Administration Act 1953* is 'PART IIA - CHARGES AND PENALTIES FOR FAILING TO MEET OBLIGATIONS'. **Item 930 of Part 1 of Schedule 2** changes the heading to 'Part 11A – The general interest charge'.

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Part 2 of Schedule 2 contains 47 items which amend 15 Acts, in consequence of the repeal of the present heading of Division 1 of Part 11A of the *Taxation Administration Act 1953*.

This is an example of an amendment, which is of a housekeeping nature, rather than being an inoperative provision or Act that is being repealed.

Rewrites

The Bill includes a number of rewrites of tax law provisions. The Explanatory Memorandum to the Bill in paragraphs 2.90 to 2.93 on pages 27 and 28 explains that the rewrites fall into two types.

The first type of rewrite relates to a continuing provision which relies on a calculation, concept or term created by a repealed provision. In such a case a consequential amendment is required to include it in the current legislation. When making the required amendment a rewrite is undertaken in the Bill.

Thus, for example, the definitions of employee and employer in section 16(4AA) of the ITAA 1936 rely at present on the meaning of the terms given in section 221A of the ITAA 1936. **Item 163 of Schedule 1** repeals Divisions 1AAA to 6A of Part VI which includes section 221A.

Items 152 and 153 of Schedule 2, in consequence, provide new rewritten definitions of employee and employer respectively to be inserted into section 16(4AA) of the ITAA 1936.

The second type of rewrite relates to the case of some significant provisions in the ITAA 1936 which have been inoperative for some time except for one or more sections or subsections which are still operative. The Bill repeals the entire provision and rewrites the sections or subsections which were operative into either the ITAA 1997 or into a different place in the ITAA 1936.

Thus, for example, section 51, except for subsections 51(8) and (9), the general deductions provision under the ITAA 1936, has been inoperative from the 1997-98 year of income. Subsections 51(8) and (9) deny deductions for the late lodgement amount of the superannuation supervisory levy and the superannuation guarantee charge respectively under section 8-1 of the ITAA 1997.

Item 65 of Schedule 1 repeals section 51 of the ITAA 1936, including subsections 51(8) and (9). A note to **item 65** adds that remade versions of subsections 51(8) and (9) which are repealed are included in the ITAA 1997 by item 663 of **Schedule 2**.

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Item 663 of **Schedule 2** inserts section 26-90 into Division 26 of the ITAA 1997 and is more specific than subsection 51(8) which it replaces. Section 26-90 disallows so much of a levy imposed by the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* as represents the late lodgement amount.

Item 663 of **Schedule 2** also inserts 26-95 into Division 26 of the ITAA 1997 to disallow a deduction for the superannuation guarantee charge imposed by the *Superannuation Guarantee Charge Act 1992*. Section 26-95 is very similar to the terms of subsection 51(9) which it substitutes.

Division 26 of the ITAA 1997 sets out some amounts that cannot be deducted or cannot be deducted in full, and is the appropriate Division for inserting these amendments in the process of the gradual consolidation of the ITAA 1936 and the ITAA 1997.

The reader is referred to the other rewrites undertaken in **Schedule 2** of this Bill in paragraphs 2.90 to 2.148 on pages 27 to 37 of the Explanatory Memorandum to the Bill.

Commencement and Application

Items 1 and **2** in **Column 1** of the table in **proposed section 2** of the Bill provide that **Schedule 2** commences on the day on which this Act receives the Royal Assent.

Under **item 1** of **Part 1** of **Schedule 6**, the repeals and amendments made by **Schedule 2**:

- (a) in so far as they affect assessments—to assessments for the 2006-07 income year and later income years, and
- (b) otherwise—to acts done, or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

Schedule 6 also deals with the saving and transitional provisions relating to the repeals and amendments proposed in **Schedules 1** to **5** of this Bill. The application of the repeals made by **Schedule 2** is therefore subject to the savings and transitional provisions in **Schedule 6** which are considered below.

Schedule 3 – Inoperative provisions repealed on 1 January 2008

Item 1 of **Schedule 3** provides for the repeal of 20 provisions in four Acts. The Explanatory Memorandum at paragraph 3.5 on page 39 states that these provisions become inoperative by the chosen benchmark at different times. It adds at paragraph 3.8 at page 40 that 1 January 2008 was chosen because it is the first day after the end of the 2006-07 income year for taxpayers with late balancing accounting periods. Also, the last of the future inoperative provisions becomes inoperative during that income year.

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Application and Commencement

As indicated by the title to **Schedule 3** the repeals take effect on 1 January 2008.

Item 3 in **Column 1** of the table in **proposed section 2** of the Bill also states that **Schedule 3** commences on 1 January 2008.

Under **item 4** of **Part 1** of **Schedule 6**, the repeals and amendments made by **Schedule 3** apply:

- (c) in so far as they affect assessments—to assessments for the 2007-08 income year and later income years, and
- (d) otherwise—to acts done, or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

Schedule 6 also deals with the saving and transitional provisions relating to the repeals and amendments proposed in **Schedules 1** to **5** of this Bill. The application of the repeals made by **Schedule 3** is therefore subject to the savings and transitional provisions in **Schedule 6** which are considered below.

Schedule 4 – Consequential amendments relating to Schedule 3 repeals

There are 12 **items** in **Schedule 4** which make consequential amendments to three Acts relating to **Schedule 3** repeals.

Application

Item 3 in **Column 1** of the table in **proposed section 2** of the Bill states that **Schedule 4** commences on 1 January 2008.

Under **item 4** of **Part 1** of **Schedule 6**, the repeals and amendments made by **Schedule 4** apply:

- (e) in so far as they affect assessments—to assessments for the 2007-08 income year and later income years, and
- (f) otherwise—to acts done, or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

Schedule 6 also deals with the saving and transitional provisions relating to the repeals and amendments proposed in **Schedules 1** to **5** of this Bill. The application of the repeals made by **Schedule 4** is therefore subject to the savings and transitional provisions in **Schedule 6** which are considered below.

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Schedule 5 – Inoperative Acts repealed on Royal assent

Item 1 of Part 1 of Schedule 5 repeals 69 Acts. The Acts repealed include 48 Acts relating to sales tax which ceased to apply from 1 July 2000 on the introduction of the goods and services tax (GST).

Part 2 has 178 amendments that are consequential to those amendments made in **Part 1 of Schedule 5**.

Commencement and Application

Item 4 in Column 1 of the table in **proposed section 2** of the Bill states that **Schedule 5** commences on the day on which the Act receives the Royal Assent.

Item 5 of Schedule 6 provides that the repeals and amendments made by **Schedule 5** apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

Schedule 6 also deals with the saving and transitional provisions relating to the repeals and amendments proposed in **Schedules 1 to 5** of this Bill. The application of the repeals made by **Schedule 5** is therefore subject to the savings and transitional provisions in **Schedule 6** which are considered below.

Schedule 6 – Application, saving and transitional provisions

The application, saving and transitional provisions relating to **Schedules 1 to 5** are set out in **Schedule 6** to the Bill.

Applications provisions

Item 1 of Part 1 of Schedule 6 provides that except as mentioned in **items 2 and 3**, the repeals and amendments made by **Schedules 1 and 2** apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

Item 4 of Part 1 of Schedule 6 provides that the repeals and amendments made by **Schedules 3 and 4** apply:

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- (a) so far as they affect assessments—to assessments for the 2007-08 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

General saving provisions

Object

The object of the general savings provisions in **Part 2 of Schedule 6** is stated in **item 6 as follows:**

The object of this Part is to ensure that despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done, or
- (b) any state of affairs existing, or
- (c) any period ending,

before such repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

Part III of the *Acts Interpretation Act 1901* (AIA 1901) deals with the repeal and expiration of Acts and section 8 clarifies the effect of repeals generally. **Item 11** provides that **Schedule 6** does not limit the operation of the AIA 1901. The Explanatory Memorandum to the Bill at paragraph 2.46 on page 16 explains that the general savings provisions in **Schedule 6** go further than that provided by section 8 of the AIA 1901 as follows.

The main general savings provision also preserves powers, duties, rights and obligations in relation to the time before the repeal or amendment. If a 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 would therefore appear that the object of the general savings provisions in **Schedule 6** is that they are intended to act in conjunction with section 8 of the AIA 1901 to preserve the operation of the repealed provisions and Acts in the particular circumstances that they are tax provisions which have revenue implications.

The Explanatory Memorandum at page 3 states categorically that the financial impact is nil. This assurance can only be given if the general and specific savings provisions in the Act in conjunction with the provisions in Part III of the AIA 1901 preserve the operations

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of the repealed provisions and Acts in a way that the Commissioner is able to administer those repealed provisions and Acts as though they had never been repealed by this Act. It should, at the same time, preserve the rights and obligations of taxpayers who might be affected by the Commissioner's application of the repealed provisions and Acts.

Support for this view of the operation of the savings provisions in **Schedule 6** is found in paragraph 2.47 on page 16 of the Explanatory Memorandum.

It extends to powers and duties as well as to rights and obligations. That is intended to make sure that the whole of a repealed provision's previous operation can be preserved where necessary.

In other words the general savings provisions are directed at preventing an unintended windfall tax amnesty benefiting those who had not been compliant with the repealed provisions and Acts in the past.

Savings provisions relating to making and amending assessments, and doing other things, in relation to past matters

Item 7 of Part 2 of Schedule 6 provides that even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended).

Item 7 provides two examples of the making and amending of assessments and doing other things in relation to past matters.

Example 1 relates to the repeal of Part 111AA where the Commissioner at the conclusion of an audit of Greg Ltd undertaken after its repeal finds that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year. The Commissioner can amend the assessment under former section 160ARN in the repealed Part 111AA of the ITAA 1936 to collect the franking deficit tax and impose a penalty by way of additional tax because of the savings provisions in **item 7 of Part 2**. This example was considered in greater detail in the Main Provisions section of the Bills Digest dealing with the repeals and amendments in **Schedule 1—Inoperative provisions repealed on Royal Assent**.

Example 2 is about Duffy Property Ltd which in the 1997-98 income year withheld amounts from employees' wages and failed to notify and remit those amounts under Division 1AAA and 2 of Part VI of the ITAA 1997. The Commissioner, on the conclusion

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of an audit of Duffy Property Ltd, undertaken after the repeal by **item 163** of **Schedule 1** of Division 1AAA to 6A of Part VI, is authorised to estimate the liability under repealed section 222AGA in Part VI because of **item 7**. Further, the Commissioner is authorised under section 220AAZA in Part VI, despite its repeal, to recover the amount of the estimate again because of **item 7**.

Saving of provisions about effect of assessments

Item 8 of **Schedule 6** is the second general savings provision. It is intended to preserve the effect of an assessment made either before or after the repeal or amendment of a provision. It does this by disregarding the repeal or amendment in relation to such assessments.

Saving of provisions about general interest charge, failure to notify penalty, late reconciliation statement penalty or interest

The third general savings provision by **item 9** of **Schedule 6** relates to the period in respect of the payment of a liability for the general interest charge or failure to notify penalty or late reconciliation statement penalty or interest, is due and which has not begun or has begun but not ended when the provision under which the liability arose is repealed or amended. The saving preserves the operation of the repealed or amended provisions in relation to those past debts.

Repeals disregarded for the purposes of dependent provisions

The Explanatory Memorandum states in paragraph 2.55 on page 20 that the fourth general savings provision in **item 10** of **Schedule 6** 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. The saving in **item 10** disregards the repeal of an Act or a provision of an Act so far as it affects the operation of any Act or legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

Other savings provisions and transitional provisions

Items 12 to **15** of **Part 3** of **Schedule 6** provides savings provisions particular to specific provisions that are repealed by **Schedule 1**.

The reader is referred to paragraphs 2.57 to 2.61 on pages 20 and 21 of the Explanatory Memorandum for details of these specific savings provisions.

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Concluding comments

Practical implications of the repeals and savings provisions to taxpayers and tax practitioners

The examples in the general savings provisions in **Part 2 of Schedule 6** considered above illustrate that where there has been fraud and tax evasion, the Commissioner is authorised to disregard the repeals and issue amended assessments. Likewise, the taxpayer has rights to object to assessments despite the repeals.

For the vast majority of taxpayers who have been honest and compliant there will be no occasion to refer to these repealed provisions and they may treat these repealed and saved provisions as consigned to history.

However, for those taxpayers who have been engaged in aggressive tax planning and tax minimisation practices, there is always the prospect of the Commissioner auditing these schemes for years covered by the repealed provisions and striking the schemes down under Part IVA of the ITAA 1936. To this class of taxpayers and their advisors the repealed provisions are at best dormant awaiting activation at any time if the Commissioner considers that those schemes fall into the grey area that separates tax avoidance and tax evasion.

In the case of taxpayers who have been fraudulent or have engaged in tax evasion, the repealed provisions were only repealed in name. The savings provisions in **Schedule 6** would be a constant reminder that as far as they were concerned the repealed provisions and Acts were always operational or active.

Should Bill when enacted be called the Tax Laws Amendment (Repeal and Saving of Inoperative Provisions) Act 2006 in the interests of taxpayers and tax practitioners

Tax professionals and those acquiring tax skills will always consider the repealed provisions and Acts as part of their working tools. The Tax Law Amendment (Repeal of Inoperative Provisions) Act 2006 (the RIP Act 2006), when enacted, will provide an index to the repealed provisions and contain the all important saving provisions in Schedule 6.

To serve the purposes of tax professionals and taxpayers who may be affected by the application of the provisions and Acts which have been repealed, a preferable title to the Act may be the Tax Laws Amendment (Repeal and Saving of Inoperative Provisions) Act 2006 instead of the Tax Law Amendment (Repeal of Inoperative Provisions) Act 2006 (the RIP Act 2006) as envisaged by the Bill.

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Will the measures in the Bill usher in a third Income Tax Assessment Act for all practical purposes for tax professionals?

The practical benefits of repealing the inoperative material are considered in paragraphs 1.11 to 1.15 on pages 6 and 7 of the Explanatory Memorandum and these paragraphs are included in Attachment D.

One of the benefits mentioned is shorter published legislation.

1.15 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 in their annual reprints. That will significantly shorten their annual reprints of the tax laws. The electronic versions of the legislation which many people use (whether the version produced by the Attorney-General's Department or one of the commercial versions) would also be shorter.

Despite the imperative to omit the repealed and saved provisions to shorten the printed volumes of the ITAA 1936 and the ITAA 1997 for the use of taxpayers and tax professionals, the volume that contains the repealed and saved provisions must still be a reference book with the repealed and saved provisions.

This third volume of inoperative and saved provisions is in fact a third reference book of income tax law and will be required for a considerable time to come when the Commissioner will not find it necessary to conduct audits for the years of assessments covered by the repealed and saved provisions.

As the remaining part of the ITAA 1936 is rewritten into the ITAA 1997, it may be necessary to save the repealed provisions to be applicable for the years prior to the insertion of the rewritten provisions into the ITAA 1997. These repealed and saved provisions will be additions to the volume of repealed and saved provisions which the Bill when enacted will create. It is only when the ITAA 1936 has been completely written into the ITAA 1997 that the ITAA 1936 will cease to be a repository of current Australian income tax law. However, its place will be taken by the volume of repealed and saved provisions and as mentioned earlier will be used by tax professionals and probably, a minority of taxpayers, until the Commissioner ceases to conduct audits for the years of assessment covered by the repealed and saved provisions. In the interim period Australian income tax assessment law will be in the ITAA 1936, the ITAA 1997 and the third volume of repealed and saved income tax law.

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Endnotes

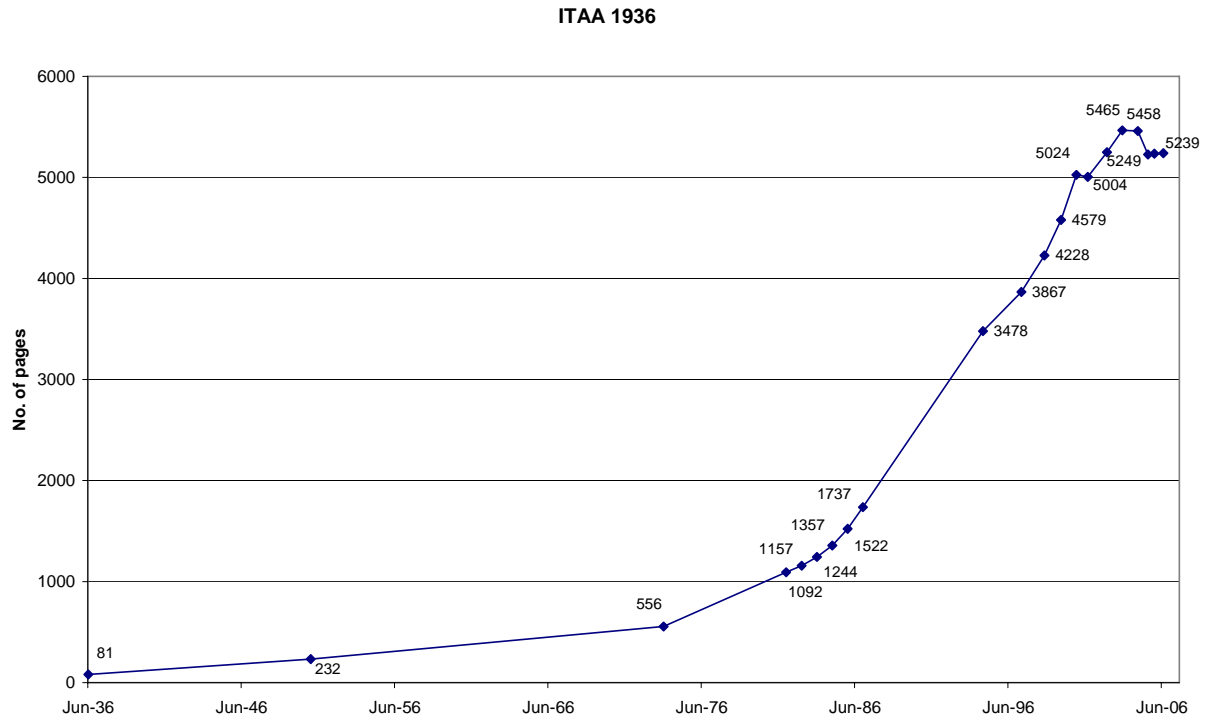
- 1 Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006 – Second Reading Speech.
- 2 [Explanatory Memorandum](#) to the Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006, p. 3.
- 3 Gary Banks, Chairman, Productivity Commission, *The good, the bad and the ugly: economic perspectives on regulation in Australia*, p. 4. Available at <http://www.pc.gov.au/speeches/cs20031002/cs20031002.pdf> on 1 August 2006.
- 4 Pagination data (which includes Tables of Contents, Notes and Tables) is taken from the printed versions up to April 1997, and thereafter from the RTF or PDF versions available on the ScalePlus or ComLaw websites.
- 5 Reform of the Australian Taxation System, Statement by the Treasurer, the Hon. Paul Keating, M.P. (September 1985).
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- 7 Review of Business Taxation, [A Tax System Redesigned: More Certain, Equitable and Durable](#), July 1999. Available on 2 August 2006 at <http://www.rbt.treasury.gov.au/publications/paper4/index.htm>.
- 8 Joint Committee of Public Accounts, *An Assessment of Tax: A report of an inquiry into the Australian Taxation Office*, page xxvi.
- 9 Office of Parliamentary Counsel, Building the New Tax Law, Information Paper No. 2, April 1995, p. 3. Available at http://www.opc.gov.au/plain/docs/building_tax_law.rtf on 1 August 2006.
- 10 *ibid.*, p. 21.
- 11 *Explanatory Memorandum*, Income Tax Assessment Bill 1996, Income Tax (Transitional Provisions) Bill 1996 and the Income Tax (Consequential Amendments) Bill 1996, p. 18.
- 12 Paul Martin, [The Tax Law Project – What it Means for Property](#), Property Australia, (October 1997).
- 13 *ibid*
- 14 The Hon Peter Costello, MP, the Treasurer, [Review of Aspects of Income Tax Self Assessment](#), Parliament House, Canberra, 24 November 2003.
- 15 The Treasury, [Review of Aspects on Income Tax Self Assessment](#), Report, Canberra, August 2004, paragraph 7.9.
- 16 The Hon Peter Costello, MP, the Treasurer, [Income Tax Act reduced by around 30 per cent](#) , Press Release No. 102, 24 November 2005, Parliament House, Canberra.
- 17 The Hon Peter Costello, MP, the Treasurer, [Bill to cut tax legislation by more than 4,100 pages](#), Press Release No. 018, 4 April 2006, Parliament House, Canberra.
- 18 *Explanatory Memorandum* to the Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006, p. 3.

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Attachment A: Growth in Volume of the ITAA 1936



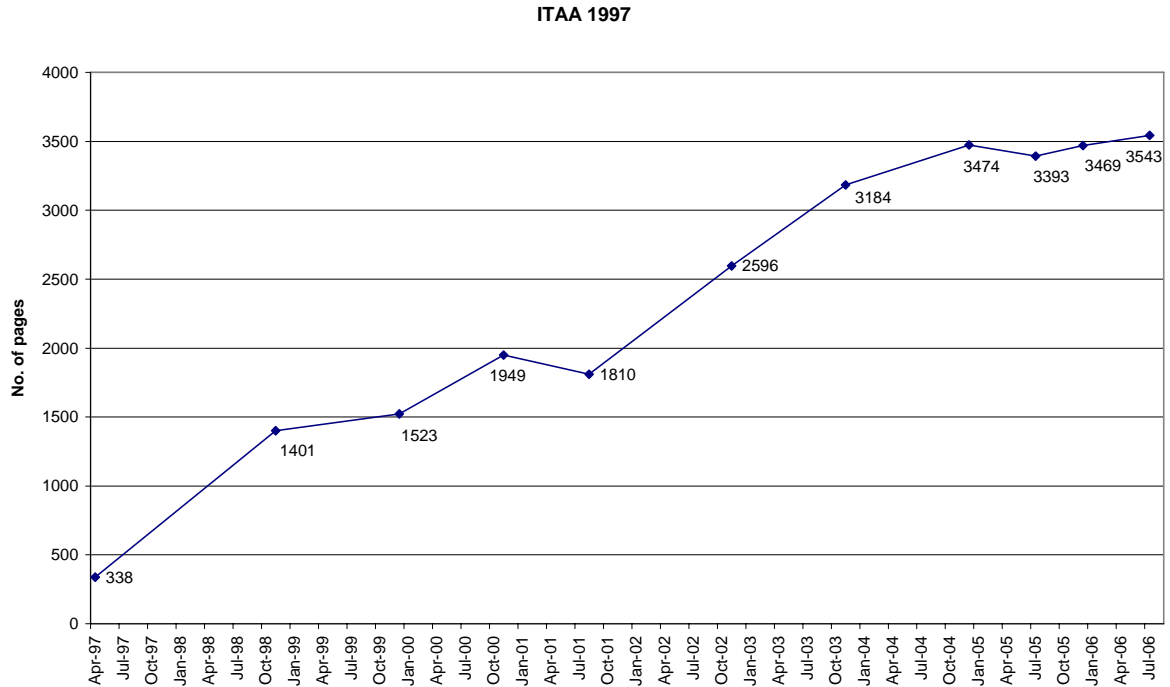
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Attachment B: Growth in Volume of the ITAA 1997

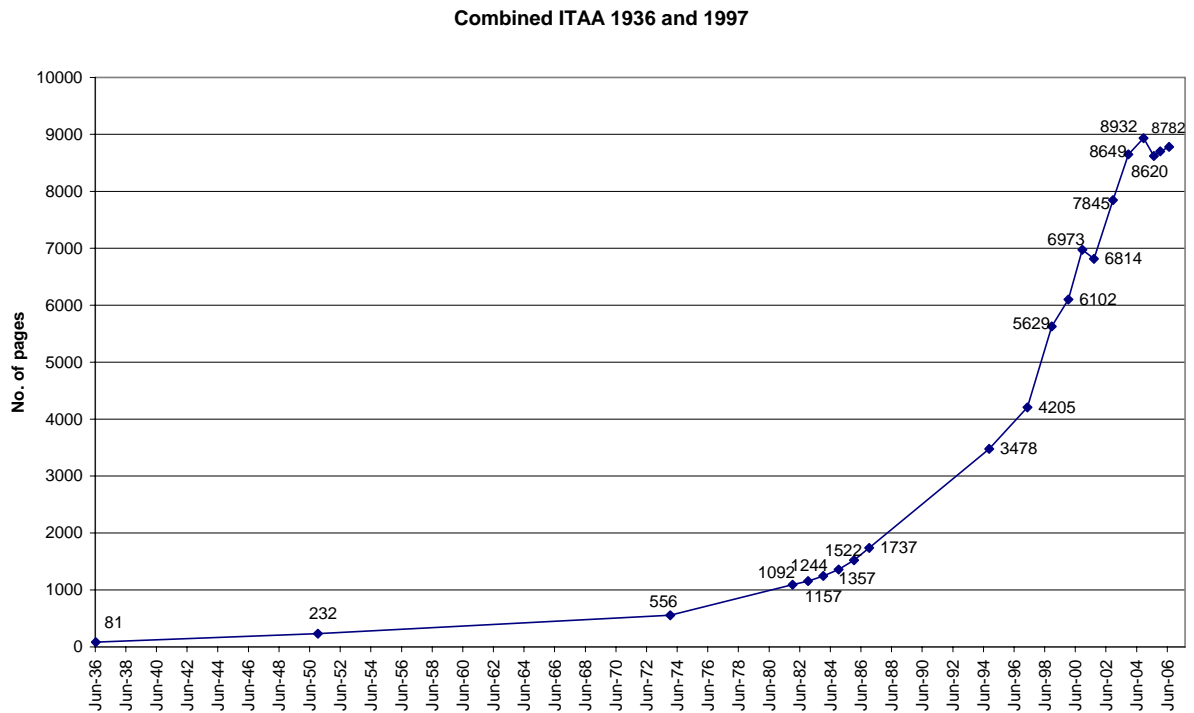


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Attachment C: Combined Growth in Volume of the ITAA 1936 and 1997



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Attachment D: Extract from the Explanatory Memorandum to the Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006— 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. 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 After that, the Treasury and the Australian Taxation Office reviewed the inoperative material identified by the Board. They also 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).

1.8 An exposure draft was released for public comment from 4 April 2006 to 5 May 2006. This Bill incorporates some minor changes arising from comments received during the consultation.

1.9 In total, this Bill repeals more than 4,100 pages of Australian taxation laws.

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1.10 As well as repealing inoperative material, this Bill 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?

1.11 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 Bill 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.

1.12 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.

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

1.14 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.

1.15 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 in their annual reprints. That will significantly shorten their annual reprints of the tax laws. The electronic versions of the legislation which many people use (whether the version produced by the Attorney-General's Department or one of the commercial versions) would also be shorter.

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