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Tax Laws Amendment (2009 Measures No. 1) Bill 2009

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Contents

Tax Laws Amendment (2009 Measures No. 1) Bill 2009

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Commencement: The formal provisions and **Parts 1** and **3** of **Schedule 1** commence on Royal Assent. **Schedules 2** and **3** commence on the day after Royal Assent, and **Part 2** of **Schedule 1** commences on 1 July 2013.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

The amendments in this Bill affect the PAYG instalment tax system for small business, unclaimed superannuation amounts and changes to various income tests determining a person's eligibility to receive various Commonwealth payments.

This Bill makes a variety of amendments, in three unrelated groups, to the:

- *Taxation Administration Act 1953* (TAA 1953)
- *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Unclaimed Super Act 1999)
- *Small Superannuation Accounts Act 1995* (Small Accounts Act 1995)
- *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Co-contribution Act 2003)
- *Superannuation Guarantee (Administration) Act 1992* (Guarantee Act 1992)
- *Financial Transactions Reports Act 1988*
- *Income Tax Assessment Act 1997* (ITAA 1997)
- *Income Tax Assessment Act 1936* (ITAA 1936)
- *A New Tax System (Family Assistance) Act 1999* (Assistance Act 1999)
- *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999*
- *Child Support (Assessment) Act 1989* (Child Support Act 1989)

- *Medicare Levy Act 1986* (Levy Act 1986)
- *Social Security Act 1991* (SSA 1991)
- *Veterans' Entitlements Act 1986*
- *Higher Education Support Act 2003*
- *Student Assistance Act 1973*, and
- *Farm Household Support Act 1992*.

These amendments are contained in three schedules in this Bill. This Digest will outline the content of each schedule separately.

Committee consideration

The Bill has been referred to the Senate Standing Committee on Economics for inquiry and report by 10 March 2009. Further information is at this Committee's webpage on this inquiry.[1]

Overall financial implications

The overall financial impact of the measures contained in this Bill is illustrated in the following table being the sum of revenue implications and fiscal costs (including administrative costs).

Table 1: Overall financial impacts

Year	2008-2009	2009-2010	2010-2011	2011-2012
Amount $m	-455.1	559.0	237.0	203.8

Source: Explanatory Memorandum[2]

These financial implications arise only from proposed changes to PAYG instalment reduction for small business (**Schedule 1**) and proposed reforms to the income tests applying to various government payments (**Schedule 3**).

1. Senate Standing Committee on Economics, Inquiry into the Tax Laws Amendment (2009 Measures No.1) Bill 2009, webpage at http://www.aph.gov.au/Senate/committee/economics_ctte/tlab_1_09/info.htm accessed 24 February 2009.

2. Explanatory Memorandum, Tax Laws Amendment (2009 Measures No. 1) Bill 2009 (hereafter Explanatory Memorandum), 12 February 2009, pp. 3 and 6.

Schedule 1 — PAYG instalment reduction for small business

Purpose

The purpose of the provisions in **Schedule 1** is to modify temporarily the method used in the timing of the payment the 'Pay as you go' (PAYG) tax applying to a small business entity only under current section 45-400 of Schedule 1 of the TAA 1953. The intent of the proposed changes is to allow a once-only reduction in the amount of tax paid by some small business in one particular quarter in the early part of 2009. The proposed amendments do not generally reduce the rate of tax applying to these entities.

Generally, for taxation purposes a small business entity is one that carries on a business and satisfies the $2 million aggregated turnover test.[3] That is, the aggregated turnover[4] of the business is less than $2 million in the previous income year or is likely to be less than this figure in the current income year.

Background

What is the PAYG instalment tax system?

The PAYG instalments system replaced the provisional tax and company tax instalment systems from 1 July 2000. The system is designed to ensure the efficient collection of company income tax, amongst other payments to the Commonwealth.

Under this scheme, entities' pay tax on a quarterly rather than on an annual basis. These quarterly instalments contribute towards the payment of the overall tax liability for the income year. Taxpayers affected by the proposed amendments have their income, for PAYG purposes, worked out using the GDP-adjusted method.

What is the GDP-adjusted method?

Taxpayers, who satisfy certain criteria, can have their quarterly tax instalments based on the prior year's adjusted taxable income. This income is increased in response to any positive movement in Gross Domestic Product (GDP). This is the default basis for PAYG taxation of small business and applies unless the taxpayer has chosen to pay on another basis (that is, on the basis of their instalment income or, being eligible to pay an annual instalment amount, and has elected to do so).[5]

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3. Section 328-110 of the ITAA 1997.
4. The term 'aggregated turnover' is generally defined in section 328-115 of the ITAA 1997 to be the sum of all relevant annual turnovers.
5. *CCH Australian Master Tax Guide 2008–2009*, Topic 27-220 - Amount of Quarterly PAYG Instalments.

What is adjusted taxable income?

Generally, a taxpayer's adjusted taxable income for these purposes is their total tax assessable income for the base year reduced by

- any net capital gain included in assessable income (except for superannuation entities)
- any tax deductions used in calculating that assessable income, and
- the amount of any tax loss – to the extent that it carries forward into the succeeding income year.[6]

The proposed amendments only affect small business entity taxpayers, using the GDP adjusted method for determining their taxable income, who make 4 annual tax payments per year.[7] Such taxpaying entities can include:

- certain individuals
- small business, and
- multi-rate trustees.[8]

Other taxpayers that may be subject to this method are superannuation funds and other entities taxed as companies, where they have:

- $2 million or less in base assessment instalment income for the previous income year, or
- more than $2 million in instalment income for the previous income year and are eligible to pay annual PAYG instalments, but have chosen not to do so.

From the 2009–2010 income year, taxpayers that are 'small business entities' will also be able to have their liability for PAYG instalments calculated under the GDP-adjusted notional tax method. For these purposes, an entity is a '*small business entity*' for an income year (the current year) if it carries on a business in that year, and either:

- in the prior year and its aggregated turnover for that year was less than $2 million, and/or
- its aggregated turnover for the current year is likely to be less than $2 million.[9]

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6. Section 45-330 of Schedule 1 of the TAA 1953.
7. Section 45-50 and subsection 45-400(1) of Schedule 1 of the TAA 1953.
8. Multi rate trustees are those who are liable to pay tax or more than one tax liability at more than one tax rate. For example, a trustee may be liable to pay tax at the company tax rate and an individual's tax liability at the personal income tax rate.

How does the GDP-adjusted instalment system work?

Under the current section 45-405 of Schedule 1 of the TAA 1953 the Commissioner of Taxation works out a GDP adjustment percentage using the following formula:

$$\left(100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}}\right) - 100$$

For the 2008 income year, the sum of the GDP amounts for the current year is the sum of the GDP amounts for the 2007 calendar year. Likewise the sum of the GDP amounts for the previous year is the sum of the GDP amounts for the 2006 calendar year. Similar GDP amounts will apply in future years.

The amount of income that is subject to GDP-adjusted tax for the year under assessment is calculated using the following formula:

$$\text{Original amount} \times (1 + \text{GDP adjustment})$$

In this formula the '*original amount*' is the adjusted taxable income for the base year, or the taxpayer's adjusted withholding income for the base year, as appropriate.

For the purposes of this formula the base year is the latest income year for which a tax assessment of that taxpayer has been made.[10] A taxpayer's '*adjusted withholding income*' for the base year is the amount of assessable income from which PAYG withholding payments has been, or should have been, made for the base year, less the deductions allowed for the base year.[11]

Tax is then calculated on this GDP-adjusted income under current section 45-325 of Schedule 1 of the TAA 1953. This is a complex process and for the purpose of the proposed amendments need not be further described here.

The timing of the payment of the relevant tax is set out in current section 45-400 of Schedule 1of the TAA 1953, and is set out in the following table:

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9. *CCH Australian Master Tax Guide 2008–2009*, op. cit.

10. op. cit., Topic 27-450 – Instalment Rate.

11. Section 45-335 of Schedule 1 of the TAA 1953.

Table 2: Schedule for payment of GDP-adjusted quarterly instalments

If the instalment quarter is:	The amount of the instalment is:
the first in that income year for which the taxpayer is liable to pay a PAYG instalment	25% of the GDP-adjusted notional tax
the second in that income year for which the taxpayer is liable to pay a PAYG instalment	50% of the GDP-adjusted notional tax, less the amount of any previous instalment in that income year
the third in that income year for which the taxpayer is liable to pay a PAYG instalment	75% of the GDP-adjusted notional tax, less the amount of any previous instalments in that income year
the fourth in that income year for which the taxpayer is liable to pay a PAYG instalment	100% of the GDP-adjusted notional tax, less the amount of any previous instalments

Source: *CCH Australian Master Tax Guide 2008–2009,* Topic 27-220 – Amount of Quarterly PAYG Instalments

One of the important concepts for the purposes of these amendments in the above table is that of 'instalment quarter'. An '*instalment quarter*' is defined in current section 45-60 of Schedule 1 of the TAA 1953. If a taxpayer's income year for taxation purposes ends on 30 June of any year, an instalment quarter ends on the following dates:

- 30 September
- 31 December
- 31 March, or
- 30 June of any income year.

Where a taxpayer's income year commences on a different date, the instalment quarter ends at three monthly intervals after the start of that year.

Why make the proposed amendments?

The proposed amendments were announced as part of the Government's response to the global financial crisis. They are designed to improve the cash flow of small business during the current economic downturn.

Basis of policy commitment

The proposed amendments have been announced in recent press releases by both the Treasurer and the Prime Minister.[12]

12. The Hon. Kevin Rudd MP, Prime Minister, '$4.7 Billion Nation Building Package', *media release*, 12 December 2008, and The Hon. Wayne Swan, Treasurer, and The Hon. Dr Craig Emerson MP, Minister for Small Business, Independent Contractors and the Service

Position of significant interest groups/press commentary

Press comment on the proposed amendments was positive at the time they were announced.[13] However, another commentator noted that the proposed amendments gave a small business the ability to reduce its PAYG tax impost on a temporary basis and that this is possible under current legislation.[14]

The Australian Chamber of Commerce and Industry welcomed the announcement of the proposed amendments, but emphasised that the proposed measure is a deferral, not a reduction, in tax liabilities.[15]

Pros and cons

The proposed amendments will reduce the amount of GDP-adjusted instalment tax paid for the early part of 2009. This will reduce the drain on a small business' cash flow during that period and may assist in maintaining economic activity into the 2009 year. Further, the proposed changes give the Government some flexibility in responding to economic circumstances affecting small business by allowing them to make regulations to reduce the amount of tax collected from these groups on a temporary basis.

However, the proposed changes will reduce the Government's tax collections at a time when the Commonwealth budget is incurring increased deficits.

Coalition/Australian Democrat/Greens/Family First policy position/commitments

At the time of the initial announcement (12 December 2008) the then Shadow Treasurer noted that the proposed changes to the PAYG tax system were welcome, but sought further details before making any further comments.[16]

Other political parties in the Australian Parliament have yet to comment on the proposed amendments.

Economy, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small business', *joint media release*, No. 140, 12 December 2008.

13. See David Crowe, 'Christmas tax break for business', *Australian Financial Review*, 12 December 2008, p. 1 and 'Investment fillip welcomed', *Australian Financial Review*, 13 December 2008, p. 8.

14. Max Newnham, 'You say tax cut, I say policy spin', *The Age – Business News*, 18 December 2008, p. 3.

15. Australian Chamber of Commerce and Industry, 'Small business tax deferral a boost to business confidence', *media release*, 12 December 2008.

16. The Hon. Julie Bishop MP, then Shadow Treasurer, 'Economic measures welcome but where is the detail?', *media release*, 12 December 2008.

Financial implications

The financial impact of this particular measure is shown in the following table:

Table 3: Proposed PAYG measures financial impacts

Year	2008-2009	2009-2010	2010-2011	2011-2012
Amount $m	-440.0	395.0	45.0	Nil

Source: Explanatory Memorandum, p. 3.

Main provisions

Part 1 – Main amendments

Item 3 of **Schedule 1** to the Bill inserts **proposed subsections 45-400(3)** to **(7)** into the existing Schedule 1 of the TAA 1953.

Proposed subsections 45-400(3) to **(5)** provide for the regulations to specify the circumstances when the amount to be paid under current section 45-400 can be reduced. **Proposed subsection 45-400(5)** ensures that if the circumstances set out in the regulations exist and the amount of PAYG tax instalment is reduced, then in assessing the instalment amount for an instalment quarter, the taxpayer assumes that the full amount (rather than the reduced instalment amount) had been paid in earlier instalment quarters in that year.

Proposed subsection 45-400(5) ensures that the amount of tax not collected under the regulations noted above, is not recovered in the collections for a later instalment quarter.

The stated purpose of these amendments is to enable the Government to respond quickly to changes in economic circumstances affecting small business.[17]

In particular, **proposed subsection 45-400(6)** reduces the amount payable under the provisions of current subsection 45-400(2) (see Table 2 above) by 20 per cent for an instalment quarter that includes 31 December 2008 of a single income year for:

- a small business entity for the 2007–2008 or the 2008–2009 income year, or
- a partner of a partnership that is a small business entity of the 2007–2008 or 2008–2009 income year, or
- a beneficiary of a trust that is a small business entity for the 2007–2008 or 2008–2009 income year.

17. Explanatory Memorandum, p. 9.

Under this proposed amendment, the 20 per cent reduction in the amount to be paid can occur once only. The Explanatory Memorandum notes that the 20 per cent amount broadly represents the annual reduction in instalment payments necessary to reflect the expected slowing in small business profit growth for the 2008–2009 income year.[18]

Proposed subsection 45-400(7) requires that the taxpayer, in working out their payments for a later instalment quarter has to assume that the reduction referred to in the **proposed subsection 45-400(6)** had not happened. This ensures that the amount not paid in the earlier instalment quarter will not be recovered in a later instalment quarter.[19]

Part 2 – Sunsetting on 1 July 2013

Item 4 requires that **proposed subsections 45-400(6)** and **(7)** be automatically repealed on 1 July 2013.

Part 3 – Application

Item 5 provides that the amendments made by Part 1 of Schedule 1 to this Bill will apply to PAYG instalment quarters in the 2007–2008 income year, and later income years.

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18. ibid, p. 10.

19. Interestingly, the taxation industry generally assumes that the 20 per cent reduction for the one instalment quarter will be recovered in subsequent instalment quarter's payments. For example see Jacqueline Hodges, 'A warning on the PAYG 20% reduction', *The Taxpayer*, Issue 15, 2008–2009, 16 February 2009, p. 237. However, the Explanatory Memorandum (at p. 12) notes that this is not the case.

Schedule 2 — Unclaimed superannuation money

Purpose

This schedule's amendments are minor in nature and arise due to previous changes to legislation governing the payment of former temporary resident's superannuation benefits to the Commissioner of Taxation.

Background

The Explanatory Memorandum recalls the changes enacted by the *Temporary Residents Superannuation Legislation Amendment Act 2008*. Briefly, under this Act unclaimed superannuation benefits left behind in Australia by former temporary residents must now be paid to the Commissioner of Taxation as unclaimed superannuation money.

The amendments proposed in this schedule update the Unclaimed Super Act 1999, as well as other Acts, as a consequence of the abovementioned changes to the treatment of former temporary residents' superannuation benefits.[20]

What is unclaimed superannuation?

According to section 12 of the Unclaimed Super Act 1999, unclaimed superannuation money generally arises when:

- a superannuation fund member has reached the eligibility age (currently age 65),[21] and
- the superannuation provider has not received a contribution from the member for at least two years,[22] and
- a five year period has passed since the superannuation provider has had contact with that member, despite reasonable efforts to do so.

In relation to a deceased member, section 14 of the Unclaimed Super Act 1999 unclaimed superannuation money arises where:

- the member has died, and
- according to the superannuation fund's rules, a benefit is immediately payable, and

20. Explanatory Memorandum, p. 15.

21. These ages are specified in section 10 of the Unclaimed Super Act 1999 or in relevant regulations.

22. Alternatively a benefit has not accrued in respect of that member in a defined benefit superannuation scheme for the previous two years.

- the superannuation fund has not received a contribution from the member for at least two years,[23] and
- after making reasonable efforts, after a reasonable period has passed, the superannuation fund provider is unable to determine a person to whom the benefit should be paid.[24]

How do unclaimed superannuation amounts arise?

Generally, unclaimed superannuation moneys arise where:

- a member changes employment or residence (generally both) and neglects to keep their superannuation fund informed of these changes
- a couple split their superannuation benefits as a result of a property settlement following the breakdown of their relationship and one party changes address or employment and also does not inform their superannuation fund of these changes, or
- a temporary resident leaves Australia and does not claim their benefits within 6 months of departure and the superannuation fund pays their benefits to the Australian Taxation Office.

How much unclaimed superannuation money is there?

As at 30 June 2008 the amount of lost and unclaimed superannuation money listed on the Australian Taxation Office's Lost Members Register was $12.9bn. [25] The rate at which this amount has increased is very high, rising by 8.4 per cent between 30 June 2007 and 30 June 2008.[26]

What happens to it?

From 1 July 2007, private sector superannuation funds must report and pay their unclaimed super money – for the half-year ending 30 June 2007 and later half-years – to the Tax Office rather than to their relevant state or territory authority. State and territory government super schemes may be required to report and pay unclaimed super money to

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23. op. cit.
24. Section 14, Unclaimed Super Act 1999.
25. Senator the Hon. Nick Sherry, Minister for Superannuation and Corporation Law, 'Liberals' lost super legacy continues to grow', *media release*, No. 66, Canberra, 15 October 2008.
26. ibid.

the Tax Office, subject to relevant state or territory law.[27] Additional amounts may be in separate State and Territory government unclaimed money accounts.

Basis of policy commitment

The proposed amendments have not previously been announced.[28]

Position of significant interest groups/press commentary

There has been little, if any, comment on the proposed changes.

Pros and cons

The proposed amendments significantly improve the administration of the unclaimed superannuation register and amounts of unclaimed superannuation arising from the departure of former temporary residents.

Coalition /Australian Democrat/Greens/Family First policy position/commitments

Political parties have not made significant comment on these proposals.

Financial implications

There are no reported financial consequences of the proposed measures.

Main provisions

Part 1 – Main amendments

Under current section 16 of the Unclaimed Super Act 1999, a superannuation provider[29] is required to provide the Commissioner of Taxation with a statement on unclaimed superannuation moneys by:

- 1 November every year in respect of the half year ending the preceding 30 June, and
- 1 May every year in relation to the half year ending the preceding 31 December.

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27. Australian Taxation Office, 'Changes to unclaimed super money for individuals' ATO Website (http://www.ato.gov.au/super/content.asp?doc=/content/19155.htm&page=2&H2 accessed 17 February 2009).

28. Explanatory Memorandum, p. 4.

29. In section 955-1 of the ITAA 1997 a superannuation provider in relation to a superannuation plan means the trustee of a superannuation fund or of an Approved Deposit Fund, or a Retirement Savings Account provider (usually a bank). In turn, a superannuation plan is a superannuation fund or an Approved Deposit Fund.

Item 11 of **Schedule 2** of this Bill ends this arrangement by inserting **proposed section 15A** into the Unclaimed Super Act 1999. **Proposed section 15A** allows the Commissioner of Taxation to specify, by legislative instrument, days that are 'unclaimed money days' and for each of those days a further day that is a 'scheduled statement day'.[30]

Item 8 inserts a new definition of the term '*unclaimed money day*' into the Unclaimed Super Act 1999, stating that it has the meaning given by **proposed section 15A**.

However, **proposed section 15A** does not directly define this term, save by reference to those days specified by the Commissioner in the abovementioned legislative instrument. Additional amendments suggest that the function of the proposed unclaimed money days is that they are the days on which a superannuation provider must tally all unclaimed superannuation money in their control, as of that day.

Item 7 inserts a definition of the term '*scheduled statement day*' into the Unclaimed Super Act 1999, defining it by the meaning given to it by either **proposed section 15A** or current section 20B. Both these sections refer to a scheduled statement day declared by legislative instrument. However, additional amendments suggest that the function of these scheduled statement days are that they are a date by which a superannuation provider must give the Commissioner of Taxation the required information about the unclaimed superannuation moneys held by that provider by the end of the specified 'unclaimed money day'. Further, they are also the date upon which amounts of unclaimed superannuation moneys are payable to the Commissioner of Taxation.

Item 12 repeals current subsections 16(1) to (6) and inserts **proposed subsections 16(1)** to **(3)**. The proposed changes require a superannuation provider to give the required statements regarding any unclaimed superannuation money under the Unclaimed Super Act 1999 or:

- the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*
- the ITAA 1997, or
- Chapters 2 and 4 of Schedule 1 of the TAA 1953.

Item 16 repeals current subsections 17(1) and (2) of the Unclaimed Super Act 1999 (requirement to pay unclaimed superannuation amounts to the Commissioner) and inserts **proposed subsections 17(1)** to **(2AA)** in their place.

The proposed subsections also require that a superannuation provider pay any unclaimed superannuation to the Commissioner. These amounts are payable at the end of the scheduled statement day in respect of the relevant unclaimed money day.

30. As a legislative instrument, the specification would be subject to the parliamentary disallowance procedures in the *Legislative Instruments Act 2003*.

Proposed subsections 17(1C) and **17(2AA)** require the Commissioner to pay unclaimed superannuation amounts to a person's nominated complying superannuation fund or their personal legal representative (if they are deceased).

Item 19 inserts **proposed section 17A** into the Unclaimed Super Act 1999. This proposed section applies the general interest charge to amounts of unclaimed superannuation that have not been paid to the Commissioner of Taxation by the due date – that is, by the scheduled statement day.

Item 23 inserts **proposed sections 18A**, **18B** and **18C** into the Unclaimed Super Act 1999.

Briefly, **proposed section 18A** enables the Commissioner of Taxation to refund any unclaimed superannuation amounts paid in excess of that required.

Where the Commissioner has overpaid unclaimed superannuation amounts to a person **proposed section 18B** enables the Commissioner to recover any overpayment as a debt due to the Commonwealth.

Proposed section 18C requires a superannuation provider to repay amounts of unclaimed superannuation the Commissioner has paid to them (at the direction of a person) if it cannot be credited to that person's account within 28 days. This is a debt due to the Commonwealth payable at that date (that is, 28 days after the Commissioner made the initial payment). The general interest charge applies after the end of this 28 day period in respect of any unrepaid amounts.

Register of unclaimed money

Item 23 also inserts a proposed new heading in the Unclaimed Super Act 1999, that of 'Part 3AA – Register of unclaimed money'. Several amendments refer to this new part (i.e. Part 3AA) or repeal existing references to other pieces of tax legislation and replace them with a reference to either 'this part' or 'Part 3AA'. Other amendments simply refer to Part 3 of the Unclaimed Super Act 1999. These amendments generally streamline the legislative basis of the administration of the register of unclaimed money (see below).

Items 24 to **41** amend the Unclaimed Super Act 1999 in respect of the register of unclaimed money. This register is kept by the Commissioner of Taxation to identify unclaimed superannuation amounts paid to him and to enable the payment of these amounts to their rightful owners when they are claimed.

Temporary residents

Item 26 adds **proposed paragraph 19(1)(c)** and **(d)** to existing subsection 19(1) of the Unclaimed Super Act 1999. Current section 19 of this Act requires the Commissioner of Taxation to maintain a register of unclaimed superannuation money. The proposed addition to this section requires the Commissioner to include particulars of amounts paid to him, in respect of a former temporary resident (see below), and the names of those persons, in this register.

Item 28 inserts **proposed section 20AA** into the Unclaimed Super Act 1999. This proposed section defines the term '*former temporary resident*'. Briefly, this term means a person who:

- was a temporary resident of Australia (being a holder of a temporary visa under the Migration Act 1958 – except those visas prescribed by regulations)
- left Australia for more than 6 months
- does not currently hold either a temporary or permanent visa
- is neither a Australian or New Zealand citizen, and
- has not made a valid application for a permanent visa that has not been finally determined.

This term is important for the operation of the proposed amendment to current sections 19 (see above) and 20C (see below) of the Unclaimed Super Act 1999.

Item 29 repeals current paragraphs 20C(1)(b) to (d) of the Unclaimed Super Act 1999 and substitutes them with **proposed paragraph 20C(b)**. The effect of this change is to require the Commissioner of Taxation to give a superannuation provider a notice that there are reasonable grounds for believing that a former temporary resident (as defined above) has an interest in that superannuation fund.

This allows the provider to identify any potential unclaimed superannuation money in a superannuation fund belonging to a former temporary resident.

Part 2 – Other amendments

Strictly speaking, unclaimed superannuation moneys held by the Commissioner of Taxation are not held in a superannuation plan for taxation purposes. Consequently, there is some legal uncertainty about whether these amounts, when paid by the Commissioner should be taxed in the same way as other superannuation payments. The following proposed amendment ends this uncertainty.

Item 43 adds **proposed section 301-125** to the ITAA 1997. The effect of this amendment is to ensure that payments of unclaimed superannuation amounts made by the Commissioner of Taxation are taxed in the same way as other superannuation payments by classifying them as coming from a superannuation plan for taxation purposes.

Item 49 repeals existing section 307-142 of the ITAA 1997 and replaces it with a proposed new section. The effect of this substitution is to update the tax treatment of unclaimed superannuation payments in the light of the simplified superannuation changes that took effect on 1 July 2007. **Item 50** has the same effect in relation to current section 307-300 of the ITAA 1997.

It may be the case that one individual may have many unclaimed superannuation amounts held by the Commissioner of Taxation. This may be the case for those who change employment frequently or are mainly employed on a casual basis.

Item 52 inserts proposed subsection 307-350(2B) into the ITAA 1997. This proposed subsection ensures that all unclaimed superannuation amounts paid by the Commissioner of Taxation are treated as if they were paid from a single superannuation plan. This greatly simplifies the tax administration task in relation to these payments.

Item 56 repeals existing paragraph 67A(1)(b) of the Small Accounts Act 1995 and replaces it with new proposed text. The effect of this amendment is to define precisely the matters a former temporary resident must satisfy the Commissioner about when requesting a withdrawal of their unclaimed superannuation monies held by the Commissioner.

Item 58 amends current subsection 6(1) of the Co-contribution Act 2003. The function of this particular section is to define persons in respect of whom a government superannuation co-contribution may be paid. Generally speaking, a temporary resident does not qualify to have this payment made on their behalf. However, a New Zealand citizen, holding the appropriate visa, does so qualify. **Proposed paragraph 6(1)(f)** of the Co-contribution Act 2003 ensures that this policy is maintained.

Under the Superannuation Guarantee regime employers are required to pay amounts equal to at least 9 per cent of an employee's ordinary time earnings into a superannuation account on the employee's behalf.[31] Where the employer fails to make these payments by the required time they may be liable to pay a Superannuation Guarantee shortfall amount to the Commissioner of Taxation. The majority of the shortfall amount paid is passed on to the employee's superannuation fund.[32]

However, this cannot happen in respect of a former temporary resident whose superannuation benefits have been either withdrawn or are classed as unclaimed superannuation amounts and paid to the Commissioner.

Item 61 inserts **proposed section 65AA** into the Guarantee Act. The proposed section requires the Commissioner of Taxation to treat a shortfall component paid in respect of a former temporary resident as unclaimed superannuation money.

Part 3 – Application

Item 67 specifies that an 'unclaimed money day' (see above) must be a day that occurs on or after 1 July 2009.

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31. Section 19 Guarantee Act 1992.

32. The balance of the Superannuation Guarantee shortfall amount is retained by the Australian Taxation Office.

Further, **item 67** requires that the unamended version of sections 16, 17 and 18 of the Unclaimed Superannuation Act 1999 continue to apply up to 1 July 2009 in relation to the current half yearly periods for the notification of unclaimed superannuation money to the Commissioner of Taxation (see **item 11** above).

Item 71 specifies that the amendments to the Co-contribution Act 2003 in this Bill apply for the 2009–2010 and later income years only.

Schedule 3 — Reforms to income tests

Purpose

The purpose of the amendments in **Schedule 3** of this Bill is to implement changes to the income test applying to various government payments announced in the 2008–2009 Budget speech in May 2009.

The amendments come in three main types:

- changes to the key concepts behind these tests
- changes to the reporting requirements for taxation purposes, and
- changes to the income tests themselves.

Background

What are the income tests

The income of a person can govern whether they are eligible to receive various Commonwealth payments and tax offsets,[33] or have them made on their behalf. Too high an income and a person is not eligible to receive such payments or tax offsets. Such payments/offsets include:

- Age Pension, Family Tax Benefits and Unemployment Benefits paid by Centrelink
- Drought Relief, Childcare and Youth Support payments also administered by Centrelink
- the Service Pension paid by the Department of Veterans Affairs
- the Government Superannuation Co-contribution paid by the Australian Tax Office
- various tax offsets such as the Senior Australians Tax Offset or the Dependent Spouse Tax Offset, and
- child support payments made by individuals but administered by the Child Support Agency.

The tests that measure a person's income to determine their eligibility to receive these payments, or qualify for a relevant tax offset, are known generally as income tests.

These income tests also determine whether a person is liable for additional payments to the Commonwealth, such as the Medicare Levy and the Medicare Levy Surcharge.

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33. Briefly a tax offset is the amount by which a person can reduce the personal income tax they have to pay. It should not be confused with a tax deduction, which is a reduction in the person's tax assessable income.

Basis of policy commitment

These changes were announced in the Budget Speech of 13 May 2008.[34]

Key Issue

The key issue for the proposed amendments in this Schedule are whether it is appropriate to include:

- the value of adjusted fringe benefits received
- the amount of additional tax deductible superannuation contributions, and/or
- the amount of a person's net investment losses

in all of the income tests specified in **Part 3** of **Schedule 3** (see below) governing the payment of various benefits and tax offsets as well as the income test governing a person's obligation to pay both the Medicare Levy and the Medicare Levy Surcharge?

Pros and cons

There are a number of arguments in favour of the proposed amendments in this Schedule:

- the payment of benefits and eligibility for tax offsets is more tightly focused, thus they are more likely to go to those who are most in need of them
- they potentially limit the possibly unintended payment of benefits and tax concessions to those in higher income brackets
- they limit the potential abuse of these payments and tax concessions by the deliberate manipulation of a person's income using salary sacrifice arrangements and excessive use of fringe benefits arrangements as a replacement for income in the hand
- they provide a more consistent treatment of a person's income across a wider range of government payments and tax concessions
- they provide equal treatment between those who have access to such arrangements and those who do not have such access
- they limit the support provided by Government transfer payments to negatively geared investment arrangements

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34. The Hon. Wayne Swan MP, Treasurer, Second Reading Speech: Appropriation Bill (No. 1) 2008–2009, House of Representatives, *Debates*, 13 May 2008, p. 2600: also The Hon. Wayne Swan MP, Treasurer, The Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, Budget Measures - Budget Paper No. 2, Canberra, 13 May 2008, pp. 29-31.

  - this comes about by including the financial returns from a negatively geared arrangement in a person's assessed income for the purposes of gaining access to certain Commonwealth payments, and
- over the long term the proposed measures reduce government expenditure.

However, there are some potential disadvantages arising from the proposed changes, such as:

- benefits and concessions may not be provided to higher income families with comparatively large numbers of dependents, and
- the incentives provided by tax concessions and payments to remain in the workforce may be reduced.

Nature of government payments

An important point in this debate is the nature of government payments. Many government payments are a 'safety net'. That is, payments that support a person if they do not have the means to support themselves. They are intended to reduce or prevent the occurrence of poverty. They are not intended to support the accumulation of assets in any form. Where such an accumulation occurs, supported in part or in full by government payments, it could be argued that the relevant income test is in need of reform.

On the other hand some payments may not be intended to be a 'safety net'. For example, the Baby Bonus was aimed more at increasing the number of births, rather than providing income support. In these cases there is less justification for the reform of the relevant income test based on maintaining the safety net character of the payment, particularly where a person may otherwise be entitled to receive an ongoing government payment or tax offset.

Position of significant interest groups/press commentary

Some press comment in the wake of the 2008–2009 Budget Speech noted that several otherwise low income groups would be denied access to much needed Commonwealth payments by the proposed amendments.[35] However, other press comment noted that the proposed changes dealt with pronounced weakness in the various income tests that led to those with no objective need for these payments actually receiving them.[36]

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35. Dennis Shanahan, 'New means test on families – Hidden budget changes to hit welfare cheques', and 'Hard-working households feels the pinch', *The Australian*, 18 June 2008, p. 1; John Kavanagh, 'Setting the hurdles higher', *Age*, 28 May 2008, p. 13.

36. Sue Dunlevy, 'Means testing to deliver welfare where it's needed', *Daily Telegraph*, 14 May 2008, p. 2; Stephen Lunn, 'Lump sum scrapped as rich miss out', *The Australian*, 14 May 2008, p. 7; Annette Sampson, 'Crackdown on double-dipping ploy', *Sydney Morning*

The proposed changes to the government income test were reportedly supported by the Australian Council of Social Services (ACOSS) for directing Commonwealth payments to where they were most needed.[37]

The Institute of Chartered Accountants in Australia noted that:

> The introduction of means testing, in relation to a number of benefits and concessions, may be justified on equity grounds. However, such tests have administrative costs and may also result in disincentives to workforce participation as income increases and benefits decline.[38]

Coalition/Australian Democrat/Greens/Family First policy position/commitments

The Coalition's position at the time the proposed measures were introduced was outlined by the then Shadow Treasurer, as follows:

> I agree with means testing generally for social welfare benefits and payments and I think most people would agree with the means testing for the Family Tax Benefit B. The area I do disagree with is on the baby bonus. We had a view in Government that this was a payment that was designed not just to help mothers with new babies, and obviously multimillionaires don't need that help, plainly. But it was designed to send a very strong social message which was going to be more powerful if it was universal. Now what they've done there is introduced a means test which says that if you earn the six months, if your household earns, the six months after your baby, $1 more than $75,000 you don't get any part, not even a fraction of the baby bonus. So it's a very crude means test. I don't think people in those circumstances regard themselves as multimillionaires, or 'the rich', but that's where they've set it and it will save very little money in the scheme of the budget. Very, very little money, but it's designed to make a political us-and-them point. It's Labor playing that, you know, wedge politics, the politics of envy, and that's the political decision not an economic one.[39]

Herald, 14 May 2008, p. 4; Nassam Khadem, 'Its suddenly tougher at the top as loopholes are plugged', *Age*, 14 May 2008, p. 5.

37. Reported comments of Mr Andrew Johnson, then ACOSS President in Nick Butterly, 'Baby bonus blocked for high-income parents', *West Australian*, 14 May 2008, p. 3.

38. Institute of Chartered Accounts, 'A tough budget but promises kept ahead of tax review', *news release*, 13 May 2008.

39. The Hon Malcolm Turnbull MP, then Shadow Treasurer, Interview with Neil Mitchell of 3AW, 14 May 2008 at http://www.liberal.org.au/news.php?Id=31 (accessed on 18 February 2009).

Senior Coalition spokesmen also expressed concern that the number of individuals and families receiving welfare payments would be reduced if the proposed measures were implemented.[40]

As at the date of writing neither the Greens, Family First of Senator Xenophon has publicly stated a position on the proposed measures in this Schedule.

Financial implications

The financial implications of the measures proposed in Schedule 3 of this Bill are set out in the following table:

Table 4: Proposed income test measures - financial impacts

Year	2008-2009	2009-2010	2010-2011	2011-2012
Amount $m	-15.1	164.0	192.5	203.8

Source: Explanatory Memorandum[41]

Main provisions

Part 1 – Key concepts

Part 1 of **Schedule 3** of this Bill inserts new definitions of various terms (such as 'adjusted fringe benefits totals' and 'rebate income' into the ITAA 1936, ITAA 1997 and the TAA 1953. These definitions are required to expand the definition of income for a person claiming various Commonwealth payments and tax offsets.

Item 1 inserts a definition of '*adjusted fringe benefits total*' into current subsection 6(1) of the ITAA 1936. This definition is:

> Taxpayers reportable fringe benefits total x [1 – FBT rate]

A taxpayers 'reportable fringe benefits total' is not precisely defined in tax legislation. However, **item 3** specifies that the term 'reportable fringe benefits total' has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986* (Fringe Benefits Act 1986). Section 135N of this Act defines this term as the sum of a 'employee's fringe benefits amounts'. In turn current section 135P (or section 135Q as appropriate) of the Fringe Benefits Act 1986 defines this term as being worked out using the general formula:

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40. Comments of Senator Boswell and Tony Abbot MP as reported in Dennis Shanahan, 'New means test on families', op. cit.

41. Explanatory Memorandum, p. 6.

$$\text{Individual fringe benefits amount} \times \frac{1}{1 - \text{Rate of tax for the year of tax}}$$

The important point to note here is the value of the individual fringe benefit amount is increased (or 'grossed up' in tax language). This determines the value of a fringe benefit for taxation purposes. An employer pays Fringe Benefits Tax on this grossed up value.

However, this particular formula overstates the cash value of the fringe benefit in question to the employee. The definition in **item 1** above calculates the cash value of the fringe benefit to the employee who is also a claimant of Commonwealth payments or tax concessions.

Comment

The Explanatory Memorandum notes that 'adjusted fringe benefits total' is already used for the purposes of assessing a person's eligibility for many Commonwealth payments, but not their eligibility for tax offsets (when a person's 'reportable fringe benefits total' is used for this purpose).[42] As noted above, the '*reportable fringe benefits total*' is the 'grossed up' figure used for determining an employer's fringe benefits tax liability. However, a switch to using a person's '*adjusted fringe benefit total*' for deciding eligibility for tax concessions may actually lower a person's income for these purposes because the '*adjusted fringe benefits total*' is lower than a persons '*reportable fringe benefits total*'. The outcome of this proposed change may be an increased number of individuals becoming eligible to claim a range of tax offsets.

Item 2 inserts a proposed definition of '*rebate income*' into current section 6(1) ITAA 1936. Under the proposed amendment a person's rebate income will be the sum of an individual's:

- taxable income
- reportable superannuation contributions
- total net investment losses, and
- adjusted fringe benefit total (as defined above)

for a particular year of income.

This definition will be used to assess a person's eligibility to claim the Senior Australian Tax Offset. The Explanatory memorandum notes that this definition consolidates the

42. Explanatory Memorandum, p. 42.

above components and removes the need for unnecessary legislative amendment (see **items 40** and **41** below).[43]

Generally, a person's taxable income is their gross income less all allowable deductions. **Items 4** and **5** defined '*reportable superannuation contributions*' and 'total net investment losses' respectively to have the same meaning as in the ITAA 1997.[44]

The term '*reportable superannuation contributions*' for an individual is defined in **Item 9** to include:

- personal superannuation contributions that are deducted from an individual's gross income under current Subdivision 290-C ITAA 1997, and
- 'reportable employer superannuation contributions' (see **items 8** and **11** below).[45]

Item 7 inserts a proposed definition of the term '*income for surcharge purposes*' into current subsection 995-1(1) of the ITAA 1997. This definition is used to assess a person's obligation to pay the Medicare Levy Surcharge (currently 1 per cent of assessable income if a single person's assessable income is over $70 000 p.a. in 2008–2009).[46] Broadly the proposed definition of '*income for surcharge purposes*' includes a person's:

- taxable income
- reportable fringe benefits total (as defined in this Part)
- reportable superannuation contributions (as defined in this Part)

This definition is used to assess a person's obligation to pay the Medicare Levy Surcharge (see **Items 26** to **32** below).

The term '*total net investment loss*' for an individual is defined in **item 10** to broadly mean the amount by which a person's deductions from their gross income arising from investments for an income year exceeds the income from those investments.

This amendment refers to deductions from gross income that a person may generate from any negatively geared investment arrangement. Generally, an investment is negatively geared where the interest expense associated with the investment (arising from moneys borrowed to purchase that investment) exceeds the net income generated by that investment.

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43. Explanatory Memorandum, p. 45.
44. See **items 9** and **10** of Schedule 3 to this Bill.
45. Explanatory Memorandum, p. 45.
46. Section 5A, *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999.*

Why is a new definition of 'total net investment loss' needed?

The proposed definition is wider than is currently used. The current definitions covering this area in existing legislation often refer to 'rental property loss'. While that term or phase allows the tax deductions arising from a negatively geared rental property to be added back into a person's income for various purposes, it does not allow similar deductions to be added back to a person's income arising from other negatively geared investments. For example, similar deductions on negatively geared shares would not be included in a person's assessed income for various purposes under current legislation.

Other definitions currently used in Social Security legislation are that of 'passive business income', or 'net passive business loss'. The term 'passive business' is currently defined in section 1067G of the SSA 1991 as a business that a person is engaged in for less than 17.5 hours a week. Section 10B of the same Act notes that a passive business loss for the appropriate tax year, means a loss that, 'under current subpoint 1067G-F11(4), is a net passive business loss for that year'.[47] It can be argued that these two terms do not capture the entire range of negative gearing arrangements currently available and so the net losses from this wider range of arrangements would not be caught by current legislation.

Item 11 inserts **proposed section 16-182** into current Schedule 1 of the TAA 1953. This section defines the term 'reportable employer superannuation contribution'.

Briefly the term is defined to mean an amount contributed to a superannuation fund by an employer, on an employee's behalf, where the employee has the capacity to influence the amount contributed and/or the extent to which this contribution reduces that employee's tax assessable income. The employee has no capacity to influence amounts contributed under the Superannuation Guarantee regime and such amounts do not in any way reduce the employee's tax assessable income. Thus such amounts are excluded from this definition.

Comment

There are other arrangements where an employee may not have any influence over the amount of superannuation paid. For example, an employer may make payments to an employee's superannuation fund at a higher rate than that required by the Superannuation Guarantee regime as an overall condition of employment. Further, a negotiated agreement between a union and an employer may also see that employer pay superannuation amounts at a higher rate than required under this regime. An employee may not have influence in these situations.

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47. Section 1067G deals with the rate payable of Youth Allowance. Subpoint 1067G-F11(4) states that a person's 'net passive business loss' for a tax year is the difference between the total of a person's loss or outgoings for a year that can be deducted from tax assessable income under the ITAA 1936 because they were incurred in relation to a passive business and the gross income from the business for that year.

However, an employee would have influence over amounts paid by way of a salary sacrifice arrangement, where they agree to reduce their salary in return for additional superannuation contributions made on their behalf.

Part 2 – Amendment of payment summary provisions

The proposed amendments in this part require an employer to provide the Commissioner of Taxation with information on the payment of reportable employer superannuation contributions and reportable fringe benefits amounts, as defined in **Part 1** of this Schedule.

These amendments enable the Commissioner to assess a person's eligibility for various tax concessions.

Comment

It is not uncommon for Centrelink and the Australian Taxation Office to exchange information to help them determine a person's eligibility to receive various payments or claim tax offsets. It is likely that the information collected by the Commissioner of Taxation under this Part will be passed to Centrelink to assist it is determination of a person's eligibility to receive a Commonwealth payment (assuming the sharing of data is done according to law).

Part 3 – Amendment of income tests

Family payments

Items 19 and **20** update the definition of 'adjusted taxable income' in existing Schedule 3 of the Assistance 1999 by inserting reference to the new definitions of 'total net investment loss' and 'reportable superannuation contributions'. These terms are defined in **Part 1** above. The benefits affected by this proposed amendment are:

- Child Care Benefit
- Family Tax Benefit (Parts A and B), and
- the Baby Bonus.

Medicare Levy Surcharge

Items 26 to **32** apply the definition of 'income for surcharge purposes' to the income test governing a person's obligation to pay the Medicare Levy Surcharge (see **Item 7** in **Part 1** of **Schedule 3** above).

Child support

Item 33 repeals the definition of 'net rental property loss' in existing subsection 5(1) of the Child Support Act 1989. Item 34 inserts reference to the term 'total net investment loss', as defined in **Part 1** of this Schedule, into the definition of a parent's 'adjustable taxable income' for Child Support purposes.

Higher Education Support payment

Items 36 and **37** insert reference to 'total net investment loss' and 'reportable superannuation contributions' into the income test governing the payment of this benefit.

Senior Australians Tax Offset

Items 40 and **41** insert reference to 'rebate income' (see **item 2** of **Part 1** of this Schedule) to the income test used to determine a person's eligibility to make use of the Senior Australian Tax Offset in current section 160AAAA of the ITAA 1936. The effect of this proposed amendment is that a person's:

- reportable superannuation contributions
- total net investment losses
- adjusted fringe benefit total (as defined above), as well as
- their taxable income

for a particular income year will be taken into account when determining their eligibility to make use of this tax offset to reduce their overall tax liability. This proposed amendment may result in fewer people being able to make use of this particular tax offset.

Mature Age Worker Tax Offset

Item 44 amends current subsection 61-570(1) of the ITAA 1997 so that a person's reportable superannuation contributions (defined in **Part 1** of this Schedule) are included in their assessed income for this offset. This change will affect those who are employed and who are above 55 years of age only, as it is only this group who may make use of this particular tax offset.

Medicare Levy Surcharge Lump Sum Tax Offset (MLS tax offset)

Item 45 amends current subsection 61-580(1) of the ITAA 1997 so that 'reportable superannuation contributions' and 'total net investment losses' (both as defined in **Part 1** of this Schedule) for a given year are included in the definition of income for MLS tax offset purposes.

An MLS tax offset is an offset equal to the amount of additional Medicare Levy Surcharge payable in the current year because:

- a person received a lump sum payment in the current year, that
- accrued, in whole or in part, during a previous year.[48]

Deduction for personal superannuation contributions

48. Section 61-575, ITAA 1997.

Under current section 290-160 of the ITAA 1997 a person may deduct all of their personal superannuation contributions from their gross income for tax purposes if:

- they are not treated as an employee for the purposes of the Guarantee Act 1992, and
- generally, less than 10 per cent of their income comes from being an employee (as opposed to being self employed).

Item 46 includes 'reportable employer superannuation contributions' in the definition of income for such a person. The effect of the proposed amendment isthat less than 10 per cent of the sum of a person's:

- assessable income (under existing legislation)
- reportable fringe benefits total (under existing legislation), and
- reportable employer superannuation contributions (proposed amendment)

comes from being employed for the income year in respect of which the deduction is claimed.

Spouse contributions tax offset

Under current section 290-230 of the ITAA 1997, a person may make use of a tax offset if he makes a personal superannuation contribution to a fund on the behalf of their spouse. This offset is available if (amongst other things) the sum of the spouse's assessable income and reportable fringe benefits is less than $13 800 in any income year.

Item 47 proposes to amend section 290-230 of the ITAA 1997 so that a spouse's reportable employer superannuation contributions (as defined in **Part 1** of this Schedule) are included in the income test for this particular offset.

Medicare Levy

Items 48 to **61** amend various sections of the Levy Act 1986 so that the term 'income for surcharge purposes', defined in **Part 1** of **Schedule 3** to this Bill, is the definition of income for the purposes of determining a person's obligation to pay the Medicare Levy.

Student Financial Supplement Scheme - Repayment Income

For social security purposes, a person's 'repayment income' is the income that Centrelink uses to determine a person's capacity to repay an accumulated financial Supplement debt under the now discontinued Student Financial Supplement Scheme. This scheme provided repayable loans to students between 1993 and 1 January 2004.

Items 70 and **71** amend existing subsection 1061ZZFA(1) of the SSA 1991 so that a person's total net investment loss and reportable superannuation contributions (as defined in **Part 1** of this Schedule) are included in their repayment income.

Item 85 makes similar amendments to the definition of 'repayment income' in current paragraph 12ZL(1)(b) of the *Student Assistance Act 1973*.

Youth Allowance – Parental income test

A person's access to Youth Allowance is governed in part both by an income test applying to the applicant and an income test applying to the parents of the applicant. It is the latter one that is proposed to be amended by **Schedule 3** of this Bill.

Item 73 amends current paragraph 1067G-F10(d) of the SSA 1991 so that the applicant's 'combined parental income' includes both their 'net investment losses' and 'reportable superannuation contributions', as defined in **Part 1** of this Schedule.

Commonwealth Seniors Health Card

Item 81 amends current paragraph 1071-3(d) of the SSA 1991 so that the term 'net property loss' is replaced with the more comprehensive 'total net investment loss' as defined in **Part 1** of this Schedule.[49]

Item 89 amends current paragraph 118ZZA-3(d) of the *Veterans' Entitlements Act 1986* making similar proposed changes in respect of access to the Commonwealth Seniors Health Card by those receiving a Veterans' Affairs pension.[50]

Government Superannuation Co-contributions

Item 88 adds **proposed paragraph 8(1)(c)** to the Co-contribution Act 2003 so that the definition of income for superannuation co-contributions purposes includes a person's reportable employer superannuation contributions as defined in **Part 1** of this Schedule.

Part 4 - Exclusion of employer superannuation contributions from exceptional circumstances relief payment

Exceptional circumstances (EC) relief payments are made to farmers and small business operators:

- living in EC declared areas
- who are having difficulty in meeting their living expenses, or
- have had their business turnover significantly affected

by the exceptional circumstances in question.

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49. Section 1071 of the SSA 1991 contains the Seniors Health Card Taxable Income Test calculator.

50. Section 118ZZA of the Veterans' Entitlements Act 1986 contains the Seniors Health Card Income Test calculator.

Item 92 adds **proposed subsections 24A(9)** and **(10)** to the *Farm Household Support Act 1992* so that superannuation contributions made on behalf of a person, by their employer, are disregarded for the purposes of working out their entitlement to exceptional circumstances relief payment.

The conditions governing this exception are:

- the person has not reached Age Pension age (generally 65 male, 63 female),[51] and
- the contribution is not a contribution made by a company or a trust in respect of an attributable stakeholder of that company or trust,[52] and
- the person is not an associate of the attributable stakeholder.

Comment

The effect of this proposed amendment is that a person engaged in earning off-farm income will not have their employer's reportable superannuation contributions made on their behalf included in the exceptionable circumstances income test.

Part 5 – Dependency rebates

A dependency rebate is one available to a taxpayer who supports a dependent during a particular income year. Particular dependency rebates affected by these proposed amendments include:

- spouse rebate
- child housekeeper
- child less than 21 (not being a student)
- student
- invalid relative, and
- parent/parent-in-law.

Under current subsection 159J(1AB) of the ITAA 1936, a taxpayer is ineligible to claim these rebates (or offsets) if their income is more than $150 000 per annum. The proposed amendments in this Part modify this income test.

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51. See subsections 23(5A – (5D) of the SSA 1991.

52. The meaning of an 'attributable stakeholder' in these circumstances is given by section 1207X of the SSA 1991. Briefly, an attributable stakeholder is a person who has 100 percent control of the assets of that entity, or lesser percentage of control if this is deemed to be appropriate (usually greater than 50 per cent control) or receives 100 per cent of the income of that entity (or lesser percentage if appropriate (again usually greater than 50 per cent).

Item 94 repeals current subsection 159J(1AB) and replaces it with proposed provisions that deny a taxpayer an entitlement to the:

- child-housekeeper offset
- invalid relative offset, and
- parent/parent-in-law offset

if the combined income of the taxpayer and their spouse is above the income limit for Family Tax Benefit (Part B) (see **item 98** below).

If the taxpayer's income alone is above this limit the proposed amendment denies them an entitlement to the spouse dependent rebate.

Items 95 and **96** amends existing subsections 159J(4) and (5) respectively so that a dependant's 'separate net income' is replaced with the term 'adjusted taxable income'.

The current income tests for dependents rebates also depend on the level of that dependant's 'separate net income' as well as the taxpayer's income.

The separate net income is the dependant's gross income (including salary and wages, interest, dividends, business, rental and trust income, income from a partnership, pensions and some social security payments) *less* expenses that, in accordance with ordinary accounting and commercial principles, are direct costs against that income.[53]

Item 97 inserts a definition into current subsection 159J(6) of the ITAA 1936 so that the term 'adjusted taxable income' has the same meaning as in the Assistance Act 1999 if clauses 3 and 3A of Schedule 3 of that Act had not been enacted. These clauses deal with working out the adjusted taxable income of a couple. Ignoring these clauses, the definition of adjusted taxable income for dependants rebates is defined in clause 2 of Schedule 3 of the above Act. Following is the text of this clause as it will read if **items 19** and **20** of Schedule 3 of this Bill succeed:

> Adjusted taxable income
>
> For the purposes of this Act and subject to subclause (2), an individual's ***adjusted taxable income*** for a particular income year is the sum of the following amounts (***income components***):
>
> (a) the individual's taxable income for that year;
>
> (b) the individual's adjusted fringe benefits total for that year;
>
> (c) the individual's target foreign income for that year;

53. *CCH Australian Master Tax Guide 2008–2009*, Topic 15-060 What is separate net income?

(d) the individual's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

(e) the individual's tax free pension or benefit for that year; and

(f) the individual's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

less the amount of the individual's deductible child maintenance expenditure for that year.

Item 98 inserts additional text into subsection 159J(6) of the ITAA 1936 noting that the 'income limit for family tax benefit (Part B)' means the amount specified in subclause 28B(1) of Schedule 1 of the Assistance Act 1999 as indexed under Part 2 of Schedule 4 to that Act.

The effect of this amendment is to allow the income test limits for dependency rebates to be automatically adjusted by changes in the Consumer Price Index as calculated by the Australian Bureau of Statistics. The income test threshold for a taxpayer wishing to claim these dependency rebates will no longer be $150 000 p.a.

Part 6 – Application

Item 102 provides for most of the amendments made in Schedule 3 to commence on 1 July 2009.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2495.