



Tax Laws Amendment (2010 Measures No. 2) Bill 2010

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Law and Bills Digest Section

Contents

Purpose.....	2
Committee consideration	3
Financial implications	3
Background and main provisions.....	3
Schedule 1—Distributions to entities connected with a private company	4
Basis of policy commitment	5
Main provisions	7
Payment that arises from the provision of an asset for use (other than a transfer of property).....	7
Interposed entities.....	10
Non-commercial loans.....	13
Application of Schedule 1	14
Schedule 2—Extending the TFN withholding arrangements to closely-held trusts, including family trusts.....	14
Part 1—Main amendments.....	14
Part 2—Amendments contingent on the <i>Tax Laws Amendment (2010 Measures No. 1) Act 2010</i>	19
Schedule 3—Exemption of HECS-HELP benefit	20
Schedule 4—Deductible gift recipients	21
Schedule 5—Global Carbon Capture and Storage Institute Ltd.....	22
Other amendments in Schedule 5 that are unrelated to the Global Carbon and Storage Institute Inc.	23
Schedule 6—Repeal of certain unlimited periods for amending assessments	23

Tax Laws Amendment (2010 Measures No. 2) Bill 2010

Date introduced: 17 March 2010

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions commence on Royal Assent, as do **Schedules 3, 4 and 5** (Part 1 only).¹ **Schedules 1 and 6** commence the day after the Act receives Royal Assent. Part 1 of **Schedule 2** commences on 1 July 2010 or Royal Assent, whichever occurs later. Items 26 and 27 of Schedule 2 commence on various dates, depending on the commencement of the nominated sections in the proposed *Tax Laws Amendment (2010 Measures No. 1) Act 2010* (see main provisions below for further details).²

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the [Bill's homepage](#), 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 Bill has six main purposes, being:

- to tighten the non-commercial loan rules in Division 7A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) to prevent a shareholder of a private company accessing tax-free dividends through the use of company assets for less than their market value (**Schedule 1**)
- to extend the tax file number withholding arrangements to closely-held trusts, including family trusts (**Schedule 2**)
- to exempt from income tax the value of any Higher Education Contribution Scheme-Higher Education Loan Program (HECS-HELP) benefit received by an eligible applicant (**Schedule 3**)
- to add two organisations to the list of deductible gift recipients (DGR) in the *Income Tax Assessment Act 1997* (ITAA 1997) (**Schedule 4**)

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1. **Part 2 of Schedule 5** to the current Bill commences on 1 January 2018.
 2. At the time of writing, that Bill is still before the Senate. That Bill's homepage is available on Parlinfo at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4305%22>, viewed 17 March 2010.

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- to make the Global Carbon Capture and Storage Institute Limited (which is a not-for-profit organisation involved in the promotion of carbon capture and storage technologies) income tax exempt for four years (**Schedule 5**), and
- to repeal over 100 legislative provisions which give the Commissioner of Taxation (the Commissioner) an unlimited period in which to amend taxpayers' assessments (**Schedule 6**).

Committee consideration

The Bill has been referred to the Senate Economics Legislation Committee for inquiry and report by 11 May 2010. The main reason for the referral is to ensure 'that there are no further unintended consequences of the Bill, particularly relating to the amendments in Schedule 1'.³ Details of the inquiry are at http://www.aph.gov.au/senate/committee/economics_ctte/tlab_02_2010/info.htm, viewed 22 March 2010.

Financial implications

According to the Explanatory Memorandum, the Bill has the following financial impacts:

- **Schedule 1:** savings of \$30m (being \$10m a year) over the forward estimates period
- **Schedule 2:** savings of \$150m (being \$50m a year) over the forward estimates period
- **Schedule 3:** nil
- **Schedule 4:** a cost of \$0.098m in 2009–10; \$0.687m in 2010–11; \$0.363m in 2011–12 and nothing in 2012–13, and
- **Schedule 5:** nil
- **Schedule 6:** unquantifiable (but thought to be less than \$1m per year).⁴

Background and main provisions

As each of the six Schedules deals with a discrete issue, this Digest will deal with the background to, and main provisions of, each Schedule in turn.

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3. Selection of Bills Committee, *Report No. 5 of 2010*, 18 March 2010, pp. 3 and 6, viewed 22 March 2010, http://www.aph.gov.au/senate/committee/selectionbills_ctte/reports/2010/report0510.pdf
 4. Explanatory Memorandum, Tax Laws Amendment (2010 Measures No. 2) Bill 2010, pp. 3–6.

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Schedule 1—Distributions to entities connected with a private company

The ‘non-commercial loan’ rules in Division 7A of Part III of the ITAA 1936 are intended to prevent private companies from making tax-free distributions of profits to shareholders (and their associates).⁵ Part III of the ITAA 1936 deals broadly with liability to taxation, and Division 7A deals specifically with distributions to entities connected with a private company. It deems certain payments, loans, and the forgiveness of debts by a private company to shareholders (or their associates) to be dividends where the company has realised or unrealised profits (that is, a distributable surplus)—although there are some exceptions.⁶ The deemed dividends do not attract franking credits. By contrast, payments made to a shareholder (or an associate) in his or her capacity as an employee, or as an associate of an employee of the private company, are not subject to the rules in Division 7A of the ITAA 1936, but they are subject to the provisions of the *Fringe Benefits Act 1986*.

In the 2009–10 Budget, the Rudd Government announced that it would tighten the rules to provide greater equity and fairness to taxpayers by preventing shareholders of a private company (and their associates) from avoiding tax on distributions and benefits they receive from the company.⁷ The Government proposes to extend the coverage of Division 7A to include ‘payments’ by way of a licence or right to use real property (or an interest in real property) and chattels, saying that the measure:

... reduces the scope for private companies to allow their shareholders or associates to use company assets such as real estate, cars and boats for free, or at less than their arm’s length value [that is, market value].

The measure will provide greater equity in treatment between the shareholders of private companies on the one hand and employees more generally.⁸

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5. The term ‘*associate*’ includes relatives, partners, spouses, children, trustees of a trust where the person (or another entity that is an associate of the person) benefits under the trust, and companies which are controlled or influenced by the shareholder. For further details, see ATO, *You and your shares 2008–09: Non-commercial loans and private company transactions*, ATO website, 8 September 2009, viewed 18 March 2010, <http://www.ato.gov.au/individuals/content.asp?doc=/content/00191825.htm&page=24&H24>
 6. ATO, *Division 7A—An overview*, ATO website, 1 April 2008, viewed 18 March 2010, <http://www.ato.gov.au/print.asp?doc=/content/40223.htm>
 7. Commonwealth Government, *Budget Measures: Budget Paper No. 2: 2009–10*, Commonwealth of Australia, Canberra, May 2009, p. 21, viewed 14 April 2010, http://www.budget.gov.au/2009-10/content/bp2/download/bp2_Consolidated.pdf
 8. Ibid.

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The Government also proposes to extend coverage of Division 7A to include payments made by ‘closely-held corporate limited partnerships’ and interposed entities—see further discussion below. The amendments will apply retrospectively from 1 July 2009 (being the start of the first financial year after the measure was announced in the 2009–10 Budget).⁹

Basis of policy commitment

The use of arrangements (particularly corporate limited partnerships) to circumvent the application of the deemed dividend provisions in Division 7A was identified as being of concern to the Australian Taxation Office (ATO) at least as early as 6 June 2007.¹⁰ The current law specifically excludes corporate limited partnerships from the definition of ‘private company’ for tax purposes.¹¹ In fact, the law deems such partnerships to be public companies—and therefore Division 7A does not apply to them.¹²

On 5 June 2009, the Treasury released a discussion paper on the proposed measures.¹³ It received 18 submissions, of which one was confidential.¹⁴ A number of the submissions raised concerns that the proposed amendments would inadvertently target small business owners who, as shareholders in their own private company, currently live rent-free in dwellings attached to property owned by the corporate structure through which they conduct their business. In this regard, the National Farmers Federation (NFF) noted that:

... a significant number of farm businesses hold their land within a separate entity, a private company. It is not uncommon for the trading entity to comprise the same family members as the private company shareholders. These arrangements have often functioned with no formal lease agreement or payment between the asset owning

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9. See p. 14 of this Digest (dealing with **Item 35 of Schedule 1**) for further comments about the application date for **Schedule 1**.
 10. ATO, *Taxpayer Alert (2007/5)*, ATO website, 6 June 2007, viewed 13 April 2010, <http://law.ato.gov.au/atolaw/view.htm?docid=TPA/TA20075/NAT/ATO/00001>
 11. Section 94N of the ITAA 1936: see http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/itaa1936240/s94n.html, viewed 14 April 2010.
 12. At present, Division 7A only applies to private companies. Following the amendments in **Schedule 1** to the current Bill, it will also apply to corporate limited partnerships, but it will still not apply to public companies.
 13. The Treasury, *Improving Fairness and Integrity in the Tax System - Tightening the Non-Commercial Loan Rules in Division 7A of the Income Tax Assessment Act 1936*, Treasury website, 5 June 2009, viewed 13 April 2010, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1558>
 14. The Treasury, *Submissions: Improving Fairness and Integrity in the Tax System - Tightening the Non-Commercial Loan Rules in Division 7A of the Income Tax Assessment Act 1936*, Treasury website, 1 February 2010, viewed 14 April 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1718&NavID=037>

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company and the trading entity. Implicit in this arrangement, however, is a “license” to use the land asset.¹⁵

The NFF particularly encouraged the Government to ensure that farmers (who own their farms through a private company structure in order to avoid death duties and intergenerational transfer of assets) are ‘not unintentionally affected by the new legislation through their legitimate use of company assets owned exclusively for business use—in particular farm land’.¹⁶

Similarly, the Institute of Chartered Accountants in Australia pointed out that ‘the use of a private company asset by a shareholder/associate for business purposes should not be within the scope of Division 7A’.¹⁷ It drew particular attention to the rural sector, ‘where many family farming businesses are conducted through arrangements where the family land is held by the company and the business is conducted by another entity’.¹⁸

In response to these concerns, on 14 September 2009, the Assistant Treasurer, Senator Nick Sherry, reiterated that the purpose of the measure is to prevent private companies from providing shareholders with access to ‘holiday homes, cars and other luxury items’, where the benefits are provided at less than market value and are ‘disguised as tax-free distributions’.¹⁹ The Assistant Treasurer clarified that the amendments would not apply to farmers (and other small business owners) who live in a dwelling owned by a private company where the shareholder has a ‘right-to-use or a licence as part of the carrying on the business’.²⁰ He also announced that the amendments would not apply to any business use (as opposed to private use) that a shareholder makes of an asset provided to him or her

15. National Farmers Federation, Submission to the Treasury, *Tightening The Non Commercial Loan Rules: Public Consultation*, June 2009, pp. 3–4, viewed 14 April 2010, http://www.treasury.gov.au/documents/1718/PDF/National_Farmers_Federation.pdf See also J Kehoe, ‘Farmers press for perks tax relief’, *Australian Financial Review*, 15 July 2009, p. 12.

16. National Farmers Federation, Submission to the Treasury, op. cit., pp. 3–4.

17. Institute of Chartered Accountants in Australia, Submission to the Treasury, *Tightening The Non Commercial Loan Rules: Public Consultation*, 3 July 2009, viewed 17 April 2010, http://www.treasury.gov.au/documents/1718/PDF/Institute_of_Chartered_Accountants_in_Australia.pdf

18. Ibid.

19. Senator Nick Sherry (Assistant Treasurer), *Targeting non-commercial loan rules in support of rural communities and small business operators*, media release, no. 51, 14 September 2009, viewed 18 March 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FCBOU6%22>

20. Ibid.

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under a ‘right-to-use’ or licence arrangement—such ‘payments’ will be deemed to be ‘otherwise deductible’.²¹

On 4 January 2010, the Treasury released draft legislation amending the non-commercial loan rules.²² It received 19 submissions on the exposure draft, two of which were confidential.²³ The main difference between the exposure draft and the current Bill is that the current Bill contains a whole new provision, **proposed section 109CA**, which includes an enlarged number of exceptions to the new rule in **proposed subsection 109CA(1)** that Division 7A applies to the ‘provision’ of an asset under a lease or licence.

Main provisions

Schedule 1 makes two main amendments to Division 7A of the ITAA 1936:

1. unless certain exceptions apply, if a shareholder (or an associate) receives a ‘payment’ from a private company (or a ‘closely-held corporate limited partnership’), the market value of the payment (less any consideration paid by the shareholder) must be included in the shareholder’s assessable income (**proposed section 109CA**), and
2. an amount may be treated as a dividend even if it is paid or lent by a private company to a shareholder through one or more interposed entities. Particularly, an amount may be included in a shareholder’s assessable income if a company has an unpaid present entitlement to income of a trust and the trustee makes a payment or loan to, or forgives a debt of the shareholder (or associate). The amendments will apply to any resident or non-resident private company that makes a payment to a resident shareholder (or associate) (**proposed Subdivision EB of Division 7A of Part III of the ITAA 1936**).

These amendments are discussed in greater detail below.

Payment that arises from the provision of an asset for use (other than a transfer of property)

Proposed section 109BB of the ITAA 1936 extends the application of Division 7A to include not only private companies but also any ‘corporate limited partnership’ if at any time during the relevant income year:

- the partnership has fewer than 50 members, or

21. Ibid.

22. The Treasury, *Exposure Draft - Tightening the Non-Commercial Loan Rules and Explanatory Material*, Treasury website, 4 January 2010, viewed 13 April 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1703&NavID=>

23. The Treasury, *Submissions: Exposure Draft - Tightening the Non-Commercial Loan Rules and Explanatory Material*, Treasury website, 19 March 2010, viewed 13 April 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1762&NavID=>

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- any entity (shareholder/associate) has, directly or indirectly, and for the entity's own benefit an entitlement to 75 per cent or more of the partnership's income or capital.²⁴

The general rule is that if a shareholder (or an associate) receives a 'payment' from a private company or a closely-held corporate limited partnership, the market value of the 'payment' (less any consideration paid by the shareholder) must be included in the shareholder's assessable income.²⁵ If the consideration paid by the shareholder (for example, rent money to use the company's holiday home) is equal to (or exceeds) the amount that would have been paid in an arm's length transaction, the amount of the 'payment' (for the purposes of Division 7A) is nil.²⁶

The term 'payment' is defined in **proposed subsection 109CA(1)** to include 'the provision of an asset for use' by an entity (including a shareholder). This phrase includes a right to use the asset (such as a company car, yacht or holiday home), without any transfer of title to the property, as well as provision of the asset under a lease or licence.²⁷

The time the payment is made is either the time the entity first (a) uses the asset with the provider's permission or (b) has a right to use the asset (whether alone or with other entities) at a time when the provider of the asset does not have a right to use the asset or provide the asset for use by another entity.²⁸ If the use (or right to use) continues into another income year, the taxpayer must treat the provision of the asset in the other income year as being a separate payment made at the start of each relevant income year.²⁹

There are, however, a number of exceptions where the general rule in **proposed subsection 109CA(1)** does not apply, such as where:

- the use of the asset by a shareholder or his or her associate is minor and infrequent.³⁰ In this regard, **proposed subsection 109CA(4)** draws an analogy with the situation under section 58P of the *Fringe Benefits Tax Assessment Act 1986*, which states that minor benefits (where the notional taxable value is less than \$300) are exempt from fringe benefits tax if certain conditions are met,³¹ or

24. To be a 'corporate limited partnership', a 'limited partnership' must meet one of the tests set out in section 94D of the ITAA 1936. See http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/itaa1936240/s94d.html, viewed 17 April 2010.

25. Proposed subsections 109CA(1) and (10).

26. Proposed subsection 109CA(11).

27. Where a company provides similar benefits to employees (as opposed to shareholders), the employer must pay fringe benefits tax (FBT).

28. Proposed subsection 109CA(2).

29. Proposed subsection 109CA(3).

30. Proposed subsection 109CA(4).

31. See particularly paragraph 58P(1)(e) of the *Fringe Benefits Tax Assessment Act 1986*.

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- (if the shareholder had incurred and paid expenditure in relation to the provision of the asset), the taxpayer would otherwise have been entitled to a ‘once-only’ deduction in relation to the expenditure.³² However, for the purposes of this exception, the deduction (for the business-related expense) must arise under a provision other than:
 - section 82A of the ITAA 1936 (which limits deductions for self-education expenses to \$250),³³ or
 - Divisions 28 (car expenses) and 900 (substantiation rules) of the ITAA 1997³⁴

Further, **proposed subsection 109CA(1)** does not apply to the provision of a dwelling to a shareholder (or associate) if the shareholder (or associate):

- carries on a business, and
- uses (or is granted or has a lease, licence or other right to use) land, water or a building for the purpose of carrying on the business

and the provision of the dwelling is connected with that use (or that lease, licence or other right).³⁵

The Explanatory Memorandum notes that this exception would apply to shareholders in a private company (who are also beneficiaries under a family trust) where the private company owns real property (a farm) on which the family trust runs a farming business and the shareholders live in a dwelling on the farm. The use of the dwelling is for private purposes, and therefore does not come within the ‘otherwise deductible’ exception in **proposed subsection 109CA(5)**. However, as the shareholders use the dwelling in connection with the family trust’s use of the farm to carry on a business, the provision of the dwelling is disregarded for the purposes of **proposed subsection 109CA(1)**.³⁶ By comparison, if the same shareholders reside in a townhouse owned by the same private company, the exception in **proposed subsection 109CA(6)** does not arise.³⁷ This is because the shareholders’ use of the dwelling is not connected to the use of the land, water or building on the farm.

32. Proposed subsection 109CA(5).

33. Section 82A of the ITAA 1936 is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/s82a.html, viewed 17 April 2010.

34. More specifically, Division 28 of the ITAA 1997 sets out the rules for working out deductions for car expenses if you own or lease a car or hire a car under a hire purchase agreement. Division 900 sets out the substantiation rules (that is, record keeping rules) that apply to certain types of losses or outgoings.

35. Proposed subsection 109CA(6).

36. Explanatory Memorandum, op. cit., p. 18.

37. Example adapted from that provided in the Explanatory Memorandum, op. cit., pp. 18–19.

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Nonetheless, under **proposed subsection 109CA(7)**, where a private company provides a dwelling to shareholder (or an associate), the ‘payment’ (in the form of the use of the dwelling) will not be taxed under Division 7A if:

- the dwelling is the main residence of the entity
- the private company acquired the dwelling before 1 July 2009, and
- the private company would meet the conditions set out in section 165–12 of the ITAA 1997 (which is about the company maintaining the same owners in order to be eligible to deduct a tax loss from an earlier income year), but with the ‘ownership test period’ commencing when the company acquired the dwelling and ending at the time of the payment to the entity (as calculated under **proposed subsection 109CA(2)**).

Thus, in the example given immediately above, the shareholders who reside in the townhouse owned by the private company may be eligible to claim the exception in **proposed subsection 109CA(7)** if the dwelling is their main residence and was acquired by the private company before 1 July 2009. Eligibility will, however, depend on the company meeting the ‘continuity of ownership’ test—and the exception is extinguished if ownership of the private company changes.

If the provision of the asset to the shareholder is in fact a *transfer* of property, **proposed subsection 109CA(1)** does not apply.³⁸ Instead, paragraph 109C(3)(c) provides that the private company which transferred the asset is taken to pay a dividend.³⁹

Interposed entities

As mentioned earlier in this Digest, **Schedule 1** amends the ITAA 1936 to provide that an amount may be treated as a dividend even if it is paid or lent by a private company to a shareholder through one or more interposed entities. Existing Subdivision EA of Division 7A of Part III of the ITAA 1936 treats a payment or loan from a trust to a shareholder (or associate) as a payment or loan from the private company, if the company has an unpaid present entitlement from the trust.⁴⁰ As the ATO explains, Subdivision EA is ‘designed to ensure that a trustee cannot shelter trust income at the prevailing company tax rate by creating a present entitlement to a private company without paying it and then distributing the underlying cash to a shareholder (or their associate) of the company’.⁴¹

38. Proposed subsection 109CA(9).

39. Following the enactment of **proposed section 109BB** (see **item 1** of **Schedule 1** to the current Bill), the reference to ‘private company’ in section 109C will be taken to include corporate limited partnerships.

40. ATO, *Division 7A - answers to frequently asked questions*, ATO website, 5 February 2009, viewed 3 May 2010, <http://www.ato.gov.au/businesses/content.asp?doc=/content/32059.htm>

41. *Ibid.*

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Item 25 inserts **proposed Subdivision EB** into Division 7A of Part III of the ITAA 1936. It has two main purposes:

1. it allows an amount to be included in a shareholder's (known as 'the *target entity*'s) assessable income under Subdivision EA if an entity interposed between a trustee and the target entity makes a payment or loan to the target entity under an arrangement involving the trustee. In such as case, the trustee is treated as having made a payment (or loan) of an amount determined by the Commissioner of Taxation to the target entity, and
2. it allows an amount to be included in a shareholder's assessable income under Subdivision EA if a private company is (or becomes) presently entitled to an amount from the net income of a trust estate interposed between the private company and another trust estate (known as the target trust) under an arrangement involving the target trust.

In short this means that a shareholder (or associate) must include in his or her assessable income any amount received, not only from a private company, but from a 'closely-held corporate limited partnership', if:

- the company has an unpaid present entitlement to income of a trust (the whole of which entitlement has not been paid), and
- instead of making a payment to the corporate beneficiary, the trustee makes a payment or loan to, or forgives a debt of, the company's shareholder (or associate).⁴²

There are three conditions (set out in **proposed sections 109XF and 109XG**) which must be met in order for a trustee to be taken to have made a payment (or loan) to a shareholder/target entity through an interposed entity:

1. the trustee must make a payment or loan to the interposed entity
2. the circumstances must be such that a reasonable person would conclude that the trustee made the payment or loan 'solely or mainly as part of an arrangement involving a payment [or loan] to the target entity', and
3. the interposed entity (or another interposed entity) makes a payment or loan to the target entity.⁴³

42. See **item 9** of **Schedule 1**, which amends section 109B of the ITAA 1936. Section 109B sets out a simplified outline of Division 7A. The term '*corporate limited partnership*' is defined in section 94D of the ITAA: see http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/itaa1936240/s94d.html, viewed 14 April 2010.

43. **Proposed section 109XF** deals with payments through proposed entities, whereas **proposed section 109XG** deals with loans through interposed entities. The quotation comes from **proposed paragraph 109XF(1)(c)**, with the alternative wording of **proposed paragraph 109XG(1)(c)** appearing in square brackets. The characterisation of the transaction as a 'loan' or 'payment' depends on the transaction between the last interposed entity and the target entity. There may be one or more interposed entities.

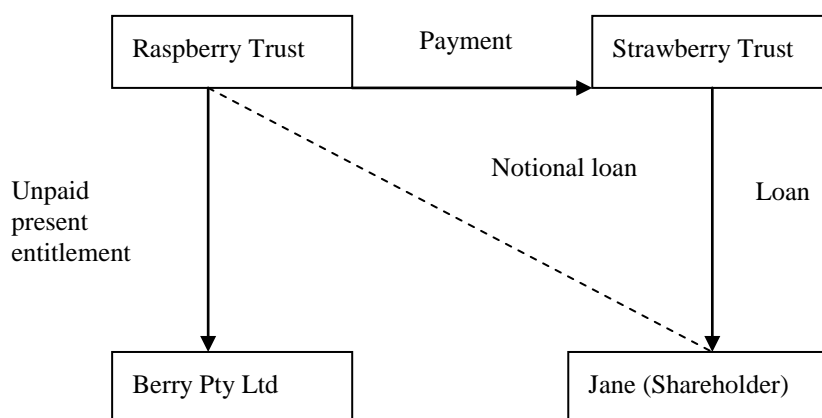
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The Explanatory Memorandum provides a number of useful, practical examples of how these provisions are intended to operate. For example, Example 1.15 states as follows:⁴⁴

Berry Pty Ltd has an unpaid present entitlement from Raspberry Trust. Raspberry Trust makes a payment to Strawberry Trust, who then makes a loan to Jane, who is a shareholder of Berry Pty Ltd, as set out in the diagram. The notional transaction between Raspberry Trust and Jane is treated as a loan, because the transaction between Jane and Strawberry Trust is a loan.



(Note that while not identified as such in the diagram, Strawberry Trust is the ‘*interposed entity*’.)

Proposed subsection 109XH(1) states that the amount the trustee is taken to have paid or lent to the target entity is the amount (if any) determined by the Commissioner of Taxation (after considering the matters set out in **proposed subsection 109XH(2)**). The trustee is taken to have made the payment or loan at the time the interposed entity made the payment or loan mentioned in **proposed paragraphs 109XF(1)(c) or 109XG(1)(c)** to the target entity.

Similarly, **proposed section 109XI** states that a private company is taken to be (or to become) entitled to an amount from the net income of a trust estate (known as the ‘*target trust*’) if:

1. the company is (or becomes) presently entitled to an amount from the net income of another trust estate (the *interposed trust*) that is interposed between the target trust and the company
2. a reasonable person would conclude (having regard to all the circumstances) that the company is (or becomes) so entitled ‘solely or mainly as part of an arrangement involving an entitlement to an amount from the target trust’, and

44. Explanatory Memorandum, op. cit., p. 22.

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3. either the interposed trust (or another interposed trust) is (or becomes) presently entitled to an amount from the net income of the target trust.

The amount to which the private company is taken to be entitled from the net income of the target trust is the amount (if any) determined by the Commissioner of Taxation (taking into account the matters set out in **proposed subsection 109XI(6)**).⁴⁵ The total amount to which the private company is taken to be entitled must not exceed the amount to which the interposed trust is (or becomes) presently entitled from the net income of the target trust.⁴⁶

The company is taken to be (or to become) entitled to the amount from the net income of the target trust at the time the company is (or becomes) entitled to the amount from the net income of the first interposed trust.⁴⁷

Items 16–23 of Schedule 2 amend existing sections 109XA, 109XB and 109XC of the ITAA 1936, largely as a result of the amendments made by **item 25**.

Item 24 inserts **proposed section 109XD** to provide that where a loan is made by a *trustee* in circumstances that give rise to a deemed dividend, and the loan has already been included in a shareholder's assessable income, then if the loan is subsequently forgiven by the trustee, the forgiven amount is disregarded.⁴⁸

Non-commercial loans

Items 26–30 of Schedule 1 to the current Bill amend section 109Y of the ITAA 1936, which provides for a proportional reduction of dividends so they do not exceed distributable surplus. The amendments are largely consequential upon other amendments made by **Schedule 1** and make it clear that the term 'non-commercial loans' means the total of any amounts the company is taken to have paid as dividends in earlier years of income (as shown in the company's accounting records) and 'any amounts that are included in the assessable income of shareholders, or associates of shareholders, of the company under section 109XB as if the amounts were dividends paid by the company in earlier years of income'.⁴⁹

45. Proposed subsection 109XI(4).

46. Proposed subsection 109XI(5).

47. Proposed subsection 109XI(7).

48. **Proposed section 109XD** mirrors the situation in existing section 109G, which provides that a *private company* is not taken to pay a dividend at the end of an income year because of the forgiveness of an amount of a debt resulting from a loan, where the loan gave rise to a deemed dividend.

49. Paragraph (b) of the proposed (revised) definition of the term '*non-commercial loans*' in subsection 109Y(2) of the ITAA 1936. Note that section 109XB is intended to be revised slightly by **item 22 of Schedule 1** to the current Bill.

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Application of Schedule 1

Item 35 states the amendments made by **Schedule 1** apply in relation to payments made, loans made, and debts forgiven on or after 1 July 2009. While this is the date that the Government has consistently given as the application date for the measures contained in Schedule 1,⁵⁰ it may be worth noting that the date was the subject of some comment in the submissions on the exposure draft. For example, the Institute of Chartered Accountants in Australia recommended that the ‘proposed amendments which are adverse to taxpayers’ (principally the amendments relating to the use of private company assets) should not apply until the date of Royal Assent—that being the date when the proposed Act actually becomes law in Australia.⁵¹ It also recommended that there should be roll-over relief (for both capital gains tax and Division 40 purposes) in circumstances where a private company decides to transfer assets to shareholders (and/or associates).⁵²

In the case of amendments ‘which are beneficial to taxpayers, reflecting the clarification of the intent of parliament’, the Institute recommended the amendments should apply from the date that Subdivision EA commenced, being 12 December 2002.⁵³

Schedule 2—Extending the TFN withholding arrangements to closely-held trusts, including family trusts

Part 1—Main amendments

Part 1 of Schedule 2 extends the tax file number (TFN) withholding arrangements to cover closely-held trusts, including family trusts.

Although there are some exclusions, the term ‘*closely-held trust*’ is defined in section 102UC of the ITAA 1936 to mean:

- (a) a trust where an individual has, or up to 20 individuals have between them, directly or indirectly, and for their own benefit, fixed entitlements to a 75% or greater share of the income, or a 75% or greater share of the capital, of the trust; or
- (b) a discretionary trust;⁵⁴

50. See, for example, Commonwealth Government, Budget Measures: Budget Paper No. 2: 2009–10, op. cit., and Senator Nick Sherry (Assistant Treasurer), Targeting non-commercial loan rules in support of rural communities and small business operators, op. cit.

51. Institute of Chartered Accountants in Australia, Submission to the Treasury. op. cit.

52. Ibid.

53. Ibid.

54. The full text of section 102UC of the ITAA 1936 is available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/itaa1936240/s102uc.html, viewed 21 April 2010. Note that the term is not actually hyphenated in the Act.

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In announcing the measure as part of the 2009–10 Budget, the Rudd Government said:

The measure will ensure that assessable distributions to beneficiaries of closely held trusts align with the amounts included by these beneficiaries in their tax returns. The measure will not apply to income upon which tax is directly payable by the trustee of the trust, such as the income assessable to minors. Individuals who have tax withheld by trustees can claim a credit for that tax in their tax return.⁵⁵

The measure is part of the Government’s general mission to ‘to improve fairness and integrity in the tax system’.⁵⁶ It means that if a beneficiary of a closely-held trust provides his or her TFN to the trustee, no amount will be withheld from the beneficiary’s assessable distribution from the trust. However, if the beneficiary does not provide his or her (or its) TFN, the trustee must withhold an amount from the beneficiary’s assessable distribution and remit that amount to the Commissioner of Taxation. If an amount is withheld, the beneficiary may claim a credit for the amount when lodging his or her annual tax return. Withholding will not occur where the trustee pays tax in relation to certain beneficiaries, such as minors and bankrupts.⁵⁷

Item 1 of Schedule 2 inserts **proposed Division 4B** into Part VA of the ITAA 1936. **Proposed Division 4B** deals with the quotation of TFNs in connection with certain closely-held trusts and comprises:

- **proposed section 202DN** (setting out when the Division applies)⁵⁸
- **proposed section 202DO** (stating that a beneficiary *may* quote a TFN to the trustee)
- **proposed section 202DP** (requiring the trustee to report quoted TFNs to the ATO), and
- **proposed section 202DR** (providing that if an incorrect TFN has been quoted and reported to the Commissioner of Taxation, the Commissioner can correct the TFN using available information; however, the Commissioner is unable to correct an incorrectly-quoted TFN and must give written notice to the trustee and the beneficiary)

55. Commonwealth Government, *Budget Measures: Budget Paper No. 2: 2009–10*, op. cit., p. 19.

56. Ibid.

57. See generally, W Swan MP (Treasurer) and C Bowen MP (then Assistant Treasurer), *Improving fairness and integrity in the tax system*, media release, No. 067, 12 May 2009, viewed 21 April 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FISJT6%22>

58. **Proposed Division 4B** will apply to both the trustee and beneficiary of a trust if paragraph 12–175(1)(c) in Schedule 1 to the TAA 1953 applies to the trust and paragraph 12–175(1)(d) of that Schedule applies to the beneficiary. Neither of these provisions exists at present: **proposed section 12–175** in Schedule 1 to the TAA 1953 is to be inserted by **item 5 of Schedule 2** to the current Bill.

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if the Commissioner is satisfied that the beneficiary's TFN has been cancelled or withdrawn, or the number quoted is not the beneficiary's TFN, or the Commissioner is not satisfied the beneficiary has a TFN).

Item 5 inserts **proposed section 12–175** into Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). It will appear in Part 2–5, which deals with the 'pay as you go' (PAYG) withholding system. Specifically, **proposed section 12–175** will appear in Division 12 (Payments from which amounts must be withheld)—in Subdivision 12–E (Payments where a TFN or ABN is not quoted).

Proposed section 12–175 applies if:

- a trustee makes a distribution to a beneficiary at a time (known as the 'distribution time') during an income year, and
- some or all of the distribution is from the ordinary income or statutory income of the trust, and
- the trust is a resident trust estate (as defined in subsection 95(2) of the ITAA 1936) and a closely-held trust (as defined in section 102UC of that Act) and is not prescribed by the regulations for the purposes of this subparagraph, and
- the beneficiary is:
 - an Australian resident who is not an 'exempt entity',⁵⁹ and
 - not under a legal disability for the purposes of section 98 of the ITAA 1936 (for example, the beneficiary is not a child).⁶⁰

Under **proposed subsection 12–175(2)**, the trustee must withhold an amount from the distribution if:

- the beneficiary did not quote his or her (or its) TFN to the trustee before the distribution time, and
- the trustee is not liable to pay tax under section 98 of the ITAA 1936 in connection with the distribution,⁶¹ and

59. The term 'exempt entity' is defined in section 6 of the ITAA 1936 to have the same meaning as in the ITAA 1997. There it is defined in subsection 995–1(1) to mean 'an entity all of whose ordinary income and statutory income is exempt from income tax because of this Act or because of another Commonwealth law, no matter what kind of ordinary income or statutory income the entity might have'; or an untaxable Commonwealth entity.

60. Section 98 of the ITAA 1936 deals with the liability of a trustee in relation to trust income. It is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/s98.html, viewed 21 April 2010.

61. Ibid.

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- the trustee is not required to make a ‘correct TB statement’ under Division 6D of Part III of the ITAA 1936 (about trustee beneficiary non-disclosure) in connection with the distribution,⁶² and
- family trust distribution tax is not payable under Schedule 2F to the ITAA 1936 in connection with the distribution.⁶³

If a beneficiary becomes presently entitled to a share of income from the trust at the end of an income year, then under **proposed section 12–180** of Schedule 1 to the TAA 1953, the trustee must withhold an amount from that share of the net income of the trust if the beneficiary did not quote his or her (or its) TFN to the trustee before the end of the year.⁶⁴

If the trustee fails to withhold an amount from a distribution to a beneficiary or fails to withhold an amount from a beneficiary’s present entitlement to a share of the trust’s income, the trustee commits an offence.⁶⁵

Subsection 15–10(2) of Schedule 1 to the TAA 1953 states that the amount that Subdivision 12–E (and other named Subdivisions) requires to be withheld from a payment is to be worked out under the regulations. According to the Explanatory Memorandum, the withholding rate applicable to **proposed sections 12–175 and 12–180** ‘is intended to match the ‘top rate’’.⁶⁶ For example, in the case of TFN withholding in respect of investments, the current rate is 46.5 per cent.⁶⁷

62. For further details about the term ‘*correct TB statement*’ see section 102UG of the ITAA 1936 at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/s102ug.html, viewed 21 April 2010. (The abbreviation ‘TB’ stands for trustee beneficiary’.)

63. Schedule 2F to the ITAA 1936 deals with trust losses and other deductions. See http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/sch2f.html, viewed 21 April 2010.

64. Some other conditions must also be met—see **proposed subsection 12–180(2)**.

65. See Note 1 to **proposed subsections 12–175(2) and 12–180(2)**. See also section 16–25 of Schedule 1 to the TAA 1953, which provides that an entity must not fail to withhold an amount as required by Division 12. The maximum penalty is 10 penalty units (\$1100)—or 50 penalty units if the entity is a body corporate: see subsection 4B(3) of the *Crimes Act 1914*.

66. Explanatory Memorandum, op. cit., p. 48, paragraph 2.52. The term ‘*top rate*’ is defined in subregulation 34(4) of the Taxation Administration Regulations 1976 as being the sum of the highest rate specified in Part 1 of Schedule 7 to the *Income Tax Rates Act 1986* and the rate of levy specified in subsection 6(1) of the *Medicare Levy Act 1986*.

67. Ibid.

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Neither **proposed sections 12–175 nor 12–180** applies if the payment is less than the amount worked out under the regulations.⁶⁸

If a trustee withholds an amount under **proposed sections 12–175 or 12–180**, the trustee must pay it to the Commissioner of Taxation:

- by the end of the 28th day of the next month following the day the trustee was required to report to the Commissioner under subsection 16–152(1) for the income year, or
- within a longer period allowed by the Commissioner.⁶⁹

If a trustee makes any withholding payments covered by **proposed sections 12–175 or 12–180** during an income year, the trustee must give a report to the Commissioner of taxation in the approved form.⁷⁰ The report must be given not later than 3 months after the end of the income year, or within such further period as the Commissioner allows.⁷¹ Even if the beneficiary provided a TFN and the trustee was not required to withhold amounts, the trustee must also provide an annual report for amounts distributed to beneficiaries to the Commissioner.⁷² Such a report must be given by the end of the day on which the trustee lodges the trust's income tax return for the income year or within such further period as the Commissioner allows.⁷³

The trustee must also give a 'payment summary' to a beneficiary of the trust if the trustee made any withholding payments covered by **proposed sections 12–175 or 12–180** during the income year.⁷⁴ The 'payment summary':

- must cover each of the withholding payments covered by **proposed sections 12–175 or 12–180**
- may be given in electronic form, and

68. **Proposed section 12–185** in Schedule 1 to the TAA 1953. See **item 5 of Schedule 2** to the current Bill.

69. **Proposed subsection 16–75(5)** in Schedule 1 to the TAA 1953. See **item 11 of Schedule 2** to the current Bill.

70. **Proposed subsection 16–152(1)** in Schedule 1 to the TAA 1953. See **item 12 of Schedule 2** to the current Bill.

71. **Proposed subsection 16–152(2)** in Schedule 1 to the TAA 1953.

72. **Proposed subsection 16–152(3)** in Schedule 1 to the TAA 1953.

73. **Proposed subsection 16–152(4)** in Schedule 1 to the TAA 1953.

74. **Proposed subsection 16–156(1)** in Schedule 1 to the TAA 1953. See **item 15 of Schedule 2** to the current Bill. The term '*payment summary*' is defined in **proposed subsection 16–170(1AAA)** of Schedule 1 to the TAA 1953 to be a statement that names the trustee and beneficiary; states the total of the withholding payments; specifies the income year to which it relates; and is in the approved form. See **item 17 of Schedule 2** to the current Bill.

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- must be given not later than 14 days after the day by which the trustee is required to give the Commissioner a report under proposed subsection 16–152(1) for the income year, or within a longer period allowed by the Commissioner.⁷⁵

The amendments made by **Part 1** of **Schedule 2** will apply from 1 July 2010.⁷⁶

Part 2—Amendments contingent on the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*

The amendments in Part 2 of Schedule 2 to the current Bill are contingent on the passage of the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*, noting that that Act is yet to be made.⁷⁷ Item 152 of Schedule 6 to the Bill for that proposed Act repeals and substitutes a revised definition for the term ‘quote’ in section 995–1 of the ITAA 1997, and item 153 of Schedule 6 to the Bill for the proposed Act repeals the definition of the term ‘quoted’ in section 995–1 of the ITAA 1997.⁷⁸

Currently the terms ‘quote’ and ‘quoted’ are defined in section 995–1 of the ITAA 1997 as follows:

‘**quote**’ an entity’s ABN means quote in a form and manner approved by the Commissioner.

‘**quoted**’: an entity has quoted its tax file number in connection with a Part VA investment if the entity is taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have quoted its tax file number in connection with the investment.⁷⁹

Item 26 of **Schedule 2** to the current Bill adds a third element to the definition of the term ‘quote’ in section 995–1 of the ITAA 1997 (as it is proposed to be amended by item 152 of Schedule 6 to the proposed *Tax Laws Amendment (2010 Measures No. 1) Act 2010*). If that provision does not commence, the amendment in **item 26** of **Schedule 2** to the current Bill will also not commence.

75. **Proposed subsection 16–156(2)** of Schedule 1 to the TAA 1953.

76. **Items 24 and 25** of **Schedule 2** to the current Bill.

77. See footnote 2.

78. Items 152 and 153 of Schedule 6 to the proposed *Tax Laws Amendment (2010 Measures No. 1) Act 2010* both appear in Part 11 of Schedule 6 and are due to commence on Royal Assent.

79. The term ‘Part VA investment’ is defined in section 995–1 of the ITAA 1997 to mean ‘an investment of a kind mentioned in section 202D of the *Income Tax Assessment Act 1936*, which includes an interest-bearing account with a financial institution; units in a unit trust; and shares in a public company. The text of section 202D of the ITAA 1936 is available at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/s202d.html, viewed 3 May 2010.

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Item 27 repeals and substitutes a new definition for the term ‘*quoted*’, but it will not commence if item 153 of Schedule 6 to the proposed *Tax Laws Amendment (2010 Measures No. 1) Act 2010* commences before the current Bill receives Royal Assent (or 1 July 2010, whichever occurs later).

Schedule 3—Exemption of HECS-HELP benefit

Schedule 3 exempts the HECS-HELP benefit from the payment of income tax.⁸⁰

The HECS-HELP benefit was introduced in the 2008–09 Budget to encourage graduates of maths or science courses of study and early childhood education courses of study to take up employment in specified occupations.⁸¹ Early childhood education graduates are also encouraged to take up employment in specified locations ‘including rural and regional areas, Indigenous communities and areas of socio-economic disadvantage’.⁸² In the 2009–10 Budget, the benefit was extended to include graduates of eligible education or nursing (including midwifery) courses of study after 30 June 2009.⁸³ Eligibility is determined according to different criteria, depending on the course from which the applicant graduated.⁸⁴

The HECS-HELP benefit is not a cash payment. The ATO applies the benefit to reduce the recipient’s compulsory HELP repayment (or, in the case of early childhood education teachers who do not have to make a compulsory repayment, the ATO applies the benefit to reduce the recipient’s accumulated HELP debt).

Item 2 of Schedule 3 amends the table at the end of section 51–10 of the ITAA 1997 to show that if the taxpayer is a recipient of a HECS-HELP benefit, then the benefit is

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80. The acronym ‘HECS’ stands for the ‘Higher Education Contribution Scheme’, and ‘HELP’ stands for the ‘Higher Education Loan Programme’.
81. ATO, *Overview of the HECS-HELP benefit*, ATO website, 31 March 2010, viewed 24 April 2010, <http://www.ato.gov.au/individuals/content.asp?doc=/content/00236158.htm>
82. Ibid.
83. Ibid. This extension to the HECS-HELP benefit guidelines (made in March 2010) was not disallowed by Parliament. See Higher Education Support Act 2003—HECS-HELP Benefit Guidelines No. 1 at <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/980C737D897C5FFBCA2576DD000E22AA?OpenDocument>, viewed 24 April 2010.
84. For a table of the varying eligibility criteria, see ATO, *Overview of the HECS-HELP benefit: who is eligible?*, ATO website, 31 March 2010, viewed 24 April 2010, http://www.ato.gov.au/individuals/content.asp?doc=/content/00236158.htm&page=3#P7_1045

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exempt from income tax. There are no conditions attached to the exemption.⁸⁵ The exemption applies to assessments for the 2008–09 income year and later income years.⁸⁶

Schedule 4—Deductible gift recipients

Schedule 4 amends the ITAA 1997 to enable taxpayers to claim income tax deductions for gifts to the Sichuan Earthquake Surviving Children’s Education Fund and the Bali Peace Park Association Inc. It also extends the time period for gifts to the Yachad Accelerated Learning Project Limited to allow gifts made after 29 June 2005 but before 1 July 2012 (instead of the current deadline of 1 July 2009) to be deductible.⁸⁷

Item 2 amends existing subsection 30–80(2) of the ITAA 1997 to include the Sichuan Earthquake Surviving Children’s Education Fund and the Bali Peace Park Association Inc in the list of international affairs deductible gift recipients.

The Sichuan Earthquake Surviving Children’s Education Fund was established by the Federation of Chinese Scholars in Australia (FOCSA) in partnership with Channel 9’s *Today* television program on 14 May 2008 following the devastating earthquake in Sichuan Province in China on 12 May 2008.⁸⁸ The aim of the appeal fund is to ‘raise funds to build a new school for 500 students, and to provide scholarships in supporting surviving children particularly those orphaned or handicapped to continue their schooling in Beichuan County’.⁸⁹ Donations/gifts to the Sichuan Earthquake Surviving Children’s Education Fund must be made between 12 May 2008 and 13 May 2010 to be deductible.

The Bali Peace Park Association Inc was established in Perth (Australia) in September 2008. Its primary aims are to raise funds to acquire the Sari Club site in Bali and create a spiritual garden in memory of the victims of the terrorist bomb attack on 12 October 2002. It also wishes to ‘help build a future without fear by promoting tolerance, understanding and freedom for generations to come, irrespective of nationality, culture, religious belief or

85. The text of section 51–10 is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s51.10.html, viewed 24 April 2010.

86. **Item 4** of **Schedule 3** to the current Bill.

87. **Item 1** of **Schedule 4** to the current Bill.

88. For further details, see FOCSA, *APPEAL FOR DONATION: China ‘Sichuan Earthquake Surviving Children’s Education Fund’*, 2009, viewed 24 April 2010, http://www.focsa.org.au/FOCSA_event_earthquake_sichuan.html

89. *Ibid.*

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race'.⁹⁰ To be eligible for the tax deduction, gifts to the Bali Peace Park Association Inc must be:

- made between 16 December 2009 and 17 December 2011, and
- be used for the purpose of establishing the Bali Peace Park.⁹¹

The amendments made by **Schedule 4** apply to the 2007–08 income year and later income years.

Schedule 5—Global Carbon Capture and Storage Institute Ltd

Item 1 of Schedule 5 amends the table in section 50–5 of the ITAA 1997 to include the Global Carbon Capture and Storage Institute Ltd in the list of entities in the field of ‘charity, education, science and religion’ whose total ordinary and statutory income is exempt from income tax. Only amounts included in that organisation’s assessable income on or after 1 July 2009 and before 1 July 2013 (that is, a four-year period) will be exempt.

The establishment of the Global Carbon Capture and Storage Institute (known more colloquially as the ‘Global CCS Institute’) was announced by the Rudd Government in September 2008. It was formally launched in April 2009 and became an independent legal entity (namely a not-for-profit company limited by guarantee) on 12 June 2009.⁹² It is a ‘bold new initiative’ aimed at accelerating the commercial deployment of CCS to contribute to the reduction of carbon dioxide emissions.⁹³

90. Bali Peace Park Association Inc, Welcome to the Bali Peace Park Association Inc., website, no date, viewed 24 April 2010, <http://www.balipeacepark.com.au/> See also Senator N Sherry (Assistant Treasurer), *Deductibility of Gifts to Bali Peace Park Association*, op. cit., and Senator N Sherry (Assistant Treasurer) and P Garrett MP (Minister for Environment Protection, Heritage & the Arts), *Government Introduces Legislation to Assist Fund Raising for Bali Peace Park*, media release, 17 March 2010, viewed 24 April 2010, <http://www.environment.gov.au/minister/garrett/2010/pubs/mr20100317a.pdf>

91. 17 December 2011 is two years from the date when the Assistant Treasurer announced the addition of the Bali Peace Park Association Inc to the list of deductible gift recipients. See Senator N Sherry (Assistant Treasurer), *Deductibility of Gifts to Bali Peace Park Association*, media release, no. 115, 17 December 2009, viewed 24 April 2010, <http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/115.htm&pageID=003&min=njsa&Year=2009&DocType=0>.

92. The Global Carbon Capture and Storage Institute, *About us*, website, no date, viewed 24 April 2010, http://www.globalccsinstitute.com/about_gccsi/about_us.html See also Explanatory Memorandum, op. cit., p. 63.

93. Ibid.

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The inclusion of the Global Carbon Capture and Storage Institute in the list of exempt entities ends on 1 January 2018.⁹⁴ While the Institute does not meet the general requirements for income tax-exempt entities, the Government is of the view that it should be entitled to a limited exemption from income tax because the ‘information and expertise developed by the Institute is to be disseminated broadly and globally to the benefit of both the Australian and global carbon capture and storage communities’.⁹⁵

Other amendments in Schedule 5 that are unrelated to the Global Carbon and Storage Institute Inc.

Items 2–5 repeal the definitions of the terms ‘eligible policy’, ‘exempt entity’, ‘exempt life assurance fund’ and ‘trustee’ in existing section 102M of the ITAA 1936.⁹⁶ The Explanatory Memorandum notes that these definitions do not accord with current drafting practices and, in the case of the definition of ‘exempt entity’ in section 102M is inconsistent with the definition of that term in the Dictionary to the ITAA 1936.

Item 6 inserts **proposed section 102MD** into the ITAA 1936 to make it clear that Division 6C (which deals with the liability to taxation of the income of certain public trading trusts) applies to the person in whom the assets of a fund are vested (whether or not as trustee) in the same way as it applies to an exempt entity if the fund is:

- maintained by a life assurance company solely in respect of a class of life assurance business that consists of the issuing of (or undertaking of liability under) exempt life assurance policies or complying superannuation/first home saver account (FHSA) life insurance policies (within the meaning of the ITAA 1997),⁹⁷ or
- a complying superannuation fund, a complying approved deposit fund, or a pooled superannuation trust.

Schedule 6—Repeal of certain unlimited periods for amending assessments

Schedule 6 repeals over 100 unlimited amendment periods in over 100 different taxation Acts to provide certainty for taxpayers.

94. **Items 10 and 11** of **Schedule 5** to the current Bill.

95. Explanatory Memorandum, op. cit., p. 63, paragraph 5.5.

96. The text of section 102M is available at http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/s102m.html, viewed 24 April 2010.

97. See also section 8 of the *First Home Saver Accounts Act 2008* at http://www.austlii.edu.au/au/legis/cth/consol_act/fhsaa2008273/s8.html, viewed 24 April 2010.

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Schedule 6 replaces the unlimited time period in which the Commissioner of Taxation may amend an assessment with existing general amendment provisions that set a finite period of two or four years (depending on the complexity of the taxpayer's circumstances). However, the unlimited amendment period will continue to apply if there has been fraud or tax evasion.

The amendments are the result of a number of reviews and public consultations undertaken by both the Howard and Rudd Governments since 2004.⁹⁸ The practice of drafting unlimited amendment periods ceased in 2005.⁹⁹ Some of the amendments in **Schedule 6** are thus long overdue.

The amendments in **Schedule 6** commence the day after the current Bill receives Royal Assent.

98. For further details, see the Explanatory Memorandum, *op. cit.*, pp. 65–66.

99. *Ibid.*

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