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Tax Laws Amendment (Transfer of Provisions) Bill 2010

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Law and Bills Digest Section

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Tax Laws Amendment (Transfer of Provisions) Bill 2010

Date introduced: 17 March 2010

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions commence on Royal Assent, but all other provisions commence on 1 July 2010

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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 rewrites five areas of income tax law from the *Income Tax Assessment Act 1936* (ITAA 1936) into the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA 1953), being:

- the collection and recovery of income tax (including the expansion of the requirement for a taxpayer to give a security deposit in certain circumstances, such as suspected involvement in fraudulent phoenix activity)
- the rules for the income tax treatment of the gain a debtor makes when one of his or her commercial debts is forgiven
- the income tax treatment of luxury car leases
- the farm management deposit (FMD) scheme, which allows primary producers to set aside pre-tax income in profitable years for withdrawal in later, low-income years, and
- the taxation of premium income received by general insurance companies (and the ability to deduct liabilities for outstanding claims).

Background

In November 1993, the Joint Committee of Public Accounts recommended that the ITAA 1936 should be rewritten.[1] In response, the then Treasurer, John Dawkins MP, announced that a multi-disciplinary project team (comprising senior personnel from the Treasury, the Australian Taxation Office (ATO) and the Office of Parliamentary Counsel) would spend

1. Joint Committee of Public Accounts, Report No. 326 (*An Assessment of Tax: a report on an inquiry into the Australian Taxation Office*), November 1993, p. 84.

three years rewriting some 500 pages of income tax law. That project was known as the 'Tax Law Improvement Project' (TLIP) and commenced on 1 July 1994.[2] Its focus was on revising the structure and language of the existing law whilst maintaining existing taxation policy. Following the release of a discussion paper in 1995, the review culminated in the ITAA 1997 (and various other Acts since that time). However, in August 1998, the Howard Government announced its tax reform plan and stated that the resources of the TLIP would be subsumed into other tax law reform work.[3] Since then, there has been no formal, systematic rewrite of the ITAA 1936—although certainly numerous tax law amendments in the past decade have rewritten provisions of that Act.[4]

The Bill repeals a large number of provisions in the ITAA 1936 and rewrites them into the ITAA 1997 or the TAA 1953. It reduces 149 pages of tax law to 101 pages.[5] According to the Explanatory Memorandum, the provisions have been selected for rewriting at this point in time because they do not involve significant policy changes, and already use a 'fairly plain-English style'.[6] There should thus be little (if any) detriment to taxpayers as a result of the rewriting. Where the ATO has published a ruling about the interpretation of a particular provision of the ITAA 1936 that is being rewritten, section 357–85 of Schedule 1 to the TAA 1953 states that (to the extent that a rewritten provision 'expresses the same ideas as the old provision'), the ruling 'is taken also to be a ruling about that provision as re-enacted or remade'.[7]

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2. J Harrison, *Tax Law Improvement Project: The Quiet Achiever in Tax Reform*, research note, no. 16, 1996–1997, Department of the Parliamentary Library, Canberra, 1997, viewed 4 May 2010, http://www.aph.gov.au/library/pubs/rn/1996-97/97rn16.htm

3. Australian Government, *Tax reform: not a new tax, a new tax system: The Howard Government's Plan for a New Tax System* (white paper), August 1998, p. 149, viewed 6 May 2010, http://www.treasury.gov.au/documents/167/PDF/Whitepaper.pdf

4. As noted in the Explanatory Memorandum for the Bill, the reform of the imputation system in 2002 'included a rewrite of the imputation provisions from the ITAA 1936 into the ITAA 1997)'. See Explanatory Memorandum, Tax Laws Amendment (Transfer of Provisions) Bill 2010, p. 6, paragraph 1.6.

5. Senator N Sherry (Assistant Treasurer), *20-year goal to streamline the tax law a step closer*, media release, no. 46, 17 March 2010, viewed 7 May 2010, http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/046.htm&pageID=003&min=njsa&Year=&DocType=0

6. Explanatory Memorandum, op. cit., p. 6, paragraphs 1.8–1.9.

7. Schedule 1 to the TAA 1953 is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/taa1953269/xx1.html, viewed 6 May 2010.

Committee consideration

On 17 March 2010, the Senate Selection of Bills Committee resolved to recommend that the Bill not be referred to a committee.[8]

Fraudulent phoenix activity

While the main purpose of the Bill is simply to rewrite the existing law, it does make at least one interesting change—and that is the expansion of the current requirement for a taxpayer to give a security deposit to the Commissioner of Taxation in certain circumstances to include not only *income* tax liabilities (as is the case at present) but *any* existing or future tax-related liabilities. The proposed change is discussed in detail below.

One reason for the proposed change is that the Bill is attempting to address, albeit in very small part only, the rise of fraudulent 'phoenix activity'. As the Assistant Treasurer, Senator Nick Sherry, explained recently:

> Phoenix activity involves the 'deliberate, and often systematic, liquidation of a company to avoid the payment of liabilities, including employee wages and superannuation, business creditors and outstanding taxes. The business then 'rises' and continues through another company free of those debts.[9]

This behaviour is the subject of a current inquiry by the Treasury, which in November 2009 issued a 'proposals paper' for public comment.[10] The paper outlines possible amendments to taxation and corporations law. Submissions closed on 15 January 2010 but the Treasury is yet to make any submission (or report etc) available to the public.[11]

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8. Senate Selection of Bills Committee, *Report No. 5 of 2010*, 18 March 2010, viewed 4 May 2010, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2010/report0510.pdf

9. Senator N Sherry (Assistant Treasurer), *Immediate action to assist in crackdown on fraudulent 'phoenix' activity*, media release, no. 45, 17 March 2010, viewed 7 May 2010, http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/045.htm&pageID=003&min=njsa&Year=&DocType=0

10. Australian Government, *Action against fraudulent phoenix activity*, Proposals Paper, Treasury website, November 2009, viewed 7 May 2010, http://www.treasury.gov.au/documents/1647/PDF/Phoenix_Proposal_Paper.pdf See also Treasury, Options to Address Fraudulent Phoenix Activity, 14 November 2009, viewed 7 May 2010, http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1647

11. Ibid. Note that at least one submission is available elsewhere on the Internet. See, for example, Law Council of Australia, *Action against fraudulent phoenix activity—Proposals paper November 2009*, Submission to the Treasury on its proposals paper 'Action against fraudulent phoenix activity', 10 February 2010, viewed 21 May 2010,

Phoenix activity is not a new phenomenon. Indeed, the ATO has been concerned about phoenix activity since at least 1998, when it launched its Phoenix Project.[12] That project provided 'a planned and coordinated focus on individuals who use, or promote the use of, successive company structures to intentionally evade payment of taxes', with the ATO making the following observations in a submission to the Royal Commission into the Building and Construction Industry in 2002:

> This fraud typically occurs when individuals use limited liability companies to accumulate debts (usually to the Tax Office), liquidate the companies concerned and then carry on their business via a newly formed company. In almost all cases the entities placed into liquidation have no assets.
>
> The major focus of the Project has been on serial offenders who use deliberate and fraudulent methods to avoid their obligations.
>
> The Project currently has 32 staff located in four Tax Office sites in the eastern States where phoenix risk is at its highest. Phoenix activity has been found to be more common in NSW, particularly in the building and construction industry.[13]

The size of the problem of fraudulent phoenix activity is difficult to estimate but appears to be substantial. In November 2009, the Assistant Treasurer said that the ATO estimates that 'the current stock of suspected phoenix cases it is monitoring poses an unacceptable risk to revenue in the order of $600 million'.[14] In March 2010, the Assistant Treasurer again said that the 'latest estimates show phoenix activity may be ripping up to $600 million from the national revenue base'.[15] However, on 23 April 2010, the Commissioner of Taxation, Michael D'Ascenzo (the Commissioner), revealed that $200 million in tax liabilities have been identified as a result of the ATO's focus on fraudulent phoenix activity, with up to nine cases being referred to the Director of Public Prosecutions.[16] It is

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http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=B6188A06-1E4F-17FA-D261-F7274EC5DD89&siteName=lca

12. ATO, 'Phoenix Project', *Submission to the Royal Commission into the Building and Construction Industry*, 2002, viewed 11 May 2010, http://www.ato.gov.au/businesses/content.asp?doc=/content/23607.htm&page=9#H23

13. Ibid.

14. Australian Government, *Action against fraudulent phoenix activity*, Proposals Paper, op. cit, pp. iv and 5.

15. Senator N Sherry (Assistant Treasurer), *Immediate action to assist in crackdown on fraudulent 'phoenix' activity*, op. cit.

16. Australian Broadcasting Corporation, *ATO grilled over tax return bungle*, transcript of Lateline Business television program, 23 April 2010, viewed 20 May 2010, http://www.abc.net.au/lateline/business/items/201004/s2880640.htm Neither the timeframe for identifying this amount (and the number of cases referred to the Director of Public Prosecutions) nor the amount actually recovered by the ATO is clear.

not clear why there is apparently a gap of $400 million between the two figures, but it may well be the case that the figure of $600 million includes moneys other than tax liabilities and/or estimates that are yet to be confirmed (with the gap thus possibly representing the difference between actual and potential liabilities).

Current law on security bonds or deposits: section 213 of the ITAA 1936

The proposal to allow the Commissioner to require the giving of a security deposit is not new. In fact it largely replicates existing section 213 of the ITAA 1936, which has been in place with only minor revisions since its inclusion in the original Act.[17] Section 213 currently provides as follows:

> (1) Where the Commissioner has reason to believe that any person establishing or carrying on business in Australia intends to carry on that business for a limited period only, or where the Commissioner for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived by that person.
>
> (2) A person who refuses or fails to give security when required to do so under this section is guilty of an offence.
>
> Penalty for contravention of this subsection: 20 penalty units.[18]

In summary, the Commissioner is currently empowered to require a taxpayer to provide security, usually by bond or deposit, for the due return and payment of income tax. *However, the Bill seeks (among other things) to amend the law to empower the Commissioner to require a taxpayer to give a security deposit for any existing or future tax-related liabilities (and not just income tax liabilities, as is the case at present).*

Proposed Subdivision 255–D in Schedule 1 to the TAA 1953: security deposits for tax liabilities

Proposed Subdivision 255–D in Schedule 1 to the TAA 1953 (to be inserted by **item 9** of **Schedule 1** to the current Bill) allows the Commissioner to require a taxpayer to make a security deposit if the Commissioner has reason to believe that:

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17. Section 213 was amended by Acts No. 143 of 1965; No. 108 of 1981; No. 123 of 1984; and No. 143 of 2007.

18. Section 213 appears in Part VI of the ITAA 1936 (which deals with the collection and recovery of tax). The term '*penalty unit*' is defined in section 4AA of the *Crimes Act 1914* as $110. If the taxpayer is a body corporate, a court may impose a penalty up to five times this amount: section 4B of the *Crimes Act 1914*. Thus the maximum penalty that a court may be impose under section 213 is $2200 (if the taxpayer is an individual) or $11 000 (if the taxpayer is a body corporate).

- the taxpayer is establishing or carrying on an enterprise in Australia, and intends to carry on that enterprise for a limited time only, or
- the requirement is otherwise appropriate 'having regard to all relevant circumstances'.[19]

The Commissioner may require the security deposit to be given by way of a bond or deposit (including by instalments) or by any other means he or she considers appropriate (such as a guarantee or mortgage over a property).[20] The Commissioner may require the taxpayer to give the security at any time and as often as the Commissioner reasonably believes is appropriate.[21]

The Commissioner must give the taxpayer written notice of the requirement to give the security.[22] The notice must:

- state that the taxpayer is required to give the security
- explain why the Commissioner requires the security
- set out the amount of the security
- describe how and when the taxpayer is to give the security, and
- explain how the taxpayer may apply to have the decision reviewed.[23]

Nonetheless, failure by the Commissioner to comply with **proposed section 255–105** does not affect the validity of the requirement for the taxpayer to give the security.[24] In other words, if the Commissioner does not provide all the details ordinarily required in the notice, the taxpayer must still provide the security deposit.

If the taxpayer fails to give the security required by the Commissioner, the taxpayer commits an offence.[25] The offence carries a maximum penalty of 100 penalty units (or $11 000).[26]

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19. **Proposed subsection 255–100(1)** of Schedule 1 to the TAA 1953.
20. **Proposed subsection 255–100(2)** of Schedule 1 to the TAA 1953. See also Senator N Sherry (Assistant Treasurer), *Immediate action to assist in crackdown on fraudulent 'phoenix' activity*, op. cit.
21. **Proposed subsection 255–100(3)** of Schedule 1 to the TAA 1953.
22. **Proposed subsection 255–105(1)** of Schedule 1 to the TAA 1953.
23. **Proposed subsection 255–105(2)** of Schedule 1 to the TAA 1953.
24. **Proposed subsection 255–105(5)** of Schedule 1 to the TAA 1953.
25. **Proposed section 255–110** of Schedule 1 to the TAA 1953.
26. See footnote 18 for an explanation of the term '*penalty unit*'. If the offence in **proposed section 255–10** of Schedule 1 to the TAA 1953 is committed by a corporation, the maximum penalty is $55 000.

Main differences between the proposed and current law on security deposits

The main differences between **proposed Subdivision 255–D** in Schedule 1 to the TAA 1953 and existing section 213 of the ITAA 1936 are as follows.

First the current provision refers to a person '*establishing or carrying on business in Australia*', whereas the proposed provisions refer to a taxpayer who is '*establishing or carrying on an enterprise*'. The term '*business*' is defined in section 6 of the ITAA 1936 to have the meaning given by section 995–1 of the ITAA 1997. There it is defined to include 'any profession, trade, employment, vocation or calling, but does not include occupation as an employee'. The term '*enterprise*' is not defined in the ITAA 1936 but is defined in section 995–1 of the ITAA 1997 to have the meaning given by section 9–20 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). There it is defined as 'an activity, or series of activities, done' in a variety of specified forms (such as a business or an adventure) or 'on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property', or done by various, specified persons or positions, including by the trustee of a superannuation fund, charitable institution or religious institution. The term '*enterprise*' does not include an activity done by a person as an employee.[27] Thus the revised provision will apply to a broader range of taxpayers than the current provision.

Second, while the current provision applies only to the payment of income tax, the proposed provisions will apply to all taxes administered by the Commissioner, including the superannuation guarantee charge and payments of the goods and services tax (GST).

Third, the proposed provisions contain greater detail about:

(a) how the Commissioner is to give notice to the taxpayer of the requirement to give security, and

(b) how the taxpayer is to provide the security to the Commissioner.

Finally, the current penalty is increased fivefold from 20 penalty units (or $2200) to 100 penalty units (or $11 000). The penalty bears no relationship to the amount required to be given as a security deposit, and thus it bears no relationship to the amount of tax which is due, or may become payable, to the Commissioner. It would still appear to be a fairly nominal amount, but it remains to be seen how effective a deterrent such a penalty will be.

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27. For the text of section 9-20 of the GST Act, see http://www.austlii.edu.au/au/legis/cth/consol_act/antsasta1999402/s9.20.html viewed 10 May 2010.

Press commentary on fraudulent phoenix activity and the Bill

The proposal to extend the requirement for a security deposit to cover not just income tax but any taxes which a taxpayer may owe to the Commissioner has drawn criticism from a number of sectors, particularly because of the effects it may have for the cash-flow of businesses which are forced to use limited cash resources or borrow funds to give a security deposit for a range of future tax liabilities.[28]

For example, Gerry Bean, head of the Law Council of Australia's tax committee, drew attention to the wide discretions vested in the Commissioner and the fact the proposed amendments 'represented a significant departure from current policy'. Dr Bean said: 'To the extent that it is a cash deposit it will strip out small-to-medium enterprise (SME) working capital and, if they have to borrow to finance it, then that will push up costs for the SME'.[29] Similarly, a tax and insolvency lawyer, David Marks, is reported as saying:

> The provisions apply potentially to every entity, and to every person who conducts a business. It might be an unintended consequence, but the tax office will have the power to squeeze small business and I don't think this has been fully appreciated yet.[30]

Roger Mendelson, chief executive of Prushka debt collection agency, said the proposal 'protects the ATO at the expense of small to medium-sized businesses'.[31] He explained:

> While the ATO's plan will protect the revenue from losses resulting from phoenix activity, it essentially leaves other creditors such as small businesses out in the cold and unprotected from companies that become liquidated without paying their debts.[32]

Financial implications

According to the Explanatory Memorandum, the Bill has a nil to minimal financial impact.[33]

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28. H Thomas, 'Plan for tax bond on dodgy firms', *Weekend Australian*, 27 March 2010, viewed 7 May 2010, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F21AW6%22
29. Ibid.
30. Ibid.
31. M Fenton-Jones, 'Phoenix plan "not tough enough"', *Australian Financial Review*, 20 April 2010, p. 45.
32. Ibid.
33. Explanatory Memorandum, Tax Laws Amendment (Transfer of Provisions) Bill 2010, p. 3.

Main provisions

As the Bill primarily rewrites (and/or repeals) numerous provisions in the ITAA 1936, it is unnecessary to provide much discussion of the individual provisions or Schedules in the Bill. It should suffice to provide a short, general explanation of each of the Schedules, but then to comment specifically on a few items of interest.

Schedule 1—Collection and recovery of tax

Part 1 of **Schedule 1** repeals Part VI of the ITAA 1936 but also rewrites existing Divisions 1, 8, 9 and 10 of Part VI of the ITAA 1936 into the ITAA 1997 and the TAA 1953.

Part VI of the ITAA 1936 deals with the collection and recovery of tax, and currently contains just four Divisions (being those four Divisions which are to rewritten). Division 1 of Part VI of the ITAA 1936 is a general division (setting out matters such as when tax is payable; temporary business; and consolidated assessments). It is being largely rewritten as **proposed Division 5** of the ITAA 1997—How to work out when to pay your income tax.[34]

Division 8 of Part VI of the ITAA 1936 deals with the prompt recovery, through estimates and payment agreements, of certain amounts not remitted. It is being largely rewritten as **proposed Division 268** in Schedule 1 to the TAA 1953, which is headed 'Estimates and recovery of PAYG withholding liabilities'.

Division 9 of Part VI of the ITAA 1936 deals with penalties for directors of non-remitting companies.[35] It is being largely rewritten as **proposed Division 269** in Schedule 1 to the TAA 1953, which is headed 'Penalties for directors of non-complying companies'.[36]

Division 10 of Part VI of the ITAA 1936 deals with 'miscellaneous items' but currently only contains one section. Existing section 222ARA states that Part VI of the ITAA 1936 'is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001*, in so far as that Chapter can operate concurrently' with Part VI.[37] It is rewritten as

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34. See **item 3** of **Schedule 1** to the current Bill.
35. The term '*non-remitting company*' is not defined in the ITAA 1936, but essentially means a company that fails to remit to the ATO deductions and amounts withheld by the due date, or to enter into an arrangement with the ATO for the remitting (or payment) of such amounts.
36. The term '*non-complying company*' is not defined in the Bill, but essentially means a company that fails to meet its obligations to pay withheld amounts to the Commissioner.
37. Chapter 5 of the *Corporations Act 2001* deals with external administration, including issues such as the appointment of receivers; creditors' meetings; deeds of company arrangement; winding up; and powers of courts.

proposed section 269–55, which states that proposed Division 269 is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001*.

Part 2 of **Schedule 1** to the Bill makes consequential amendments to a variety of Acts as a consequence of the repeal of existing provisions in the ITAA 1936 by Part 1 of Schedule 1 to the Bill.

Part 3 of **Schedule 1** contains various application, transitional and saving provisions.

Schedule 2—Forgiveness of commercial debts

Part 1 of **Schedule 2** to the Bill repeals Schedule 2C to the ITAA 1936 and in its place inserts **proposed Division 245** into the ITAA 1997. Existing Schedule 2C to the ITAA 1936 comprises only one Division: Division 245, which is headed 'Forgiveness of commercial debts'. It applies if:

> (a) a debt or part of a debt ceases to be payable because the obligation to pay the debt or part is released or waived, or is otherwise extinguished (this is referred to as the forgiveness of the debt or part); and
>
> (b) there are amounts (*reducible amounts*) that would otherwise be taken into account in reducing the debtor's taxable income of the year of income in which the debt is forgiven or a later year of income.[38]

Proposed Division 245 of the ITAA 1997 largely replicates existing Division 245 of Schedule 2C to the ITAA 1936 but the language has been greatly simplified and some provisions have been renumbered.

Part 2 of **Schedule 2** to the Bill makes consequential changes to the ITAA 1936 and the ITAA 1997 as a result of the amendments in Part 1 to Schedule 2.

Schedule 3—Leases of luxury cars

Part 1 of **Schedule 3** to the Bill repeals Schedule 2E to the ITAA 1936 and it its place inserts **proposed Division 242** into the ITAA 1997. Existing Schedule 2E to the ITAA 1936 comprises only one Division: Division 42A, which deals with leases of luxury cars. **Proposed Division 242** of the ITAA 1997 largely replicates existing Division 245 of Schedule 2C to the ITAA 1936 but the language has been greatly simplified and some provisions have been renumbered.

Part 2 of **Schedule 3** to the Bill makes consequential amendments to the ITAA 1997 as a result of the amendments made by Part 1 of the Schedule. **Part 3** of **Schedule 3** contains application and transitional provisions.

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38. Existing section 245–1 in Schedule 2C to the ITAA 1936.

Schedule 4—Farm management deposits

Part 1 of **Schedule 4** to the Bill repeals Schedule 2G to the ITAA 1936 and it its place inserts **proposed Division 393** into the ITAA 1997. Existing Schedule 2G to the ITAA 1936 comprises only one Division: Division 393, which deals with farm management deposits. A '*farm management deposit*' is essentially a deposit made with a financial institution by an individual carrying on a primary production business which allows the taxpayer to carry over income from years of good cash flow and access that income in the future when required. Existing Division 393 sets out various tests and conditions that must be met in order for a taxpayer to be eligible to deduct a farm management deposit from the taxpayer's taxable income in a particular income year, including the fact that:

- the deposit must not be more than $400 000
- the taxpayer can have a farm management deposit with only one financial institution
- the sum of the balances of the taxpayer's farm management deposits from time to time with the financial institution must not be more than $400 000
- the deposit must generally be held for at least 12 months, and
- the taxpayer's taxable non-primary production income for the year must not exceed $65 000.

Existing Division 393 allows the taxpayer to defer including the amount of the farm deposit bond as income until the income year in which the deposit is repaid (that is, accessed or 'drawn down' by the taxpayer). **Proposed Division 393** of the ITAA 1997 largely replicates existing Division 393 of Schedule 2G to the ITAA 1936 but the language has been greatly simplified and some provisions have been renumbered. A large number of explanatory notes have been retained.

Part 1 of **Schedule 4** to the Bill also inserts **proposed Division 398** into Schedule 1 to the TAA 1953. Proposed Division 398 deals with miscellaneous reporting obligations and currently contains only one subdivision which deals specifically with farm management deposit reporting. **Proposed section 398–5** in Schedule 1 to the TAA 1953 states that a provider of a farm management deposit must within 60 days of the end of a quarter give written information to the Agriculture Secretary about:

- the number of farm management deposits held by the provider at the end of each month in the quarter
- the number of depositors in respect of such deposits
- the sum of the balances of such deposits, and
- any other information in relation to farm management deposits held by the provider at any time in the quarter that is required by the regulations.

Failure to provide the information is a criminal offence which attracts a maximum penalty of 10 penalty units.[39]

The regulations must not require the disclosure of the identity of any depositor or information from which the identity of a depositor could reasonably be inferred.[40]

Proposed section 398–5 simply rewrites existing section 264AA of the ITAA 1936. That provision does not appear in existing Schedule 2G but rather appears in Part VIII of that Act, which contains miscellaneous provisions.

Part 2 of **Schedule 4** to the Bill makes consequential amendments to the *Farm Household Support Act 1992*, the ITAA 1936, the ITAA 1997 and the TAA 1953.

Part 3 of **Schedule 4** to the Bill contains application and transitional provisions.

Schedule 5—General insurance

Part 1 of **Schedule 5** to the Bill repeals Schedule 2J to the ITAA 1936 and it its place inserts **proposed Division 321** into the ITAA 1997. Existing Schedule 2J to the ITAA 1936 comprises two Divisions: Division 321, which deals with the taxation of general insurance companies, and Division 323, which makes provision for (and payment of) outstanding claims for workers' compensation liabilities against companies that are not required by law to insure, and do not insure, in respect of such liabilities.

These two existing Divisions are condensed into **proposed Division 321** of the ITAA 1997, which deals with both general insurance companies and companies that self-insure in respect of workers' compensation liabilities. Again the language has been greatly simplified and provisions have been renumbered. The provisions that apply to each type of company are readily apparent from the structure of the proposed Division.

39. See footnote 18 for an explanation of the term '*penalty unit*'. If the offence in **proposed section 398–5** of Schedule 1 to the TAA 1953 is committed by a corporation, the maximum penalty is 50 penalty units (or $5500).

40. **Proposed subsection 398–5(4)** in Schedule 1 to the TAA 1953.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2795.