



Reforms to Income Tests - 2008-09 Budget Measures

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Abstract: In the 2008-09 Budget, the Government announced four measures to reform income tests across the tax and transfer systems (see Treasurer's [Media Release No. 046](#) and [Media Release No. 047](#) of 13 May 2008).

In summary, these measures will include particular salary sacrificed contributions to superannuation in income tests for relevant tax and transfer system programs. Net financial investment losses and net rental property losses where appropriate, will be added to applicable income tests. Further, adjusted fringe benefits will be assessed as income for those tax programs where they are not already included and the income tests for the dependency tax offsets will also be amended.

The proposed changes will remove inconsistencies in the treatment of non-wage remuneration and ensure a better measure of income is assessed for government assistance purposes. The dependency tax offsets reform will more closely align income definitions with those used for family assistance purposes. The measures will provide an overall saving to the Budget of around \$638 million over the next four years.

Comments are sought on the draft legislation giving effect to these reforms. Electronic lodgement is preferred.

Comments closing date: close of business **Friday 5 December 2008**.

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NOTES TO PARTICIPANTS

The draft legislation discussed in this paper is subject to the outcomes of public consultation and passage through Parliament. The amendments should be read as a guide only to how the ultimate enactments might operate, subject to change.

Reforms to Income Tests

2008-09 Budget

Consultation Paper

NOVEMBER 2008

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INTRODUCTION

1. On 13 May 2008, as part of the 2008-09 Budget ('the Budget'), the Government announced four measures to reform income tests across the tax and transfer systems. These measures are designed to enhance fairness in the application of income tests, and to better ensure that government assistance is targeted to those most in need. The measures also remove inconsistencies in the treatment of non-wage remuneration and ensure net losses from investment activities are better accounted for in income tests.

Expanded income definitions – particular superannuation contributions

2. Budget measure, 'Means testing of government support – expanded definitions of income to include 'certain salary sacrificed contributions to superannuation', will expand relevant income definitions to include particular superannuation contributions with effect from 1 July 2009.
3. As a result, for the purpose of particular means-tested benefits, individuals who are able to salary sacrifice into superannuation and reduce their taxable income will be treated on an equivalent basis to those who do not. Also, the measure will provide for greater consistency in the treatment of superannuation contributions for means-tested programs.
4. This is because particular superannuation contributions are already being assessed as income for some welfare recipients while the amount of those contributions in the hands of other recipients is ignored. For example, income support recipients of Age Pension age have the amount of these contributions assessed whereas the contributions are ignored as income for income support recipients below Age Pension age.
5. Programs to be affected by this measure are as follows:

Table 1: Affected programs

Tax programs	Transfer programs
Government superannuation co-contribution	Baby bonus
Higher Education Loan Programme	Child Care Benefit
Pensioner tax offset	Child support
Mature age worker tax offset	Family Tax Benefit Parts A and B
Medicare levy surcharge	Income support under the <i>Social Security Act 1991</i> for people below Age Pension age paid
Section 160AAAB tax rebate for trustees	Income test for residential aged care
Senior Australians tax offset	parental income test, Additional Boarding Allowance, Assistance for Isolated Children scheme
Spouse superannuation contributions tax offset	parental income test, Youth Allowance and ABSTUDY
Student Financial Supplement Scheme	

6. The measure will not affect the tax benefits that currently accrue from salary sacrificing. That is, salary sacrificed superannuation contributions will continue to be excluded from the definition of taxable income which is used to determine an individual's income tax liability. Also, the programs to be affected by this measure do

not include the Medicare levy and the low income tax offset, which will continue to be means-tested on the basis of taxable income.

Request for comment

Comments are sought on whether other programs should be brought within this measure.

Expanded income definitions – Net financial investment losses and net rental property losses

7. Budget measure, 'Means testing of government support – expanded definitions of income to include net losses from investments', will expand definitions of income to include net financial investment losses and net rental property losses where appropriate, with effect from 1 July 2009. This will ensure greater consistency in the treatment of losses for income test purposes.
8. The scope of net losses is the amount by which allowable deductions in respect of the particular investments exceed gross income from those investments. For example, a net financial investment loss would be the amount by which deductible interest expenses on a loan taken out to buy shares exceeds the dividend income from those shares.
9. That is, the definition of net financial investment losses would not capture capital losses made on the value of a share as a result of a decline in share price.
10. Under existing arrangements, net rental property losses are already added back to income for family assistance payment purposes; child support; the Commonwealth Seniors Health Card; the repayment income test for the Higher Education Loan Programme; the Student Financial Supplement Scheme and the parental income tests for Youth Allowance, ABSTUDY and the Additional Boarding Allowance offered as part of the Assistance for Isolated Children scheme.
11. In respect of the last-mentioned programs, net rental property losses are added to income as a component of 'net passive business' losses. This concept of 'net passive business' loss also includes some examples of a net financial investment loss although the 'net financial investment' concept is broader.
12. The programs to be affected by this measure are the following:

Table 2: Affected programs

Tax system programs	Transfer system programs
Senior Australians tax offset	Child support
Pensioner tax offset	Family Tax Benefit Parts A and B
Section 160AAAB tax rebate	parental income test, Additional Boarding Allowance, Assistance for Isolated Children scheme
Medicare levy surcharge	Commonwealth Seniors Health Card
Higher Education Loan Programme	parental income test, Youth Allowance and ABSTUDY
Student Financial Supplement Scheme	Child Care Benefit
	Baby bonus

Request for comment

Comments are sought on whether other programs should be brought within this measure.

Expanded income definitions – Adjusted fringe benefits

13. Budget measure, 'Means-testing of government support – expanded definitions of income to include reportable fringe benefits', provided for reportable fringe benefits to be assessed as income for the purposes of particular tax offsets, with effect from 1 July 2009. On 19 June 2008, the Government varied this measure so that only the adjusted or 'non-grossed' fringe benefit amount will be included in relevant income tests from 1 July 2009.
14. The affected offsets are some of the remaining means-tested government assistance programs that do not currently assess some amount in respect of an individual's fringe benefits income.
15. Fringe benefits are reported on employee payment summaries at a 'grossed-up' value, being the amount the employee would have needed to pay before taxation to purchase the fringe benefit, assuming the employee is on the highest marginal tax rate and the Medicare levy of 46.5 per cent.
16. Transfer programs generally reverse this gross-up process for valuing fringe benefits so that only the net or 'cash' value of the fringe benefit is included. However, there are some exceptions such as the income test for child support purposes. Conversely, means-tested tax programs such as the Higher Education Loan Programme; the Student Financial Supplement Scheme, the Medicare levy surcharge and the Government's superannuation co-contribution scheme, assess the reportable value of fringe benefits (or the 'grossed up value').
17. From 1 July 2009, as part of these changes, income definitions used for the purposes of the senior Australians tax offset, pensioner tax offset and the tax rebate provided for in section 160AAAB of the ITAA 1936 will be amended to include adjusted fringe benefits.

Request for comment

Comments are sought whether there are any other programs in the tax and transfer systems that do not currently assess some amount of fringe benefits income but which should assess fringe benefits income.

Tightening income definitions – Dependency tax offsets

18. Budget measure, 'Personal income tax – tightening eligibility for the dependency tax offsets', provided for a number of reforms of the dependency tax offsets. These reforms will reduce workforce participation disincentives that can be associated with

the dependency tax offsets and more closely align the eligibility criteria used for these offsets with those applying to family assistance.

19. From 1 July 2008, the Budget measure has applied a \$150,000 taxable income threshold on eligibility for the dependency tax offsets, being the dependent spouse; parent/parent-in-law; invalid relative; child-housekeeper; and housekeeper tax offsets. This income cap aligns with the \$150,000 income cap that was applied, from 1 July 2008, on eligibility for Family Tax Benefit (Part B) as a result of the Budget.
20. The measure also provides, with effect from 1 July 2009, for the definition of income used for the purposes of the \$150,000 income threshold to be aligned with that used for family assistance payments, being 'adjusted taxable income'. In addition, the measure provides for the \$150,000 income cap to be applied against the incomes of both the claimant taxpayer and their spouse (where relevant) rather than the income of the taxpayer alone. This treatment is consistent with the way incomes are assessed for family assistance purposes.
21. There will be an exception for the dependent spouse tax offset which will continue to assess the \$150,000 income cap against the taxpayer's income only. This is in recognition of the very low income amounts that a dependent spouse must have for a taxpayer spouse to be eligible to claim the dependent spouse tax offset.
22. From 1 July 2009, the 'separate net income' definition which is currently applied against the income of dependants in determining eligibility for the dependency tax offsets will be replaced with 'adjusted taxable income'. However, the thresholds will be unchanged. That is, the maximum offset amounts will continue to cut out when the dependant's adjusted taxable income reaches \$282.
23. The \$150,000 income threshold will be indexed from 1 July 2009, consistent with the indexation of the equivalent income threshold on eligibility for Family Tax Benefit (Part B).

Request for comment

Comments are sought regarding the exclusion of spouse income from the \$150,000 income cap used to determine eligibility for the dependent spouse tax offset

COMMENTARY

24. This is a commentary on the items within Tax Laws Amendment (Budget Measures No. 1) Bill 2009 and should be read having regard to the contents of that bill. The headings adopted reflect those used in the bill.

PART 1 – KEY CONCEPTS

Amendment of *Income Tax Assessment Act 1936*

25. A number of amendments at early items in this Part are made in respect of changes to income tests for the senior Australians tax offset and the tax rebate in section 160AAAB of the *Income Tax Assessment Act 1936* (ITAA 1936). The amendments will also become relevant for amendments that will need to be made to the *Income Tax Regulations 1936* in respect of the pensioner tax offset.

Adjusted fringe benefits

26. The definition of ‘adjusted fringe benefits’ total is relevant to the definition of income that will be used for the purposes of the senior Australians tax offset, pensioner tax offset and tax rebate in section 160AAAB from 1 July 2009. This definition reflects ‘adjusted fringe benefits’ definitions from other Acts such as the *A New Tax System (Family Assistance) Act 1999* and is designed to reverse the ‘gross-up’ process that is applied against fringe benefits amounts for fringe benefit reporting purposes.

Rebate income

27. The definition of ‘rebate income’ in item 2 of the bill will be relevant for the purposes of the senior Australians tax offset and the pensioner tax offset. It will also form the base for the income test applied against a beneficiary spouse’s income for the purposes of the rebate in section 160AAAB.
28. Rebate income is to be comprised of an individual’s taxable income, adjusted fringe benefits total, total net investment loss and reportable superannuation contributions (these latter two concepts are explained further in paragraphs below). The new definition is described as ‘rebate income’ to ensure consistency with the terminology that is used to describe the relevant offsets in the ITAA 1936, although the term ‘offset’ is now more commonly used to describe these benefits.

Amendment of *Income Tax Assessment Act 1997*

29. The amendments to the ITAA 1997 are made to section 995-1, which is the definitions section for the ITAA 1997 and is also relied on by other pieces of tax legislation.
30. The amendments are integral to the Budget measures as they define a number of the key new ‘components’ of income that are to be added to relevant income tests from 1 July 2009. The amendments also replace existing definitions across a series of legislation.

31. Before turning to these wider concepts of income, it is necessary to provide a brief commentary on the new 'income for surcharge purposes' definition which will apply to the Medicare levy surcharge from 1 July 2009.

Income for surcharge purposes

32. Under existing law, the definition of income for Medicare levy surcharge purposes is drawn from three pieces of legislation: *the Medicare Levy Act 1986* (ML Act); *the A New Tax System (Medicare levy surcharge – Fringe Benefits) Act 1999* (ANTS Act); and Part VIIB of the ITAA 1936. This has resulted in duplication of the income tests across the ML Act and the ANTS Act, and added to complexity in the income tax legislation.
33. As part of these amendments, a new definition of 'income for surcharge purposes' is proposed for insertion into section 995-1 of the ITAA 1997. This definition includes the new components of income for Medicare levy surcharge purposes that would be included in the definition as a result of the Budget measures noted in this paper.
34. The amendment would also provide for adjustments to taxable income that are currently made as part of the income test for the Medicare levy surcharge. The provisions concerning these adjustments were previously located in three pieces of legislation so the new definition will ensure greater clarity in the definition.
35. Section 995-1 is a central definitional resource for a number of pieces of tax legislation, which is why it was chosen to hold this definition over the ML Act or the ANTS Act.

Request for comment

Comments are sought regarding the draft 'income for surcharge purposes' definition and the amendments to the ML Act and ANTS Act.

Reportable superannuation contributions

36. This definition has two components and would be included in the income definition for most means-tested tax and transfer programs from 1 July 2009.
37. The first paragraph of the definition concerns an employee's 'reportable employer superannuation contributions', which are explained further in paragraphs below. The second paragraph concerns personal deductible superannuation contributions. These contributions are currently assessed as income for income support purposes so the reform ensures consistency in the treatment of superannuation contributions.
38. Personal superannuation contributions are fully deductible under subdivision 290-C of the ITAA 1997, provided particular requirements are met.
39. For example, the person making the contribution must notify their superannuation fund or Retirement Savings Account (RSA) provider that they intend to claim the deduction and receive an acknowledgment from their fund or RSA provider of this valid notice. The individual must also meet particular age conditions and requirements in respect of income earned from activities that result in the individual being treated as an employee for Superannuation Guarantee purposes, where relevant.

40. For some transfer payments, an individual will need to estimate the amount they expect to claim as a deduction in advance. This amount may differ from what is ultimately allowed as a deduction as the individual may have misunderstood or miscalculated the other eligibility conditions. In these circumstances, it is expected the difference would be identified as part of current arrangements for reconciling estimated income amounts and adjustments made accordingly.
41. Because some individuals making deductible personal superannuation contributions may lodge an amended tax return up to four years after the relevant income year, compared to two years for many other taxpayers, mechanisms will need to be in place to ensure the contents of an amended return are captured for means test purposes.

Amendment of *Taxation Administration Act 1953*

Reportable employer superannuation contributions

42. This definition comprises the first limb of the definition of 'reportable superannuation contributions'. It aims to capture superannuation contributions made on behalf of an employee that would otherwise have been paid as salary or wages to the employee. The affected contributions are those employer contributions that the employee was capable of influencing and which exceed some mandated amount of contribution.
43. The definition of a reportable employer superannuation contribution (RESC) is located in the *Taxation Administration Act 1953* (TAA) rather than the ITAA 1997 as a result of other amendments to the payment summary provisions that have been made in the TAA (which are discussed under Part 2 later in this commentary).
44. Employer contributions refer to the total amount of contributions made to a superannuation fund or RSA by an employer, including contributions to a foreign superannuation fund. The definition of an employer and employee for the purposes of this definition is linked to the extended definition of 'employee' in section 12 of the *Superannuation Guarantee (Administration) Act 1992*.
45. The starting principle for this definition is that the total amount of employer contributions should be included in the RESC definition. For a part of these contributions to then be excluded from the RESC definition, it must be demonstrated that the amount of the contribution falls within one of the carve-outs from this principle.
46. These 'carve-outs' are explained in the following paragraphs.

'Post-tax' contributions

47. Firstly, any part of a contribution that would have been included in the person's assessable income for the relevant income year ('post-tax contribution') should not fall within the RESC definition.

Superannuation guarantee requirements

48. Also excluded from the RESC definition is that amount of an employer contribution that relieves the employer from being liable to pay a charge under the *Superannuation Guarantee Charge Act 1992* in respect of the employee. That is, the RESC definition would not capture an amount of contribution to the extent that the contribution satisfies the employer's legal obligation to pay the '9 per cent superannuation guarantee (SG) levy' on behalf of the particular employee.

49. However, where an employer is making contributions in excess of the mandated SG requirements, then they will have exceeded the amount that may be ignored for RESC definition purposes. Unless these added contributions are being made pursuant to some other requirement explained in the paragraphs below, they would fall within the definition of a RESC.
50. Further, if an employer is making contributions on behalf of an employee in circumstances where the SG requirements do not apply, possibly because of the age of the employee or amount of the employee's monthly salary, then the amount of these contributions would fall within the definition of a RESC provided there is not some other requirement for the contributions to be made.

Industrial agreement

51. In some instances, the industrial agreement governing the terms and conditions of employment between an employee and their employer may require the employer to pay an amount of superannuation on the employee's behalf in excess of what is required under SG legislation.
52. In these cases, the question of whether the added contribution falls within the RESC definition will depend on the specific circumstances and nature of the relevant industrial agreement. A key consideration will be whether the relevant employee is deemed to have had the capacity to influence the amount of added superannuation contributions that are made on their behalf.
53. In respect of an agreement between an employer and employee, any amount of superannuation contributions required by that contract in excess of what would be necessary under SG legislation falls within the definition of a RESC. This includes added contributions that may be required under the terms of an individual transitional employment agreement (ITEA) or a preserved individual state agreement (PISA).
54. In respect of employer contributions made under an industrial agreement that has been entered between an employee and an employer who are not at arms' length, any amount of these contributions above what is required under SG legislation would be included in the definition of a RESC. That is, where an employee is a director of their employer company, and that company makes added superannuation contributions on behalf of the employee, the amount of these added superannuation contributions would be a RESC.

Small collective agreements

55. Proposed subsection 16-182(3) in the draft bill concerns employer contributions made under a collective agreement covering 20 employees or less. The subsection creates a rebuttable presumption that an employee has capacity to influence the terms of such an agreement, if they were an employee at the time the agreement was made or varied.
56. As a result, any employer contributions made on behalf of that employee under the agreement that are in excess of the amount of contributions that would be required under SG legislation would fall into the definition of a RESC.
57. An employee could argue against the presumption by demonstrating that the terms of their industrial agreement were settled between the employer and an external agency with no opportunity for the employee to negotiate the terms of the agreement. Other factors relevant to the decision whether added contributions are a RESC would be the circumstances surrounding any discussions of the agreement's terms.

58. It should be noted that added superannuation contributions made under an agreement governing 20 or fewer employees will only be assessed as income of a particular employee and fall within the definition of a RESC, if the employee was employed with their employer at the time that agreement was made or varied.

Contributions required by Commonwealth, State or Territory law

59. Where an amount of employer contributions in excess of those required under SG legislation is required by law then the amount of these contributions will not fall within the RESC definition. This is provided for by the paragraph that states contributions required under an 'industrial instrument' do not fall within the definition of a RESC. 'Industrial instrument', as defined in section 995-1 of the ITAA 1997 means an Australian law (among other things).

Defined benefit interests

60. Employer contributions that are less than or equal to an amount the employer must contribute in relation to a defined benefit interest of a person are not to be included in the definition of a RESC. That is, employer contributions made in response to actuarial calculations of what the defined benefit scheme requires to meet their 'pooled' liability would be out of scope.
61. However, where an employee may elect to have additional contributions made to an account in their name with a particular defined benefit scheme then, unless these contributions are mandated under the defined benefit fund rules or legislation, their amount would be included in the definition of a RESC. This is because, by definition, the employee may elect whether to have these extra contributions made from their salary so they are not required to be made by the employer.

'Salary sacrificed' employer superannuation contributions as part of an election

62. In some circumstances, employees may elect to have contributions that would fall outside the RESC definition because they were required by law or an industrial agreement, made from 'pre-tax salary'. That is, the employee may 'salary sacrifice' the amount of these contributions where the contributions would have otherwise been included in the particular employee's assessable income.
63. While such contributions would ordinarily not be included in the definition of a RESC, where an employee has chosen to have these contributions made by salary sacrificing income, the amount of these contributions should be added to the employee's RESC amount. This is because the contributions, in the form they were made, do not meet the condition that they be required by the relevant industrial instrument (including an industrial agreement) or in relation to a defined benefit interest of the person.
64. The inclusion of these contributions in the RESC definition ensures that employees who have access to this salary sacrifice option are treated on an equivalent basis to those who do not.

Request for comment

Comments are sought whether other employer contributions should be included in the definition of a RESC.

Total net investment loss

65. This definition relates to both elements of Budget measure 'Means testing of government support - expanded definitions of income to include net losses from investments'.
66. The definition rationalises the various definitions of net rental property loss that are currently in applicable legislation and recognises them in one definition. This ensures greater consistency and reduces legislative complexity. The definition also captures net losses from financial investments, where financial investment is defined by reference to that term in the *Social Security Act 1991*.
67. An individual will have a 'total net investment loss' where their deductions for the relevant income year from financial investments and rental property exceed the individual's gross income from those activities for the year. Deductions in respect of a financial investment may be claimed for expenses such as the costs of borrowing to invest in the financial investment or management fees charged on the investment.
68. In determining an individual's 'total net investment loss' amount, the amount of the deductions must be allowable under the law.
69. Where an individual has a 'total net investment loss' then it is proposed that the amount of that loss be added back to the individual's income. This includes where the individual may otherwise have a zero taxable income because their other income is tax-exempt or non-existent.
70. In later income years, should an individual wish to amend their earlier income tax return in respect of the amount of deductions claimed, or if there is a change in the amount of income deemed to relate to the individual's investment, then the individual's 'total net investment loss' for the earlier income year will need to be amended. It is assumed that the mechanisms for dealing with such an amendment and re-assessment of entitlement for government assistance would be handled by existing arrangements for re-assessments.

Request for comment

The definition of 'financial investment' from the *Social Security Act 1991* has been chosen as a broad definition of possible investments. Comments are sought whether particular financial investments may not be captured by this definition.

PART 2 – AMENDMENT OF PAYMENT SUMMARY PROVISIONS

71. The amendments to the *Taxation Administration Act 1953* in this Part provide the mechanism for reporting of 'reportable employer superannuation contributions' (RESC).
72. From 1 July 2009, payment summary provisions will require the reporting of RESC amounts, where appropriate, on full year and part year payment summaries together with the current information required to be reported on payment summaries. As a

result, payment summaries for the 2009-10 income year should include any RESC amounts made by the employer in respect of the employee during that income year.

73. Also, any part year payment summary that may be issued to an employee during the 2009-10 income year and later income years, will need to include the amount of any RESC that has been paid on behalf of the employee requesting the part-year payment summary. The timeframe for providing the RESC information in a part year payment summary is 14 days from the date that the payer receives the written request.
74. Consistent with current law, copies of all payment summaries provided by an employer in respect of the RESC amounts paid to an employee, or a report in the approved form, will need to be given to the Australian Taxation Office by employers no later than 14 August after the end of the relevant financial year in which the RESC amounts were made.

Request for comment

Comments are sought regarding the timeframes for providing an annual payment summary or part-year payment summary as they would relate to the provision of information regarding an individual's RESC amount.

PART 3 – AMENDMENT OF INCOME TESTS

Amendment of A New Tax System (Family Assistance) Act 1999

75. The amendments at these items will affect the adjusted taxable income test which is used to determine eligibility for Family Tax Benefit (Parts A and B); Child Care Benefit; and Baby Bonus. The amendments replace the existing concept of 'net rental property loss' in that definition with the concept of 'total net investment loss', as to be defined by section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).
76. The amendments also include an individual's reportable superannuation contributions amount, as defined in section 995-1, in the adjusted taxable income definition.

Amendment of A New Tax System (Medicare levy surcharge – Fringe Benefits) Act 1999

77. The amendments to this Act are a consequence of changes to the income definition used for the purposes of the Medicare levy surcharge ('the Surcharge') and the creation of the new definition of 'income for surcharge purposes'.
78. As noted in the commentary on that definition, there are three pieces of legislation governing the Surcharge being the *Medicare Levy Act 1986* (ML Act); *A New Tax System (Medicare levy surcharge – Fringe Benefits) Act 1999* (ANTS Act); and Part V11B of the *Income Tax Assessment Act 1936* (ITAA 1936).
79. The ANTS Act is relevant as it applies the one per cent Surcharge against the reportable fringe benefits total component of an individual's income. The ML Act applies the Surcharge against an individual's taxable income.
80. The amendments to the ML Act are contained later in the bill but essentially they reflect the amendments to the ANTS Act. This is because the relevant provisions of the ANTS Act reflect provisions of the ML Act. This duplication of provisions across the two pieces of legislation was one reason why a single definition of 'income for surcharge purposes' is proposed as part of this bill for inclusion in the ITAA 1997.
81. There are two definitions of income that are of relevance to the Surcharge. The first is the definition of income against which the one per cent Surcharge is applied, being an individual's taxable income and their reportable fringe benefits total.
82. The second definition of relevance is that which is used to determine whether the Surcharge should be applied in the first place. This is a broader definition than taxable income and reportable fringe benefits and includes some adjustments to what would ordinarily be an individual's taxable income.
83. From 1 July 2009, the definition of income used to determine the threshold for when the Surcharge shall apply will alter to 'income for surcharge purposes'. However, the Surcharge will continue to be applied against an individual's taxable income and reportable fringe benefits total only.
84. That is, if an individual's 'income for surcharge purposes', comprising taxable income, reportable fringe benefits, reportable superannuation contributions and a total net investment loss, means they are subject to the Surcharge, they will only pay the

one per cent Surcharge on the taxable income and reportable fringe benefits component of their 'income for surcharge purposes'.

85. Similarly, if the total of a married person's combined 'income for surcharge purposes' amount with their spouse results in the individual being subject to the Surcharge, then they will only be subject to the Surcharge on that component of their 'income for surcharge purposes' which equates to their taxable income and reportable fringe benefits total.
86. The amendments to the ANTS Act give effect to this intent and are complementary to similar amendments to be made to the ML Act.

Amendment of Child Support (Assessment) Act 1989

87. The amendments to the *Child Support (Assessment) Act 1989* extend the adjusted taxable income definition which is used to determine a parent's capacity to meet the costs of his or her children. From 1 July 2009, this definition will include the parent's total net investment loss and the parent's reportable superannuation contributions. The definition of net rental property loss that is currently in the *Child Support (Assessment) Act 1989* will be repealed.

Amendment of Higher Education Support Act 2003

88. The amendments to the *Higher Education Support Act 2003* (HESA) extend the repayment income definition, which is used to determine when an individual must begin repaying an accumulated HELP debt. From 1 July 2009, an individual's total net investment loss and their reportable superannuation contributions will be assessed in determining whether the individual's repayment income is above the minimum threshold for compulsory repayment of an accumulated HELP debt.
89. The amendments to the HESA give effect to this intent and repeal the current definition of 'net rental property loss' that was in the HESA to be replaced with a cross-reference to the definition of 'total net investment loss' in the ITAA 1997. The amendments also revise some existing wording of section 154-1 of the HESA to ensure more consistency within the provision.

Amendment of Income Tax Assessment Act 1936

90. The amendments to the ITAA 1936 extend the income definitions used for the purposes of the senior Australians tax offset and the tax rebate in section 160AAAB for trustees assessed under section 98 of the ITAA 1936.
91. Currently, these offsets are means-tested with taxable income alone as the base. However, with effect from 1 July 2009, references to taxable income in the relevant provisions will be replaced with references to the concept of 'rebate income' which has been discussed earlier.
92. As a result, a taxpayer's taxable income; adjusted fringe benefits; total net investment loss and reportable superannuation contributions will be assessed to determine whether the taxpayer is eligible for the senior Australians tax offset. Where the taxpayer is a member of a couple then these components for both the taxpayer and

their spouse will be relevant in determining eligibility for the senior Australians tax offset.

93. In respect of the rebate provided for in section 160AAAB, the changes will expand the scope of beneficiary income, and beneficiary spouse's income, that is assessed before the trustee may be eligible for a rebate under that section in respect of the trustee's assessment.

Amendment of *Income Tax Assessment Act 1997*

Mature age worker tax offset

94. The amendment to section 61-570 of the ITAA 1997 expands the categories of income included in the definition of 'net income from working' for the purposes of the mature age worker tax offset.
95. From 1 July 2009, the definition of 'net income from working' will include 'reportable employer superannuation contributions', which is distinct from including an individual's 'reportable superannuation contributions'.
96. The reason 'reportable superannuation contributions' is not included is because that would add back amounts of deductible personal superannuation contributions for the individual. However, 'net income from working' measures an individual's assessable, or gross, income before deductions have been taken away. Therefore, it was not appropriate for 'reportable superannuation contributions' to be inserted as that definition also includes an individual's deductible personal superannuation contributions.

Tax offset for Medicare levy surcharge (lump sum payments in arrears)

97. The amendment to section 61-580 of the ITAA 1997 extends the definition of income against which an MLS lump sum is applied in determining eligibility for the Medicare levy surcharge (lump sum payment in arrears) tax offset. This will ensure greater consistency with the definition of income that would have been used to determine whether an individual would be subject to the Medicare levy surcharge or not.

Tax offset for spouse contributions

98. The amendments to section 290-230 of the ITAA 1997 extend the definition of income that is assessed in determining whether the income of a taxpayer's spouse is below the income threshold necessary for the taxpayer to be eligible for the 'spouse contributions tax offset'.
99. Currently, to be eligible for this offset, and among other conditions, a taxpayer's spouse must have assessable income and reportable fringe benefits for the income year of less than \$13,800. As this definition captures assessable income, it is not appropriate to add back amounts that are calculated having regard to deductions, such as a spouse's total net investment loss and deductible self-employed superannuation contributions. However, reportable employer superannuation contributions should be included
100. As a result, if a taxpayer's spouse has had these contributions made on their behalf in an income year, they will be added to the spouse's income that is assessed in determining eligibility for the offset.

Amendment of Medicare Levy Act 1986

101. As mentioned above, the *Medicare Levy Act 1986* applies the one per cent Surcharge to an individual's taxable income and includes the provisions that determine when this Surcharge should apply. The amendments to this Act are designed to give effect to the changes to the income definition relevant for Surcharge purposes and the insertion of the new definition of 'income for surcharge' purposes in section 995-1 of the ITAA 1997.

Amendment of Social Security Act 1991

Commonwealth Seniors Health Card

102. The amendments to sections 1071-3 and 1071-3 of the *Social Security Act 1991* (SS Act) are made as a consequence of the changes to the adjusted taxable income test used for the purposes of the Commonwealth Seniors Health Card (CSHC).
103. From 1 July 2009, as a result of the Budget measures, the income definition used to determine eligibility for the CSHC will be amended to include an individual's total net investment loss for the relevant income year. The income test for the purposes of the CSHC already included an individual's 'net rental property loss' so the amendments repeal that definition and insert a cross-reference to the new 'total net investment loss' concept.
104. The amendments to sections 10A and 19B of the SS Act are also made as a consequence of the changes to the income test used for the purposes of the CSHC and there are amendments to the *Veterans' Entitlement Act 1986* which are a consequence as well.

Student Financial Supplement Scheme

105. The amendments to section 1061ZZFA of the SS Act are made as a consequence of changes to the repayment income definition used for the purposes of the Student Financial Supplement Scheme (SFSS) that are to take effect from 1 July 2009 as part of this bill. These changes are discussed further in respect of the amendments to the *Student Assistance Act 1973* below.
106. The amendment to section 19B of the SS Act is made as a consequence of the replacement of the net rental property loss definition for the purposes of the SFSS with the new concept of an individual's 'total net investment loss'.

Parental income test, Youth Allowance

107. The amendments to section 1067G-F10 revise the parental income test definition used in determining an individual's entitlement to Youth Allowance to include the parent's reportable superannuation contributions amount and the parent's total net investment loss amount.
108. Because the current parental income definition includes a concept of 'net passive business losses', which may already capture some aspects of the new concept of 'total net investment loss', the amendments have been drafted to incorporate both concepts.

Amendment of *Student Assistance Act 1973*

109. The amendments to the *Student Assistance Act 1973* amend the repayment income test used for the purposes of the SFSS to ensure consistency with the income definition to be used in respect of accumulated HELP debts.
110. As a result of the amendments, the definition of 'repayment income' used to determine an individual's obligation to repay an accumulated Financial Supplement (FS) debt will include an individual's total net investment loss and reportable superannuation contributions amount with effect from 1 July 2009.
111. The SFSS is a voluntary loan scheme that was available to tertiary students to help them cover their expenses while studying. The scheme closed on 31 December 2003 and no new loans are being issued, however accumulated FS debts still exist and the Australian Taxation Office is responsible for collecting the balance of these debts.

Amendment of *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*

112. The amendments to the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Co-contribution Act) expand the definition of income that is used to determine an individual's eligibility for a contribution to their superannuation as part of the Government's superannuation co-contribution scheme to include the individual's reportable employer superannuation contributions amount.
113. The Co-contribution Act has not been amended to include an individual's total net investment loss, or reportable superannuation contribution, as the income definition used to determine eligibility for the superannuation co-contribution is assessed on the basis of an individual's assessable, or gross, income and those two definitions of income include amounts that are deducted from assessable income.

Amendment of *Veterans' Entitlement Act 1986*

114. The amendments to the *Veterans' Entitlement Act 1986* are made as a consequence of changes to the income test used to determine eligibility for the Commonwealth Seniors Health Card.

Request for comment

Comments are sought regarding the amendments described above and whether there is a need for further amendments.

PART 4 – DEPENDENCY REBATES

115. The amendments in this Part relate to Budget measure, 'Personal income tax – Tightening eligibility for the dependency tax offsets'. The amendments will replace the current subsection in the offsets provisions that imposes a \$150,000 taxable income cap on eligibility for these offsets with new subsections.
116. These subsections draw upon a definition that will be inserted in subsection 159J(6) of the ITAA 1936, which is the definitions subsection of that provision. The definition, to be known as 'income limit for family tax benefit (Part B)', cross-references provisions in the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) and will have the effect of ensuring that the income limit on Family Tax Benefit (Part B) and the dependency offsets remains the same.
117. This ensures greater consistency between the income arrangements for family assistance and the dependency tax offsets.
118. The amendments also extend the \$150,000 income cap to include the income of a taxpayer's spouse for the purposes of determining eligibility for particular dependency tax offsets, being the child-housekeeper, housekeeper, invalid relative and parent/parent-in-law tax offsets. Given the already very low income permitted of a dependant as a condition of being eligible to claim the dependency tax offsets, it was not considered necessary to apply the income cap to a spouse's income for the purposes of the dependent spouse tax offset.
119. The reforms are intended to replace all existing income definitions used to determine eligibility for the dependency tax offsets with 'adjusted taxable income', as defined in the Family Assistance Act. As such, there are amendments to remove references to 'separate net income', which is the current definition of income applied against the income of dependants' and to delete the definition from subsection 159J(6).
120. Because of the deletion of the concept of 'separate net income' there is a need for a consequential amendment of the *Social Security Act 1991* to remove a reference to 'separate net income'.
121. The housekeeper tax offset will be subject to the same means test arrangements as the child housekeeper, invalid relative and parent/parent-in-law offsets from 1 July 2009. However, this offset is provided for by section 159L of the ITAA 1936 rather than section 159J which provides for the other offsets. As such, the bill includes amendments that apply the income test from section 159J to the housekeeper tax offset.

Request for comment

Comments are sought on whether any other legislative references to 'separate net income' need updating.

PART 5 – APPLICATION

122. All amendments provided for in the bill are to apply to income years and assessments starting on or after 1 July 2009. From that date, any obligations imposed by this bill will take effect and all income assessments for relevant programs should include the new components of income.
123. However, if the particular program currently relies on an earlier year's income amount in determining an individual's entitlement to a payment for the current year then the commencement date is not proposed to affect those arrangements. The relevant income definition would continue to be that which applied in the earlier year, which may not be the expanded income definition including the new 'components'.

SUBMISSIONS

124. The Government seeks submissions in response to the terms of the draft bill.

125. Submissions may be posted to the following mail address:

Income Reforms Team
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

126. Alternatively, submissions may be emailed to: incomereforms@treasury.gov.au

127. The closing date for submissions is close of business **5 December 2008**.

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Inserts for
**Tax Laws Amendment (Budget Measures
No. 1) Bill 2009: Reforms to income tests**

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.		
2. Schedule ??	The day after this Act receives the Royal Assent.	
3.		

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1
2 **Schedule ??—Reforms to income tests**

3 **Part 1—Key concepts**

4 *Income Tax Assessment Act 1936*

5 **1 Subsection 6(1)**

6 Insert:

7 *adjusted fringe benefits total* of a taxpayer for a year of income is
8 the amount worked out using the formula:

9
$$\text{Taxpayer's reportable fringe benefits total} \times (1 - \text{FBT rate})$$

10 where:

11 *FBT rate* is the rate of tax set by the *Fringe Benefits Tax Act 1986*
12 for the FBT year (as defined in the *Fringe Benefits Tax Assessment*
13 *Act 1986*) beginning on the 1 April just before the start of the year
14 of income.

15 **2 Subsection 6(1)**

16 Insert:

17 *rebate income* of an individual for a year of income is the sum of:

- 18 (a) the individual's taxable income for the year of income; and
19 (b) the individual's reportable superannuation contributions for
20 the year of income; and
21 (c) the individual's total net investment loss for the year of
22 income; and
23 (d) the individual's adjusted fringe benefits total for the year of
24 income.

25 **3 Subsection 6(1) (definition of *reportable fringe benefits***
26 ***total*)**

27 Repeal the definition, substitute:

28 *reportable fringe benefits total* has the same meaning as in the
29 *Fringe Benefits Tax Assessment Act 1986*.

30 **4 Subsection 6(1)**

31 Insert:

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1 *reportable superannuation contributions* has the same meaning as
2 in the *Income Tax Assessment Act 1997*.

3 **5 Subsection 6(1)**

4 Insert:

5 *total net investment loss* has the same meaning as in the *Income*
6 *Tax Assessment Act 1997*.

7 ***Income Tax Assessment Act 1997***

8 **6 Subsection 995-1(1)**

9 Insert:

10 *income for surcharge purposes*, for a person and an income year,
11 means the sum of the following:

- 12 (a) the person's taxable income for the income year
13 (disregarding subsection 271-105(1) of Schedule 2F to the
14 *Income Tax Assessment Act 1936*);
15 (b) the person's *reportable fringe benefits total (if any) for the
16 income year;
17 (c) the person's *reportable superannuation contributions for the
18 income year;
19 (d) the person's *total net investment loss for the income year;

20 less the amount mentioned in subsection 301-20(3) for the person
21 for the income year if the person is entitled to a tax offset under
22 subsection 301-20(2) for the income year.

23 **7 Subsection 995-1(1)**

24 Insert:

25 *reportable employer superannuation contributions* has the
26 meaning given by section 16-182 in Schedule 1 to the *Taxation*
27 *Administration Act 1953*.

28 **8 Subsection 995-1(1)**

29 Insert:

30 *reportable superannuation contributions*, for a person and an
31 income year, means the sum of:

- 32 (a) the person's *reportable employer superannuation
33 contributions (if any) for the income year; and

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-
- 1 (b) the total amount of contributions made by the person that the
2 person has deducted or can deduct under Subdivision 290-C
3 for the income year.

4 **9 Subsection 995-1(1)**

5 Insert:

6 ***total net investment loss*** of an individual for an income year means
7 the sum of:

- 8 (a) the amount (if any) by which the individual's deductions for
9 the income year that are attributable to financial investments
10 (within the meaning of the *Social Security Act 1991*) exceed
11 the individual's gross income for that year from those
12 investments; and
13 (b) the amount (if any) by which the individual's deductions for
14 the income year that are attributable to rental property exceed
15 the individual's gross income for that year from rental
16 property.

17 ***Taxation Administration Act 1953***

18 **10 At the end of Subdivision 16-C in Schedule 1**

19 Add:

20 **16-182 Meaning of *reportable employer superannuation contributions***

- 21 (1) A person's ***reportable employer superannuation contributions*** for
22 an income year is the sum of the amounts contributed by an
23 employer of the person for the person's benefit, for the income
24 year, to:
- 25 (a) a *superannuation fund; or
26 (b) an *RSA;
- 27 except to the extent to which:
- 28 (c) the amounts are included in the person's assessable income
29 for the income year; or
30 (d) the employer would have been liable to pay superannuation
31 guarantee charge under the *Superannuation Guarantee*
32 *Charge Act 1992* in respect of the person and a quarter in the
33 income year if the amounts had not been so contributed; or
34 (e) the contributions were required under the terms of an
35 industrial agreement, in force under an *Australian law, that
36 the person was not capable of influencing; or

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-
- 1 (f) the sum of the contributions is less than or equal to any
2 minimum amount that the employer is required to contribute
3 for the person's benefit for the income year:
4 (i) under an *industrial instrument (other than an industrial
5 agreement); or
6 (ii) in relation to a *defined benefit interest of the person.

7 *Influencing the terms of an agreement*

- 8 (2) For the purposes of paragraph (1)(e), the person is taken to be
9 capable of influencing the terms of the agreement if:
10 (a) the person is the only employee covered by the agreement; or
11 (b) the employer employed the person at the time:
12 (i) the agreement commenced; or
13 (ii) a variation of the agreement commenced;
14 and they were not at *arm's length at that time (even if they
15 were at arm's length at other times).
- 16 (3) For the purposes of paragraph (1)(e), a rebuttable presumption
17 arises that the person is capable of influencing the terms of the
18 agreement if it is established that:
19 (a) the employer employed the person at the time:
20 (i) the agreement commenced; or
21 (ii) if the agreement has been varied—the most recent
22 variation commenced; and
23 (b) the agreement covered at most 20 employees of the employer
24 at the time applying under paragraph (a).

25 *Employer and employee*

- 26 (4) For the purposes of this section, **employer** and **employee** have the
27 expanded meanings given by section 12 of the *Superannuation*
28 *Guarantee (Administration) Act 1992* (assuming that subsection
29 12(11) of that Act had not been enacted).

30 *If the person dies*

- 31 (5) For the purposes of this section, disregard whether any
32 *superannuation benefits arising from a contribution are payable to
33 a *SIS dependant of the person if the person dies before or after
34 becoming entitled to receive the benefits.

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Part 2—Amendment of payment summary provisions

2

Taxation Administration Act 1953

3

11 At the end of subsection 16-153(2) in Schedule 1

4

Add:

5

; or (d) the entity made *reportable employer superannuation contributions in respect of a person’s employment by the entity.

6

7

8

Note: The heading to section 16-153 in Schedule 1 is altered by omitting “**about withholding payments and reportable fringe benefits**”.

9

10

12 Subparagraph 16-153(3)(b)(i) in Schedule 1

11

Omit “and *reportable fringe-benefit amounts”, substitute “, *reportable fringe-benefit amounts and *reportable employer superannuation contributions”.

12

13

14

13 At the end of subsection 16-155(1) in Schedule 1

15

Add:

16

; or (d) the recipient is an individual and *reportable employer superannuation contributions have been made by the payer, in respect of the individual’s employment by the payer, during the year.

17

18

19

20

14 At the end of subsection 16-155(2) in Schedule 1

21

Add:

22

; and (c) if paragraph (1)(d) applies—the *reportable employer superannuation contributions, except so much of those contributions as are covered by a previous payment summary (and a copy of it) given by the payer to the recipient under section 16-160.

23

24

25

26

27

15 At the end of paragraph 16-160(1)(c) in Schedule 1

28

Add “or”.

29

16 After paragraph 16-160(1)(c) in Schedule 1

30

Insert:

31

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1 (d) *reportable employer superannuation contributions made by
2 the payer, in respect of the recipient's employment by the
3 payer, during the financial year;

4 **17 After paragraph 16-170(1)(e) in Schedule 1**

5 Insert:

6 (f) specifies the *reportable employer superannuation
7 contributions (if any) that it covers and the income year to
8 which those contributions relate; and

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2 **Part 3—Amendment of income tests**

2

3 *A New Tax System (Family Assistance) Act 1999*

3

4 **18 Paragraph 2(1)(d) of Schedule 3**

4

5 Repeal the paragraph, substitute:

5

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

7

8 **19 After paragraph 2(1)(e) of Schedule 3**

8

9 Insert:

9

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

12

13 **20 Clause 6 of Schedule 3**

13

14 Repeal the clause.

14

15 *A New Tax System (Medicare Levy Surcharge—Fringe 16 Benefits) Act 1999*

16

17 **21 Subsection 3(1)**

17

18 Insert:

18

19 *income for surcharge purposes* has the same meaning as in the
20 *Income Tax Assessment Act 1997*.

20

21 **22 Subsection 3(1) (definition of *reportable fringe benefits total*)**

21

22

23 Repeal the definition, substitute:

23

24 *reportable fringe benefits total* has the same meaning as in the
25 *Fringe Benefits Tax Assessment Act 1986*.

25

26 **23 Subsection 3(1) (definition of *taxable income*)**

26

27 Repeal the definition.

27

28 **24 Section 9**

28

29 Repeal the section.

29

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25 Paragraph 12(1)(a)

Repeal the paragraph, substitute:

- (a) the person's income for surcharge purposes exceeds \$50,000 for the year of income; and

26 Paragraph 13(1)(a)

Repeal the paragraph, substitute:

- (a) the person's income for surcharge purposes for the year of income exceeds the person's family surcharge threshold for the year of income; and

27 Paragraphs 15(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the sum of the person's income for surcharge purposes, and the person's spouse's income for surcharge purposes, for the year of income exceeds the person's family surcharge threshold for the year of income; and
- (c) the person's income for surcharge purposes for the year of income exceeds \$17,309.

28 Paragraph 15(2)(a)

Omit "taxable income", substitute "income for surcharge purposes".

29 Paragraphs 16(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the sum of the person's income for surcharge purposes, and the person's spouse's income for surcharge purposes, for the year of income exceeds the person's family surcharge threshold for the year of income; and
- (c) the person's income for surcharge purposes for the year of income exceeds \$17,309.

30 Paragraph 16(3)(b)

Repeal the paragraph, substitute:

- (b) the person's income for surcharge purposes for the year of income exceeds the person's family surcharge threshold for the year of income.

31 Paragraph 16(5)(a)

Omit "taxable income", substitute "income for surcharge purposes".

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Child Support (Assessment) Act 1989

32 Subsection 5(1) (definition of *net rental property loss*)

Repeal the definition.

33 Paragraph 43(1)(d)

Repeal the paragraph, substitute:

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

34 At the end of subsection 43(1)

Add:

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

Higher Education Support Act 2003

35 Paragraph 154-5(1)(b)

Repeal the paragraph, substitute:

- (b) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and

36 Paragraph 154-5(1)(d)

Repeal the paragraph, substitute:

- (d) the person's *exempt foreign income for the income year; and
(e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.

37 Subsections 154-5(2) and (3)

Repeal the subsections.

38 Clause 1 of Schedule 1 (definition of *rental property loss*)

Repeal the definition.

Income Tax Assessment Act 1936

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1 **39 Subsection 160AAAA(3)**

2 Omit “taxpayer has a taxable income for the year of income”, substitute
3 “taxpayer’s rebate income for the year of income is”.

4 **40 Subsection 160AAAA(4)**

5 Repeal the subsection, substitute:

- 6 (4) If the taxpayer is the spouse of another person, the amount
7 applicable to the taxpayer under subsection (3) is half of the sum
8 of:
9 (a) the taxpayer’s rebate income for the year of income; and
10 (b) the taxpayer’s spouse’s rebate income for the year of income
11 (reduced by any amount included in the spouse’s assessable
12 income under section 100); and
13 (c) any share of the net income of a trust estate to which the
14 taxpayer’s spouse is presently entitled and that is assessed
15 under section 98.

16 **41 Subsection 160AAAB(3)**

17 Omit “has a taxable income”, substitute “has an amount applicable
18 under subsection (4) or (5)”.

19 **42 Subsections 160AAAB(4) and (5)**

20 Repeal the subsections, substitute:

- 21 (4) If the beneficiary is not the spouse of another person, the amount
22 applicable to the beneficiary under subsection (3) is the amount
23 that would be the beneficiary’s rebate income for the year of
24 income if the beneficiary’s taxable income for that year were the
25 beneficiary’s share of the net income of the trust estate.
- 26 (5) If the beneficiary is the spouse of another person, the amount
27 applicable to the beneficiary under subsection (3) is half the sum
28 of:
29 (a) the amount that would be applicable to the beneficiary under
30 subsection (3) if the beneficiary were not the spouse of
31 another person; and
32 (b) the beneficiary’s spouse’s rebate income for the year of
33 income (reduced by any amount included in the spouse’s
34 assessable income under section 100); and
35 (c) any share of the net income of a trust estate to which the
36 beneficiary’s spouse is presently entitled and that is assessed
37 under section 98.

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Income Tax Assessment Act 1997

43 After paragraph 61-570(1)(b)

Insert:

- (c) your *reportable employer superannuation contributions for the year;

44 At the end of paragraph 61-580(1)(d)

Add:

- ; (v) your *reportable superannuation contributions for the current year;
(vi) your *total net investment loss for the current year.

45 Paragraph 290-230(2)(c)

Repeal the paragraph, substitute:

- (c) the total of your spouse's:
(i) assessable income; and
(ii) *reportable fringe benefits total; and
(iii) *reportable employer superannuation contributions; for the income year is less than \$13,800; and

Medicare Levy Act 1986

46 Subsection 3(1)

Insert:

income for surcharge purposes has the same meaning as in the *Income Tax Assessment Act 1997*.

47 Subsection 3(1) (definition of *reportable fringe benefits total*)

Repeal the definition.

48 Subsection 3(2)

Repeal the subsection, substitute:

- (2) In this Act, a reference to income for surcharge purposes, net income or taxable income is to be read as a reference to that term for the year of income.

49 Subsection 8B(2)

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1 Omit “total of a person’s taxable income and reportable fringe benefits
2 total (if any)”, substitute “person’s income for surcharge purposes”.

3 Note: The heading to section 8B is altered by omitting “**Increase in levy**” and substituting
4 “**Levy surcharge**”.

5 **50 Subsection 8C(3)**

6 Omit “If the total of a person’s taxable income and reportable fringe
7 benefits total (if any) exceeds the family surcharge threshold”,
8 substitute “If the person’s income for surcharge purposes exceeds the
9 person’s family surcharge threshold”.

10 Note: The heading to section 8C is altered by omitting “**Increase in levy**” and substituting
11 “**Levy surcharge**”.

12 **51 Paragraphs 8D(3)(b) and (c)**

13 Repeal the paragraphs, substitute:

14 (b) the sum of the person’s income for surcharge purposes and
15 the person’s spouse’s income for surcharge purposes exceeds
16 the person’s family surcharge threshold; and

17 (c) the person’s income for surcharge purposes exceeds \$17,309.

18 Note: The heading to section 8D is altered by omitting “**Increase in levy**” and substituting
19 “**Levy surcharge**”.

20 **52 Subparagraphs 8D(4)(a)(i) and (ii)**

21 Repeal the subparagraphs, substitute:

22 (i) the sum of the person’s income for surcharge purposes
23 and the person’s spouse’s income for surcharge
24 purposes exceeds the person’s family surcharge
25 threshold;

26 (ii) the person’s income for surcharge purposes exceeds
27 \$17,309; or

28 **53 Paragraph 8D(4)(b)**

29 Repeal the paragraph, substitute:

30 (b) the person’s income for surcharge purposes exceeds the
31 person’s family surcharge threshold, if the person is married
32 for only some of the year of income.

33 **54 Subsection 8D(5)**

34 Repeal the subsection, substitute:

35 (5) In this section:

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1 *income for surcharge purposes*, in relation to the person's spouse,
2 includes any share in the net income of a trust estate:

- 3 (a) to which the spouse is presently entitled as a beneficiary; and
4 (b) in respect of which the trustee of the trust estate in that
5 capacity is liable to be assessed under section 98 of the
6 Assessment Act.

7 Note: The heading to section 8E is altered by omitting "**Increase in levy**" and substituting
8 "**Levy surcharge**".

9 **55 Subsection 8F(2)**

10 Omit "family surcharge threshold", substitute "beneficiary's family
11 surcharge threshold".

12 Note: The heading to section 8F is altered by omitting "**Increase in levy**" and substituting
13 "**Levy surcharge**".

14 **56 Paragraph 8G(2)(b)**

15 Repeal the paragraph, substitute:

- 16 (b) the sum of the beneficiary's trust income and the
17 beneficiary's spouse's income for surcharge purposes
18 exceeds the beneficiary's family surcharge threshold; and

19 Note: The heading to section 8G is altered by omitting "**Increase in levy**" and substituting
20 "**Levy surcharge**".

21 **57 Subparagraph 8G(3)(a)(i)**

22 Repeal the subparagraph, substitute:

- 23 (i) the sum of the beneficiary's trust income and the
24 beneficiary's spouse's income for surcharge purposes
25 exceeds the beneficiary's family surcharge threshold;
26 and

27 **58 Paragraph 8G(3)(b)**

28 Omit "family surcharge threshold", substitute "beneficiary's family
29 surcharge threshold".

30 **59 Subsection 8G(4)**

31 Repeal the subsection, substitute:

- 32 (4) In this section:

33 *income for surcharge purposes*, in relation to the beneficiary's
34 spouse, includes any share in the net income of a trust estate:

- 35 (a) to which the spouse is presently entitled as a beneficiary; and

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1 (b) in respect of which the trustee of the trust estate in that
2 capacity is liable to be assessed under section 98 of the
3 Assessment Act.

4 Note: The heading to section 9 is altered by omitting “(other than certain levy increases)”.

5 ***Social Security Act 1991***

6 **60 Subsection 10A(2) (definition of *net rental property loss*)**

7 Repeal the definition.

8 **61 Subsection 10A(15)**

9 Repeal the subsection.

10 **62 Subsection 19AB(2) (definition of *rental property loss*)**

11 Repeal the definition.

12 **63 Paragraph 1061ZZFA(1)(b)**

13 Repeal the paragraph, substitute:

14 (b) the person’s total net investment loss (within the meaning of
15 the *Income Tax Assessment Act 1997*) for the income year;
16 and

17 **64 Paragraph 1061ZZFA(1)(d)**

18 Repeal the paragraph, substitute:

19 (d) the person’s exempt foreign income for the income year; and
20 (e) the person’s reportable superannuation contributions (within
21 the meaning of the *Income Tax Assessment Act 1997*) for the
22 income year.

23 **65 Subsections 1061ZZFA(2) and (3)**

24 Repeal the subsections.

25 **66 At the end of point 1067G-F10**

26 Add:

27 ; (e) the parent’s reportable superannuation contributions (within
28 the meaning of the *Income Tax Assessment Act 1997*) for that
29 year;
30 (f) to the extent that it is not covered by paragraph (d)—the
31 parent’s total net investment loss (within the meaning of the
32 *Income Tax Assessment Act 1997*) for that year.

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1 **67 Paragraph 1071-3(d)**

2 Repeal the paragraph, substitute:

3 (d) the person's total net investment loss (within the meaning of
4 the *Income Tax Assessment Act 1997*) for that year.

5 **68 Point 1071-3 (note 4)**

6 Repeal the note.

7 **69 Point 1071-8**

8 Repeal the point, substitute:

9 *Total net investment loss*

10 1071-8 For the purposes of this Part, a person's *total net investment loss*
11 for a particular tax year is the person's accepted estimate of the
12 amount of that loss for that year.

13 ***Student Assistance Act 1973***

14 **70 Subsection 3(1) (definition of *rental property loss*)**

15 Repeal the definition.

16 **71 Paragraph 12ZL(1)(b)**

17 Repeal the paragraph, substitute:

18 (b) the person's total net investment loss (within the meaning of
19 the *Income Tax Assessment Act 1997*) for the income year;
20 and

21 **72 Paragraph 12ZL(1)(d)**

22 Repeal the paragraph, substitute:

23 (d) the person's exempt foreign income for the income year; and
24 (e) the person's reportable superannuation contributions (within
25 the meaning of the *Income Tax Assessment Act 1997*) for the
26 income year.

27 **73 Subsections 12ZL(2) and (3)**

28 Repeal the subsections.

29 ***Superannuation (Government Co-contribution for Low*** 30 ***Income Earners) Act 2003***

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1 **74 At the end of subsection 8(1)**

2 Add:

3 ; and (c) the person's reportable employer superannuation
4 contributions (within the meaning of the *Income Tax*
5 *Assessment Act 1997*) for the income year.

6 ***Veterans' Entitlements Act 1986***

7 **75 Paragraph 118ZZA-3(d)**

8 Repeal the paragraph, substitute:

9 (d) the person's total net investment loss (within the meaning of
10 the *Income Tax Assessment Act 1997*) for that year.

11 **76 Point 118ZZA-3 (note 4)**

12 Repeal the note.

13 **77 Point 118ZZA-7**

14 Repeal the point, substitute:

15 *Total net investment loss*

16 118ZZA-7 For the purposes of this Division, a person's ***total net investment***
17 ***loss*** for a particular tax year is the person's accepted estimate of
18 the amount of that loss for that year.

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Part 4—Dependency rebates

Income Tax Assessment Act 1936

78 Subsection 159J(1AB)

Repeal the subsection, substitute:

(1AB) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1, 2, 5 or 6 in the table in subsection (2) if:

- (a) for a dependant included in class 1—the taxpayer’s adjusted taxable income for the year is more than the income limit for family tax benefit (Part B) for the year; or
- (b) for a dependant included in class 2, 5 or 6—subsection (1AC) applies to the taxpayer for the year.

(1AC) This subsection applies to a taxpayer for a year of income if the sum of:

- (a) the taxpayer’s adjusted taxable income for the year; and
- (b) if the taxpayer has a spouse during the year—the spouse’s adjusted taxable income for the year; and
- (c) if the taxpayer has a spouse during only part of the year—this amount:

$$\text{Spouse's adjusted taxable income for the year} \times \frac{\text{Number of days a spouse}}{\text{Number of days in the year}}$$

is more than the income limit for family tax benefit (Part B) for the year.

Note: If the taxpayer has a different spouse during different parts of the year, the adjusted taxable income of each spouse will be included under paragraph (c).

79 Subsection 159J(4)

Omit “separate net income derived by the dependant in”, substitute “dependant’s adjusted taxable income for”.

80 Subsection 159J(5)

Omit “a separate net income in”, substitute “an adjusted taxable income for”.

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1 **81 Subsection 159J(6)**

2 Insert:

3 *adjusted taxable income* has the same meaning as in the *A New*
4 *Tax System (Family Assistance) Act 1999*.

5 **82 Subsection 159J(6)**

6 Insert:

7 *income limit for family tax benefit (Part B)* means the amount
8 specified in subclause 28B(1) of Schedule 1 to the *A New Tax*
9 *System (Family Assistance) Act 1999*, as indexed under Part 2 of
10 Schedule 4 to that Act.

11 **83 Subsection 159J(6) (definition of *separate net income*)**

12 Repeal the definition.

13 **84 Subsection 159L(3B)**

14 Repeal the subsection, substitute:

15 (3B) A taxpayer is not entitled, in his or her assessment in respect of a
16 year of income, to a rebate under this section if subsection
17 159J(1AC) applies to the taxpayer for the year.

18 ***Social Security Act 1991***

19 **85 Subpoint 1067G-G13(2) (paragraph (b) of the definition of**
20 ***NITML (notional income tax/medicare levy)*)**

21 Omit “a separate net income within the meaning of section 159J of the
22 *Income Tax Assessment Act 1936* in that year”, substitute “an adjusted
23 taxable income within the meaning of the *A New Tax System (Family*
24 *Assistance) Act 1999* in that year”.

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Part 5—Application

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86 Application

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The amendments made by this Schedule apply in relation to income

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years starting on or after 1 July 2009.



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