Income Tax Assessment Act 1997

No. 38, 1997

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This compilation is in 12 volumes

**Volume 1: sections 1‑1 to 36‑55**

Volume 2: sections 40‑1 to 67‑30

Volume 3: sections 70‑1 to 121‑35

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Volume 12: Endnote 4

Each volume has its own contents

**About this compilation**

**This compilation**

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 1 April 2025 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act about income tax and related matters

Chapter 1—Introduction and core provisions

Part 1‑1—Preliminary

Division 1—Preliminary

Table of sections

1‑1 Short title

1‑2 Commencement

1‑3 Differences in style not to affect meaning

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1‑7 Administration of this Act

1‑1 Short title

This Act may be cited as the *Income Tax Assessment Act 1997*.

1‑2 Commencement

This Act commences on 1 July 1997.

1‑3 Differences in style not to affect meaning

(1) This Act contains provisions of the *Income Tax Assessment Act 1936* in a rewritten form.

(2) If:

(a) that Act expressed an idea in a particular form of words; and

(b) this Act appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style;

the ideas are not to be taken to be different just because different forms of words were used.

Note: A public or private ruling about a provision of the *Income Tax Assessment Act 1936* is taken also to be a ruling about the corresponding provision of this Act, so far as the 2 provisions express the same ideas: see section 357‑85 in Schedule 1 to the *Taxation Administration Act 1953*.

1‑4 Application

This Act extends to every external Territory referred to in the definition of ***Australia***.

1‑7 Administration of this Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

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2‑A How to find your way around

2‑B How the Act is arranged

2‑C How to identify defined terms and find the definitions

2‑D The numbering system

2‑E Status of Guides and other non‑operative material

Subdivision 2‑A—How to find your way around

2‑1 The design

This Act is designed to help you identify accurately and quickly the provisions that are relevant to your purpose in reading the income tax law.

The Act contains tables, diagrams and signposts to help you navigate your way.

You can start at Division 3 (What this Act is about) and follow the signposts as far into the Act as you need to go. You may also encounter signposts to several areas of the law that are relevant to you. Each one should be followed.

Sometimes they will lead down through several levels of detail. At each successive level, the rules are structured in a similar way. They will often be preceded by a Guide to the rules at that level. The rules themselves will usually deal first with the general or most common case and then with the more particular or special cases.

Subdivision 2‑B—How the Act is arranged

2‑5 The pyramid

This Act is arranged in a way that reflects the principle of moving from the general case to the particular.

In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.

Chart showing a pyramid consisting of four levels. From the top down, the levels are: Core Provisions (Checklists), General Provisions, Specialist Groupings (including, as examples only, Corporate taxpayers and corporate distributions, rules for particular industries and occupations, international aspects of income taxation, financial transactions and superannuation), and Administration (Dictionary of terms and concepts)

Note: The *Taxation Administration Act 1953* contains the provisions on collection and recovery of tax and provisions on administration.

Subdivision 2‑C—How to identify defined terms and find the definitions

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2‑15 When terms are *not* identified

2‑20 Identifying the defined term in a definition

2‑10 When defined terms are identified

(1) Many of the terms used in the income tax law are defined.

(2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in “\*business”. The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 995‑1.

2‑15 When terms are *not* identified

(1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are *not* usually asterisked.

(2) Terms are *not* asterisked in the non‑operative material contained in this Act.

Note: The non‑operative material is described in Subdivision 2‑E.

(3) The following basic terms used throughout the Act are *not* identified with an asterisk. They fall into 2 groups:

Key participants in the income tax system

| Item | This term: | is defined in: |
| --- | --- | --- |
| 1. | Australian resident | section 995‑1 |
| 2. | Commissioner | section 995‑1 |
| 3. | company | section 995‑1 |
| 4. | entity | section 960‑100 |
| 4A. | foreign resident | section 995‑1 |
| 5. | individual | section 995‑1 |
| 6. | partnership | section 995‑1 |
| 7. | person | section 995‑1 |
| 8. | trustee | section 995‑1 |
| 9. | you | section 4‑5 |

Core concepts

| Item | This term: | is defined in: |
| --- | --- | --- |
| 1. | amount | section 995‑1 |
| 2. | assessable income | Division 6 |
| 3. | assessment | section 995‑1 |
| 3A. | Australia | Subdivision 960‑T |
| 4. | deduct, deduction | Division 8 |
| 5. | income tax | section 995‑1 |
| 6. | income year | section 995‑1 |
| 7. | taxable income | section 4‑15 |
| 8. | this Act | section 995‑1 |

2‑20 Identifying the defined term in a definition

Within a definition, the defined term is identified by ***bold italics***.

Subdivision 2‑D—The numbering system

Table of sections

2‑25 Purposes

2‑30 Gaps in the numbering

2‑25 Purposes

Two main purposes of the numbering system in this Act are:

1. To indicate the relationship between units at different levels.

For example, the number of Part 2‑15 indicates that the Part is in Chapter 2. Similarly, the number of section 165‑70 indicates that the section is in Division 165.

1. To allow for future expansion of the Act. The main technique here is leaving gaps between numbers.

2‑30 Gaps in the numbering

There are gaps in the numbering system to allow for the insertion of new Divisions and sections.

Subdivision 2‑E—Status of Guides and other non‑operative material

Table of sections

2‑35 Non‑operative material

2‑40 Guides

2‑45 Other material

2‑35 Non‑operative material

In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

2‑40 Guides

The first is the “Guides”. A ***Guide*** consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 950‑150.

2‑45 Other material

The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions, but are not kept separate from them.

Division 3—What this Act is about

Table of sections

3‑5 Annual income tax

3‑10 Your other obligations as a taxpayer

3‑15 Your obligations *other than* as a taxpayer

3‑5 Annual income tax

(1) Income tax is payable for each year by each individual and company, and by some other entities.

Note 1: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See the *Medicare Levy Act 1986* and Part VIIB of the *Income Tax Assessment Act 1936*.

Note 2: Income tax is imposed by the *Income Tax Act 1986* and the other Acts referred to in the definition of ***income tax*** in section 995‑1.

(2) Most entities have to pay *instalments* of income tax before the income tax they *actually* have to pay can be worked out.

(3) This Act answers these questions:

1. What instalments of income tax do you have to pay? When and how do you pay them?

See Schedule 1 to the *Taxation Administration Act 1953*.

2. How do you work out how much income tax you must pay?

See Division 4, starting at section 4‑1.

3. What happens if your income tax is *more* than the instalments you have paid? When and how must you pay the rest?

See Division 5 of this Act and Part 4‑15 in Schedule 1 to the *Taxation Administration Act 1953*.

4. What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?

See Division 3A of Part IIB of the *Taxation Administration Act 1953*.

5. What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?

See section 3‑10.

6. Do you have any other obligations under the income tax law?

See section 3‑15.

7. If a dispute between you and the Commissioner of Taxation cannot be settled by agreement, what procedures for objection, review and appeal are available?

See Part IVC (sections 14ZL to 14ZZS) of the *Taxation Administration Act 1953*.

3‑10 Your other obligations as a taxpayer

(1) Besides paying instalments and the rest of your income tax, your main obligations as a taxpayer are:

(a) to keep records and provide information as required by:

1. the *Income Tax Assessment Act 1936*; and
2. Division 900 (which sets out substantiation rules) of this Act; and

(b) to lodge income tax returns as required by:

1. the *Income Tax Assessment Act 1936*.

Tax file numbers

(2) Under Part VA of the *Income Tax Assessment Act 1936*, a tax file number can be issued to you. You are not obliged to apply for a tax file number. However, if you do not quote one in certain situations:

1. you may become liable for instalments of income tax that would not otherwise have been payable;
2. the amount of certain of your instalments of income tax may be increased.

3‑15 Your obligations *other than* as a taxpayer

Your main obligations under the income tax law, other than as a taxpayer are:

1. in certain situations, to deduct from money you owe to another person, and to remit to the Commissioner, instalments of income tax payable by that person.

See Part 4‑5 (Collection of income tax instalments),   
starting at section 750‑1.

Part 1‑3—Core provisions

Division 4—How to work out the income tax payable on your taxable income

Table of sections

4‑1 Who must pay income tax

4‑5 Meaning of *you*

4‑10 How to work out how much income tax you must pay

4‑15 How to work out your taxable income

4‑25 Special provisions for working out your basic income tax liability

4‑1 Who must pay income tax

Income tax is payable by each individual and company, and by some other entities.

Note: The actual amount of income tax payable may be nil.

For a list of the entities that must pay income tax,  
see Division 9, starting at section 9‑1.

4‑5 Meaning of *you*

If a provision of this Act uses the expression ***you***, it applies to entities generally, unless its application is expressly limited.

Note 1: The expression ***you*** is not used in provisions that apply only to entities that are not individuals.

Note 2: For circumstances in which the identity of an entity that is a managed investment scheme for the purposes of the *Corporations Act 2001* is not affected by changes to the scheme, see Subdivision 960‑E of the *Income Tax (Transitional Provisions) Act 1997*.

4‑10 How to work out how much income tax you must pay

(1) You must pay income tax for each \*financial year.

(2) Your income tax is worked out by reference to your taxable income for the ***income year***. The income year is the same as the \*financial year, except in these cases:

(a) for a company, the income year is the *previous* financial year;

(b) if you have an accounting period that is not the same as the financial year, each such accounting period or, for a company, each previous accounting period is an income year.

Note 1: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

(3) Work out your income tax for the \*financial year as follows:

Method statement

Step 1. Work out your taxable income for the income year.

To do this, see section 4‑15.

Step 2. Work out your basic income tax liability on your taxable income using:

(a) the income tax rate or rates that apply to you for the income year; and

(b) any special provisions that apply to working out that liability.

See the *Income Tax Rates Act 1986* and section 4‑25.

Step 3. Work out your tax offsets for the income year. A ***tax offset*** reduces the amount of income tax you have to pay.

For the list of tax offsets, see section 13‑1.

Step 4. Subtract your \*tax offsets from your basic income tax liability. The result is how much income tax you owe for the \*financial year.

Note 1: Division 63 explains what happens if your tax offsets exceed your basic income tax liability. How the excess is treated depends on the type of tax offset.

Note 2: Section 4‑11 of the *Income Tax (Transitional Provisions) Act 1997* (which is about the temporary budget repair levy) may increase the amount of income tax worked out under this section.

Income tax worked out on another basis

(4) For some entities, some or all of their income tax for the \*financial year is worked out by reference to something other than taxable income for the income year.

See section 9‑5.

4‑15 How to work out your taxable income

(1) Work out your ***taxable income*** for the income year like this:

Method statement

Step 1. Add up all your assessable income for the income year.

To find out about your assessable income, see Division 6.

Step 2. Add up your deductions for the income year.

To find out what you can deduct, see Division 8.

Step 3. Subtract your deductions from your assessable income (unless they exceed it). The result is your taxable income. (If the deductions equal or exceed the assessable income, you don’t have a taxable income.)

Note: If the deductions exceed the assessable income, you may have a tax loss which you may be able to utilise in that or a later income year: see Division 36.

(2) There are cases where taxable income is worked out in a special way:

| Item | For this case ... | See: |
| --- | --- | --- |
| 1. | A company does not maintain continuity of ownership and control during the income year and does not satisfy the business continuity test | Subdivision 165‑B |
| 1B. | An entity is a \*member of a \*consolidated group at any time in the income year | Part 3‑90 |
| 2. | A company becomes a PDF (pooled development fund) during the income year, and the PDF component for the income year is a nil amount | section 124ZTA of the *Income Tax Assessment Act 1936* |
| 3. | A shipowner or charterer:  has its principal place of business outside Australia; and  carries passengers, freight or mail shipped in Australia | section 129 of the Income *Tax Assessment Act 1936* |
| 4. | An insurer who is a foreign resident enters into insurance contracts connected with Australia | sections 142 and 143 of the *Income Tax Assessment Act 1936* |
| 5. | The Commissioner makes a default or special assessment of taxable income | sections 167 and 168 of the *Income Tax Assessment Act 1936* |
| 6. | The Commissioner makes a determination of the amount of taxable income to prevent double taxation in certain treaty cases | section 24 of the *International Tax Agreements Act 1953* |

Note: A life insurance company can have a taxable income of the complying superannuation class and/or a taxable income of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320‑D.

4‑25 Special provisions for working out your basic income tax liability

Subsection 392‑35(3) may increase your basic income tax liability beyond the liability worked out simply by applying the income tax rates to your taxable income.

Note: Subsection 392‑35(3) increases some primary producers’ tax liability by requiring them to pay extra income tax on their averaging components worked out under Subdivision 392‑C.