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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax Laws Amendment (2012 Measures
No. 6) Bill 2012**

No. , 2012

(Treasury)

**A Bill for an Act to amend the law relating to
taxation and superannuation, and for related
purposes**

1 **Schedule 1—Tax treatment of native title**
2 **benefits**

3 **Part 1—Main amendments**

4 ***Income Tax Assessment Act 1936***

5 **1 Subsection 128U(1) (definition of *mining payment*)**

6 Omit all the words after “but does not”, substitute:
7 include:
8 (d) a payment made by a distributing body; or
9 (e) a native title benefit (within the meaning of the *Income Tax*
10 *Assessment Act 1997*).

11 ***Income Tax Assessment Act 1997***

12 **2 Section 11-55 (after table item headed “National Rental**
13 **Affordability Scheme”)**

14 Insert:
15 **native title benefits**
16 native title benefits..... 59-50

15 **3 After section 59-45**

16 Insert:

17 **59-50 Native title benefits**

- 18 (1) To the extent that a *native title benefit would otherwise be
19 included in your assessable income, it is not assessable income and
20 is not *exempt income if you are an *Indigenous person or an
21 *Indigenous holding entity.
- 22 (2) To the extent that an amount, or other benefit, arising directly or
23 indirectly from a *native title benefit would otherwise be included
24 in your assessable income, it is not assessable income and is not
25 *exempt income if you are an *Indigenous person or an
26 *Indigenous holding entity.

- 1 (3) Neither subsection (1) nor (2) applies to an amount, or benefit, to
2 the extent that it:
3 (a) is for the purposes of meeting the provider's administrative
4 costs; or
5 (b) is remuneration or consideration for the provision of goods or
6 services.
- 7 (4) Subsection (2) does not apply to an amount, or benefit, to the
8 extent that it arises directly or indirectly:
9 (a) from so much of:
10 (i) the *native title benefit; or
11 (ii) an amount, or benefit, arising directly or indirectly from
12 the native title benefit;
13 as is not *non-assessable non-exempt income of an entity
14 because of this section; or
15 (b) from an entity investing any or all of:
16 (i) the native title benefit; or
17 (ii) an amount, or benefit, arising directly or indirectly from
18 the native title benefit.
- 19 (5) A **native title benefit** is an amount, or *non-cash benefit, that:
20 (a) arises under:
21 (i) an agreement made under an Act of the Commonwealth,
22 a State or a Territory, or under an instrument made
23 under such an Act; or
24 (ii) an ancillary agreement to such an agreement;
25 to the extent that the amount or benefit relates to an act that
26 would extinguish *native title or that would otherwise be
27 wholly or partly inconsistent with the continued existence,
28 enjoyment or exercise of native title; or
29 (b) is compensation determined in accordance with Division 5 of
30 Part 2 of the *Native Title Act 1993*.

- 31 Note 1: Agreements that can be covered by paragraph (a) include:
32 (a) indigenous land use agreements (within the meaning of the
33 *Native Title Act 1993*); and
34 (b) an agreement of the kind mentioned in paragraph 31(1)(b) of that
35 Act; and
36 (c) recognition and settlement agreements (within the meaning of the
37 *Traditional Owner Settlement Act 2010* (Vic.)).
- 38 Note 2: Paragraph (a) does not require a determination of native title under the
39 *Native Title Act 1993*.

- 1 (6) An *Indigenous holding entity* is:
2 (a) a *distributing body; or
3 (b) a trust, if the beneficiaries of the trust can only be
4 *Indigenous persons or distributing bodies.

5 **4 After section 118-75**

6 Insert:

7 **118-77 Native title and rights to native title benefits**

- 8 (1) A *capital gain or *capital loss you make is disregarded if:
9 (a) you are an *Indigenous person or an *Indigenous holding
10 entity; and
11 (b) you make the gain or loss because one of the following things
12 happens in relation to a *CGT asset mentioned in
13 subsection (2):
14 (i) you transfer the CGT asset to one or more entities that
15 are either Indigenous persons or Indigenous holding
16 entities;
17 (ii) you create a trust, that is an Indigenous holding entity,
18 over the CGT asset;
19 (iii) your ownership of the CGT asset ends, resulting in
20 *CGT event C2 happening in relation to the CGT asset.
- 21 (2) The *CGT assets are as follows:
22 (a) *native title;
23 (b) the right to be provided with a *native title benefit.

24 Note: Paragraph (a) does not require a determination of native title under the
25 *Native Title Act 1993*.

26 **5 Subsection 995-1(1)**

27 Insert:

28 *Indigenous holding entity* has the meaning given by subsection
29 59-50(6).

30 **6 Subsection 995-1(1)**

31 Insert:

32 *Indigenous person* means an individual who is:

- 1 (a) a member of the Aboriginal race of Australia; or
2 (b) a descendant of an Indigenous inhabitant of the Torres Strait
3 Islands.

4 **7 Subsection 995-1(1)**

5 Insert:

6 *native title* has the same meaning as in the *Native Title Act 1993*.

7 **8 Subsection 995-1(1)**

8 Insert:

9 *native title benefit* has the meaning given by subsection 59-50(5).

10 **9 Application of amendments**

- 11 (1) The amendments made by items 1, 2 and 3 apply in relation to income
12 years starting on or after 1 July 2008.
- 13 (2) The amendment made by item 4 applies in relation to CGT events
14 happening on or after 1 July 2008.
15

1 **Part 2—Other amendments**

2 ***Income Tax Assessment Act 1936***

3 **10 Subsection 6(1)**

4 Insert:

5 *Indigenous land* has the same meaning as in the *Income Tax*
6 *Assessment Act 1997*.

7 **11 Subsection 6(1)**

8 Insert:

9 *Indigenous person* has the same meaning as in the *Income Tax*
10 *Assessment Act 1997*.

11 **12 Division 11C of Part III (heading)**

12 Repeal the heading, substitute:

13 **Division 11C—Payments in respect of mining operations**
14 **on Indigenous land**

15 **13 Subsection 128U(1) (definition of *Aboriginal*)**

16 Repeal the definition.

17 **14 Subsection 128U(1) (definition of *Aboriginal land*)**

18 Repeal the definition.

19 **15 Subsection 128U(1) (subparagraphs (d)(i) and (ii) of the**
20 **definition of *distributing body*)**

21 Omit “Aboriginals” (wherever occurring), substitute “Indigenous
22 persons”.

23 **16 Subsection 128U(1) (definition of *mining payment*)**

24 Omit “Aboriginal or Aboriginals”, substitute “Indigenous person or
25 persons”.

26 **17 Subsection 128U(1) (paragraph (c) of the definition of**
27 ***mining payment*)**

1 Omit “Aboriginals”, substitute “Indigenous persons”.

2 **18 Subsection 128U(1) (subparagraphs (c)(i), (ii) and (iii) of**
3 **the definition of *mining payment*)**

4 Omit “Aboriginal land” (wherever occurring), substitute “Indigenous
5 land”.

6 ***Income Tax Assessment Act 1997***

7 **19 Section 11-55 (table item headed “mining”)**

8 Omit “Aboriginals”, substitute “Indigenous persons”.

9 **20 Subsection 30-300(2)**

10 Omit “Aboriginal arts”, substitute “arts of *Indigenous persons”.

11 **21 Paragraphs 59-15(1)(b) and (2)(b)**

12 Omit “*Aboriginals”, substitute “*Indigenous persons”.

13 **22 Subsection 995-1(1) (definition of *Aboriginal*)**

14 Repeal the definition.

15 **23 Subsection 995-1(1)**

16 Insert:

17 ***Indigenous land*** means any estate or interest in land that, under an
18 *Australian law relating to *Indigenous persons, is held for the use
19 or benefit of Indigenous persons.
20