



Taxation Laws Amendment Act (No. 2) 2001

No. 167, 2001



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**An Act to amend the law relating to taxation, and
for related purposes**

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Taxation Laws Amendment Act (No. 2) 2001

No. 167, 2001

An Act to amend the law relating to taxation, and for related purposes

[Assented to 1 October 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 2001*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 5 is taken to have commenced immediately after both of the following commenced:

(a) Schedule 2 to the *New Business Tax System (Miscellaneous) Act (No. 1) 2000*;

(b) Part 2 of Schedule 3 to the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Fringe Benefits Tax Assessment Act 1986

Part 1—Exempt benefits

Fringe Benefits Tax Assessment Act 1986

1 After subsection 47(1)

Insert:

(1A) Where:

- (a) a person is an employee of a government body; and
- (b) the person's duties of employment are performed in a police service; and
- (c) the person is provided with a residual benefit consisting of the provision of travel on public transport; and
- (d) the benefit is provided for the purpose of travel between:
 - (i) the person's place of residence; and
 - (ii) the person's primary place of employment;

the benefit is an *exempt benefit*.

2 Application

The amendment made by item 1 applies in relation to the year of tax starting on 1 April 2000 and later years of tax.

Part 2—Application of the Fringe Benefits Tax Assessment Act 1986 to nominated State or Territory bodies

Fringe Benefits Tax Assessment Act 1986

3 After Part XIB

Insert:

Part XIC—Application of the Act to nominated State or Territory bodies

135R Application of this Part

This Part applies in relation to the year of tax starting on 1 April 2001 and later years of tax.

135S Nomination of eligible State or Territory bodies

(1) The following:

- (a) a State; or
- (b) the Australian Capital Territory; or
- (c) the Northern Territory;

may nominate an eligible State or Territory body for the purposes of this Part.

Form and content etc. of nomination

(2) The nomination:

- (a) must be in the approved form; and
- (b) must specify the first year of tax in relation to which the nomination is to have effect; and
- (c) may specify that a class or classes of employees are to be taken to have a sufficient connection with the body for the purposes of subsection 135U(3); and

- (d) must be given to the Commissioner on or before 21 May in the year of tax specified under paragraph (b).

When nomination has effect

- (3) Subject to subsection (5), the nomination has effect in relation to the body in relation to the first year of tax as specified in the nomination and in relation to all later years of tax.

Avoidance of doubt

- (4) To avoid doubt:
- (a) the State or Territory may nominate more than one eligible State or Territory body; and
 - (b) the State or Territory may make nominations at different times (including in different years of tax); and
 - (c) if the State or Territory nominates more than one eligible State or Territory body, it need not specify the same first year of tax for them.

Variation or revocation of nomination

- (5) The nomination may be varied or revoked, but a variation or revocation:
- (a) must be in the approved form; and
 - (b) must specify the first year of tax in relation to which the variation or revocation is to have effect; and
 - (c) must be given to the Commissioner on or before 21 May in that first year of tax.

Nominated State or Territory bodies

- (6) For each year of tax during which the nomination has effect in relation to an eligible State or Territory body, the body is a ***nominated State or Territory body***.

135T Eligible State or Territory bodies

- (1) Each of the following is an ***eligible State or Territory body***:
- (a) a ***department*** within the meaning of section 3 of the *Public Sector Management Act 1988* of New South Wales;

Schedule 1 Amendment of the Fringe Benefits Tax Assessment Act 1986

Part 2 Application of the Fringe Benefits Tax Assessment Act 1986 to nominated State or Territory bodies

- (b) an **agency** within the meaning of section 4 of the **Public Sector Management and Employment Act 1998** of Victoria;
 - (c) an **office** referred to in subsection 16(1) of the **Public Sector Management and Employment Act 1998** of Victoria;
 - (d) a **department** within the meaning of section 7 of the *Public Service Act 1996* of Queensland;
 - (e) a **department** within the meaning of section 3 of the *Public Sector Management Act 1994* of Western Australia, as extended by subsection 3(2) of the *Financial Administration and Audit Act 1985* of Western Australia;
 - (f) a **subsidiary body** as defined in paragraphs (aa) and (b) of the definition of that term in subsection 3(1) of the *Financial Administration and Audit Act 1985* of Western Australia;
 - (g) an **administrative unit** within the meaning of section 3 of the *Public Sector Management Act 1995* of South Australia;
 - (h) a **government department** within the meaning of section 3 of the *Tasmanian State Service Act 1984* of Tasmania;
 - (i) a **department** within the meaning of section 3 of the *Financial Management Act 1996* of the Australian Capital Territory;
 - (j) an **agency** within the meaning of section 3 of the *Financial Management Act 1995* of the Northern Territory;
 - (k) a **government business division** within the meaning of section 3 of the *Financial Management Act 1995* of the Northern Territory;
 - (l) a **department** of a Parliament of a State;
 - (m) a **department** of a Legislative Assembly of a Territory.
- (2) However, a government body that pays, or is liable to pay, salary or wages is not an **eligible State or Territory body**.
- (3) The regulations may make modifications to subsection (1).
- (4) In subsection (3), **modifications** includes additions, omissions and substitutions.
-

135U Consequences of nomination

Change in employer

- (1) Subject to subsection (4), a nominated State or Territory body, instead of the governing body otherwise applicable, is taken, for the purposes of the Act, to be the employer of each employee of the State or Territory that has a sufficient connection with the body.

Meaning of sufficient connection

- (2) An employee of the State or Territory has a **sufficient connection** with the body if the employee performs his or her duties of employment wholly or principally in the body.
- (3) An employee of the State or Territory is taken to have a **sufficient connection** with the body if:
 - (a) the employee does not perform his or her duties of employment wholly or principally in any other nominated State or Territory body; and
 - (b) the employee is of a class of employees that the State or Territory has specified under paragraph 135S(2)(c) is to be taken to have a sufficient connection with the body.

Obligations etc. still fall on State or Territory

- (4) Any right that would be conferred, or obligation that would be imposed, on the nominated State or Territory body as a consequence of subsection (1) is instead conferred or imposed on the State or the Territory.

Other consequences

- (5) Also, for the purposes of this Act:
 - (a) the nominated State or Territory body is taken to be a company; and
 - (b) the following are taken to be companies related to the nominated State or Territory body:
 - (i) each other nominated State or Territory body of the State or Territory concerned; and
 - (ii) the State or Territory concerned; and

- (iii) each authority of the State or Territory that is not a related company of the nominated State or Territory body under subparagraph (i) or (ii); and
- (c) the nominated State or Territory body is taken to be a government body.

Where nominated State or Territory body ceases to exist

- (6) If the nominated State or Territory body ceases to exist during a year of tax:
 - (a) the State or Territory is taken, from the time the body ceases to exist, to be the employer of all employees who had a sufficient connection with the body immediately before it ceased to exist; and
 - (b) the State or Territory is taken to have revoked the nomination of the body, with effect from the start of the next year of tax.

135V Working out the notional tax amount where nominations have been made, varied or revoked

When section applies

- (1) This section applies if a State or Territory does any one or more of the following under section 135S:
 - (a) makes one or more nominations;
 - (b) varies one or more nominations;
 - (c) revokes one or more nominations;with effect from the start of the same year of tax (the *year of the change*).

State or Territory to apportion prior year's assessed tax for instalment purposes

- (2) If this section applies, the State or Territory must, in accordance with this section, specify the amounts of the tax that are to be taken for the purposes of subsection 110(1) to be assessed in respect of the following in respect of the year of tax (the *prior year of tax*) immediately preceding the year of the change:
 - (a) each body that is a nominated State or Territory body of the State or Territory for the year of the change (even if that year is not the first year of tax for that body);

- (b) the State or Territory.
- (3) The sum of the amounts specified under subsection (2) must equal the sum of the tax that was assessed in respect of the following in respect of the prior year of tax:
 - (a) the State or Territory;
 - (b) if there were nominated State or Territory bodies of the State or Territory for the prior year of tax—those bodies.

Form etc. of apportionment

- (4) The State or Territory must:
 - (a) specify the amounts after it makes the last of the nominations, variations or revocations; and
 - (b) do so in the approved form; and
 - (c) give the approved form to the Commissioner on or before 21 May in the year of the change.

Effect of apportionment

- (5) For the purposes of subsection 110(1), the amounts specified in the approved form have effect to replace the amounts that would otherwise be the tax assessed for the prior year of tax in respect of the nominated State or Territory bodies and the State or Territory.

Consequences of failure to apportion

- (6) If the requirements of this section are not complied with:
 - (a) any making, variation or revocation of a nomination to which this section applies has no effect in relation to any year of tax; and
 - (b) all existing nominations of the State or Territory under section 135S cease to have effect at the start of the year of the change; and
 - (c) the amount of the tax that is taken for the purposes of subsection 110(1) to have been assessed in respect of the State or Territory in respect of the prior year of tax is equal to the sum of the amounts of tax assessed in respect of that year of tax in respect of the following:
 - (i) the State or Territory;
 - (ii) if there were nominated State or Territory bodies for that year of tax—those bodies.

135W Notional tax amount where a nominated State or Territory body ceases to exist

If a nominated State or Territory body ceases to exist during a year of tax (other than because of subsection 135V(6)), then, for the purposes of subsection 110(1), the amount of the tax that was assessed, in respect of the immediately preceding year of tax in respect of the State or Territory that nominated the body, is taken to be an amount worked out using the following formula:

$$\begin{array}{rcccc} \text{Amount actually} & & \text{Notional tax} & & \text{Previous} & & \text{Previous} \\ \text{assessed} & + & \text{amount of the} & - & \text{instalments} & - & \text{credits} \\ & & \text{State or} & & \text{by the State or} & & \text{of the State or} \\ & & \text{Territory body} & & \text{Territory body} & & \text{Territory body} \end{array}$$

where:

amount actually assessed means the amount of the tax assessed in respect of the State or Territory in respect of the immediately preceding year of tax.

notional tax amount of the State or Territory body means the notional tax amount of the nominated State or Territory body in respect of the year of tax, as at the end of the last day of the last quarter before the body ceased to exist.

previous credits of the State or Territory body means the total of any credits claimed under section 112A in relation to one or more instalments of tax of the nominated State or Territory body for that year of tax.

previous instalments by the State or Territory body means the total of any instalments of tax of the nominated State or Territory body for that year of tax that became due and payable before it ceased to exist.

135X Application of certain provisions by agreement with the Commissioner

Object

- (1) The object of this section is:
 - (a) to ensure that the calculation of the taxable value of certain fringe benefits is not affected where continuity in the

fulfilment of certain record-keeping provisions is broken solely because of a transitional event; and

- (b) to preserve the character of certain benefits where that character would otherwise be lost solely because of a transitional event.

Meaning of transitional event

- (2) A **transitional event** occurs if:
 - (a) a State or Territory makes a nomination under section 135S;
or
 - (b) a State or Territory varies a nomination under section 135S;
or
 - (c) a State or Territory revokes a nomination under section 135S;
or
 - (d) a nominated State or Territory body ceases to exist.

Agreement about consequences of transitional events

- (3) The Commissioner may enter into a written agreement with a State or Territory about what is to happen in respect of the following when a transitional event occurs:
 - (a) whether a register kept by the State or Territory, or a nominated State or Territory body, is to be treated as a valid register for the purposes of Subdivision D of Division 10A of Part III of the Act (which deals with the 12 week record keeping method for car parking fringe benefits) and the employees and FBT years in relation to which the register is to be treated as valid;
 - (b) whether a benefit that would otherwise lose its character as an exempt benefit under section 58B, 58C, 58D or 58S is to be treated as an exempt benefit;
 - (c) whether a benefit that would otherwise lose its character as an amortised fringe benefit under section 65CA is to be treated as an amortised fringe benefit;
 - (d) whether a benefit that would not otherwise be covered by a recurring fringe benefit declaration under section 152A is to be treated as being covered by the declaration;
 - (e) whether a year of tax is to be treated as a log book year of tax of the State or Territory, or a nominated State or Territory body, for the purposes of the application of section 10 in

Schedule 1 Amendment of the Fringe Benefits Tax Assessment Act 1986

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relation to a car fringe benefit in relation to that State or Territory, or that nominated State or Territory body, in relation to a particular car or class of cars (however described).

- (4) So far as the agreement is inconsistent with this Act, the agreement prevails.

Schedule 2—Special rules about the tainting of share capital accounts

Income Tax Assessment Act 1936

1 At the end of subsection 160ARDM(2)

Add:

; or (c) is an amount to which subsection (2A) applies.

2 After subsection 160ARDM(2)

Insert:

- (2A) This subsection applies to an amount transferred into the company's share capital account if:
- (a) the company is a resident; and
 - (b) immediately before the transfer, the company was not incorporated under the Corporations Law; and
 - (c) a law of the Commonwealth or of a State or Territory requires or allows either or both of the following to become part of the company's share capital account:
 - (i) the company's share premium account;
 - (ii) the company's capital redemption reserve; and
 - (d) the transfer is made as part of a process that leads to there being no shares in the company that have a par value; and
 - (e) the amount was an amount standing to the credit of the company's share premium account or capital redemption reserve immediately before the transfer.

Note: The definition of *share premium account* in subsection 6(1) of this Act was repealed in relation to companies with shares with no par value (see items 5 and 67 in Schedule 5 to the *Taxation Laws Amendment (Company Law Review) Act 1998*). However, it has been retained in relation to companies with par value shares.

3 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to transfers on or after 1 July 1998.

Schedule 3—Life assurance companies

Income Tax Assessment Act 1936

1 At the end of section 160AQK

Add:

- (3) This section does not apply to a life assurance company in relation to a liability to pay franking deficit tax or deficit deferral tax for a franking year that ends on or after 4 May 1999.

2 At the end of section 160AQKA

Add:

- (2) This section does not apply to a life assurance company in relation to a liability to pay franking deficit tax or deficit deferral tax for a franking year that ends on or after 4 May 1999.

3 After section 160AQKA

Insert:

160AQKAA Entitlement for life assurance companies to offset on or after 4 May 1999

Determination by Commissioner—original assessment

- (1) Subject to this Subdivision, where:
 - (a) a life assurance company has become liable to pay one or more of the following in relation to a franking year that ends on or after 4 May 1999:
 - (i) class A franking deficit tax for the franking year;
 - (ii) class C franking deficit tax for the franking year;
 - (iii) class A deficit deferral tax in relation to the refund of one or more instalments paid during the franking year;
 - (iv) class C deficit deferral tax in relation to the refund of one or more instalments paid during the franking year;and
 - (b) after the end of the franking year, the Commissioner serves on the company a notice of an original company tax

assessment for an eligible year of income in which the company was sufficiently resident;
the Commissioner must determine that the company is entitled to an offset in relation to that company tax equal to the amount specified in the determination.

Determination to specify lesser of 2 amounts

- (2) The amount specified in the determination must be the lesser of the following amounts:
- (a) the sum of the class A franking deficit tax, the class A deficit deferral tax, the class C franking deficit tax and the class C deficit deferral tax, reduced by any part of it that has been previously applied under this Subdivision;
 - (b) the amount, worked out under section 160AQKAB, of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits, reduced by any foreign tax credits allowable in respect of tax paid or payable by the company in respect of income derived in the eligible year of income.

Determination by Commissioner—amended assessment

- (3) Subject to this Subdivision, where:
- (a) a life assurance company has become liable to pay one or more of the following in relation to a franking year that ends on or after 4 May 1999:
 - (i) class A franking deficit tax for the franking year;
 - (ii) class C franking deficit tax for the franking year;
 - (iii) class A deficit deferral tax in relation to the refund of one or more instalments paid during the franking year;
 - (iv) class C deficit deferral tax in relation to the refund of one or more instalments paid during the franking year;and
 - (b) after the end of the franking year, the Commissioner serves on the company a notice of an amended company tax assessment for an eligible year of income in which the company was sufficiently resident;
- then:
- (c) any determination already made by the Commissioner under this section as a result of the service on the company of an

original or amended company tax assessment for the eligible year of income is revoked; and

- (d) except for the purposes of section 160AQKAD, the company is not entitled, and is taken never to have been entitled, to an offset under any such determination; and
- (e) the Commissioner must make a new determination that the company is entitled to an offset in relation to its company tax for the eligible year of income equal to the amount specified in the new determination.

Determination to specify lesser of 2 amounts

- (4) The amount specified in the new determination must be the lesser of the following amounts:
 - (a) the sum of the class A franking deficit tax, the class A deficit deferral tax, the class C franking deficit tax and the class C deficit deferral tax, reduced by any part of it that has been previously applied under this Subdivision in relation to an eligible year of income other than the eligible year of income for which the amended assessment is made;
 - (b) the amount, worked out under section 160AQKAB, of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits, reduced by any foreign tax credits allowable in respect of tax paid or payable by the company in respect of income derived in the eligible year of income.

Company may claim offset

- (5) The company may, for the purposes of making a claim for an offset under this section in relation to a year of income, determine:
 - (a) whether an offset is allowable to the company; and
 - (b) if the company determines that an offset is so allowable—the amount of the offset.
- (6) A claim under subsection (5) must be made after the end of a franking year that ends on or after 4 May 1999 in the return furnished by the company in respect of income of that year of income or after the furnishing of that return.

160AQKAB Amount of a life assurance company's liability to pay company tax that would normally give rise to franking credits

Years of income ending before 1 July 2000

- (1) If an eligible year of income of a life assurance company ends before 1 July 2000, the amount of the company's liability to pay company tax for that year that would normally give rise to franking credits is the amount of the company's liability to pay company tax for that year, reduced by the sum of the following:
 - (a) the amount of the company tax that is attributable to the RSA component of the taxable income of the company for the year of income;
 - (b) 80% of the amount of the company tax that is not attributable to the general fund component of the taxable income of the company for the year of income.

1999-2000 year of income ending on or after 1 July 2000

- (2) If the 1999-2000 year of income of a life assurance company ends on or after 1 July 2000, the amount of the company's liability to pay company tax for that year that would normally give rise to franking credits is the amount of the company's liability to pay company tax for that year, reduced by the sum of the following:
 - (a) the amount of the company tax that is attributable to income earned before 1 July 2000 and also attributable to the RSA component of the taxable income of the company for the year of income;
 - (b) 80% of the amount of the company tax that is attributable to income earned before 1 July 2000 and is not attributable to the general fund component of the taxable income of the company for the year of income;
 - (c) the amount of the company tax that is attributable to income earned on or after 1 July 2000 and is not attributable to shareholders' funds income.

2000-01 year of income begins before 1 July 2000

- (3) If the 2000-01 year of income of a life assurance company begins before 1 July 2000, the amount of the company's liability to pay company tax for that year that would normally give rise to franking

credits is the amount of the company's liability to pay company tax for that year, reduced by the sum of the following:

- (a) the amount of the company tax that is attributable to income earned before 1 July 2000 and also attributable to the RSA component of the taxable income of the company for the year of income;
- (b) 80% of the amount of the company tax that is attributable to income earned before 1 July 2000 and is not attributable to the general fund component of the taxable income of the company for the year of income;
- (c) the amount of the company tax that is attributable to income earned on or after 1 July 2000 and is not attributable to shareholders' funds income.

Other years of income

- (4) If an eligible year of income of a life assurance company ends on or after 1 July 2000 and is not dealt with in subsection (2) or (3), the amount of the company's liability to pay company tax for that year that would normally give rise to franking credits is the amount of the company's liability to pay company tax for that year that is attributable to shareholders' funds income.

Working out the company tax for the year

- (5) For the purposes of this section, the amount of the company's liability to pay company tax for a year of income is:
 - (a) if an original company tax assessment for the year of income has been served on the company and has not (or not yet) been amended—the amount of the company's liability to pay company tax for that year under that assessment; and
 - (b) if an amended company tax assessment for the year of income is served on the company—the amount of the company's liability to pay company tax for that year under that assessment.

Definition

- (6) For the purposes of this section:

RSA component has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

160AQKAC Consequences of offset entitlement—reduction of company tax liability

If the Commissioner determines that a life assurance company is entitled to an offset under section 160AQKAA in relation to company tax for an eligible year of income, the company's liability to pay company tax for the eligible year of income is reduced by the amount of the offset.

160AQKAD Consequences of offset entitlement—franking credits and debits*Object of section*

- (1) The object of this section is to ensure that, if the Commissioner determines that a life assurance company is entitled to an offset under section 160AQKAA, franking credits and debits that arise in relation to the company's company tax for the eligible year of income do not exceed those that would have arisen if the company had not received the offset under section 160AQKAC and instead satisfied its unreduced liability to pay company tax.

Overview of section

- (2) That object is achieved by reversing any previous franking credits and debits and recalculating them each time a determination is made by the Commissioner as a result of an original or amended company tax assessment. If the company pays a PAYG instalment or company tax, or receives a refund of company tax, after the original or amended company tax assessment that resulted in the determination is served on the company, a separate franking credit or debit will be generated (which may be subject to reversal as a result of a later assessment and determination).

No franking credits or franking debits except under this section

- (3) No franking credit or franking debit arises in relation to the company's company tax for the eligible year of income on or after the day on which the original company tax assessment for that year is served on the company, except under this section.

Reversing out franking credits and debits that arose before the original company tax assessment

- (4) If the determination is made under subsection 160AQKAA(1) (a determination made as a result of the original company tax assessment for the eligible year of income):
- (a) a class C franking debit arises on the day on which the original company tax assessment is served on the company equal to the sum of all class C franking credits that have arisen in relation to the company's company tax for the eligible year of income before that day; and
 - (b) a class C franking credit arises on the day on which the original company tax assessment is served on the company equal to the sum of all class C franking debits that have arisen in relation to the company's company tax for the eligible year of income before that day.

Franking credit on original company tax assessment

- (5) On the day on which the original company tax assessment is served on the company, a class C franking credit equal to the adjusted amount of the amount worked out using the following formula arises:

$$\frac{\text{Total payments of PAYG instalments and company tax}}{\text{Reduced liability to pay company tax}} \times \left(\begin{array}{l} \text{Amount of the} \\ \text{company's liability} \\ \text{to pay company tax} \\ \text{for the eligible year} \\ \text{of income that} \\ \text{would normally} \\ \text{give rise to} \\ \text{franking credits} \end{array} - \begin{array}{l} \text{Amount by which} \\ \text{that liability is} \\ \text{reduced under} \\ \text{section 160AQKAC} \end{array} \right)$$

where:

amount of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits is the amount worked out for the company for that year under section 160AQKAB.

reduced liability to pay company tax means the amount, after the reduction under section 160AQKAC is made, of the company's liability to pay company tax for the eligible year of income (worked out in accordance with the original company tax assessment).

total payments of PAYG instalments and company tax means the sum of all PAYG instalments and company tax for the eligible year of income paid by the company on or before the day on which the original company tax assessment is served.

Note: If payments or refunds of company tax are made after the original company tax assessment is served on the company, franking credits and debits arise for those under subsections (8) and (10).

Reversing out franking credits and debits that arose before an amended company tax assessment

- (6) If the determination is made under subsection 160AQKAA(3) (a determination made as a result of an amended company tax assessment for the eligible year of income):
- (a) a class C franking debit arises on the day on which the amended company tax assessment is served on the company equal to the sum of all class C franking credits that have arisen before that day in relation to the company's company tax for the eligible year of income, other than class C franking credits in relation to which a class C franking debit has already arisen because of a previous application of this section; and
 - (b) a class C franking credit arises on the day on which the amended company tax assessment is served on the company equal to the sum of all class C franking debits that have arisen before that day in relation to the company's company tax for the eligible year of income, other than class C franking debits in relation to which a class C franking credit has already arisen because of a previous application of this section.

Note: For example, if the amended company tax assessment is the first or only amended assessment, subsection (6) will reverse any franking credit arising under subsection (5) in respect of the original company tax assessment, and franking credits and debits arising under subsections (8) and (10) for payments and refunds of company tax made between the serving of the original company tax assessment and the amended company tax assessment.

Franking credit on amended company tax assessment

- (7) On the day on which the amended company tax assessment is served on the company, a class C franking credit equal to the

adjusted amount of the amount worked out using the following formula arises:

$$\frac{\text{Total payments of PAYG instalments and company tax less refunds}}{\text{Reduced liability to pay company tax}} \times \left(\begin{array}{l} \text{Amount of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits} \\ - \\ \text{Amount by which that liability is reduced under section 160AQKAC} \end{array} \right)$$

where:

amount of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits is the amount worked out for the company for that year under section 160AQKAB.

reduced liability to pay company tax means the amount, after the reduction under section 160AQKAC is made, of the company's liability to pay company tax for the eligible year of income (worked out in accordance with the amended company tax assessment).

total payments of PAYG instalments and company tax less refunds means the sum of all PAYG instalments and company tax for the eligible year of income paid by the company on or before the day on which the amended company tax assessment is served less the sum of all refunds of company tax for the eligible year of income received by the company on or before that day.

Franking credit on a payment made after original or amended company tax assessment

- (8) A class C franking credit arises if the company pays a PAYG instalment or company tax for the eligible year of income:
- (a) in a case where the determination is made under subsection 160AQKAA(1) (a determination made as a result of the original company tax assessment for the eligible year of income)—after the day on which the original company tax assessment is served on the company and before the day on which the first or only amended company tax assessment (if any) is served on the company; and

- (b) in a case where the determination is made under subsection 160AQKAA(3) (a determination made as a result of an amended company tax assessment for the eligible year of income)—after the day on which the amended company tax assessment is served on the company and before the day on which the next amended company tax assessment (if any) is served on the company.
- (9) The class C franking credit arises on the day on which the payment is made and is equal to the adjusted amount of the amount worked out using the formula:

$$\frac{\text{Amount paid to pay company tax}}{\text{Reduced liability to pay company tax}} \times \left(\begin{array}{l} \text{Amount of the} \\ \text{company's liability} \\ \text{to pay company tax} \\ \text{for the eligible year} \\ \text{of income that} \\ \text{would normally} \\ \text{give rise to} \\ \text{franking credits} \end{array} - \begin{array}{l} \text{Amount by which} \\ \text{that liability is} \\ \text{reduced under} \\ \text{section 160AQKAC} \end{array} \right)$$

where:

amount of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits is the amount worked out for the company for that year under section 160AQKAB.

reduced liability to pay company tax means the amount, after the reduction under section 160AQKAC is made, of the company's liability to pay company tax for the eligible year of income (worked out in accordance with the assessment that resulted in the most recent determination).

Franking debit on a refund received after original or amended company tax assessment

- (10) A class C franking debit arises if the company receives a refund of company tax for the eligible year of income:
- (a) in a case where the determination is made under subsection 160AQKAA(1) (a determination made as a result of the original company tax assessment for the eligible year of income)—after the day on which the original company tax assessment is served on the company and before the day on

which the first or only amended company tax assessment (if any) is served on the company; and

- (b) in a case where the determination is made under subsection 160AQKAA(3) (a determination made as a result of an amended company tax assessment for the eligible year of income)—after the day on which the amended company tax assessment is served on the company and before the day on which the next amended company tax assessment (if any) is served on the company.

- (11) The class C franking debit arises on the day on which the refund is received and is equal to the adjusted amount of the amount worked out using the following formula:

$$\frac{\text{Amount of the refund}}{\text{Reduced liability to pay company tax}} \times \left(\begin{array}{l} \text{Amount of the} \\ \text{company's liability} \\ \text{to pay company tax} \\ \text{for the eligible year} \\ \text{of income that} \\ \text{would normally} \\ \text{give rise to} \\ \text{franking credits} \end{array} - \begin{array}{l} \text{Amount by which} \\ \text{that liability is} \\ \text{reduced under} \\ \text{section 160AQKAC} \end{array} \right)$$

where:

amount of the company's liability to pay company tax for the eligible year of income that would normally give rise to franking credits is the amount worked out for the company for that year under section 160AQKAB.

reduced liability to pay company tax means the amount, after the reduction under section 160AQKAC is made, of the company's liability to pay company tax for the eligible year of income (worked out in accordance with the assessment that resulted in the most recent determination).

160AQKAE Transitional—adjustments where franking year ends before 4 May 1999

When section applies

- (1) This section applies if:

-
- (a) a life assurance company (the **subsidiary company**) has become liable to pay one or more of the following in relation to a franking year that ends before 4 May 1999:
- (i) class A franking deficit tax for the franking year;
 - (ii) class C franking deficit tax for the franking year;
 - (iii) class A deficit deferral tax in relation to the refund of one or more instalments paid during the franking year;
 - (iv) class C deficit deferral tax in relation to the refund of one or more instalments paid during the franking year;
- and
- (b) some or all (the **available deficit/deferral tax liability**) of that franking deficit tax or deficit deferral tax liability has not given rise to an entitlement to an offset under section 160AQK before 4 May 1999; and
- (c) at all times during the period beginning at the start of the franking year and ending on the day on which an original assessment is made in relation to the subsidiary company in relation to the last year of income in which a liability mentioned in paragraph (a) arises:
- (i) the subsidiary company was a wholly-owned subsidiary (as defined in section 121AP) of another company (the **holding company**); and
 - (ii) both companies were residents of Australia.

Consequences for the subsidiary company under this section

- (2) The subsidiary company is not entitled to an offset under section 160AQK in relation to the available deficit/deferral tax liability.
- (3) If:
- (a) the subsidiary company satisfies in whole or in part (which whole or part is the **deficit/deferral tax amount**) the available deficit/deferral tax liability; and
 - (b) on or after 4 May 1999:
 - (i) the Commissioner serves on the subsidiary company a notice of an original company tax assessment for an eligible year of income in which the company was sufficiently resident; or
 - (ii) the Commissioner serves on the subsidiary company a notice of an amended company tax assessment for an

eligible year of income in which the company was sufficiently resident, being an amendment that increases the company tax of the company;

the Commissioner must determine that the subsidiary company is entitled to an offset in relation to the company tax, or increased company tax, equal to the amount specified in the determination.

- (4) The amount specified in the determination must be the lesser of the following amounts:
- (a) the deficit/deferral tax amount, reduced by any part of it that has been previously applied under this section;
 - (b) the amount of the company tax or increased company tax, reduced by any foreign tax credits allowable in respect of tax paid or payable by the company in respect of income derived in the eligible year of income.

Company may claim offset

- (5) The subsidiary company may, for the purposes of making a claim for an offset under this section in relation to a year of income, determine:
- (a) whether an offset is allowable to the subsidiary company; and
 - (b) if the subsidiary company determines that an offset is so allowable—the amount of the offset.
- (6) A claim under subsection (5) must be made on or after 4 May 1999 in the return furnished by the company in respect of income of that year of income or after the furnishing of that return.

Further consequences if a determination is made

- (7) If the subsidiary company is entitled to an offset under a determination made under this section:
- (a) for the purposes of Division 2 of this Part, the subsidiary company is taken to have made a payment of company tax for the eligible year of income equal to the offset specified in the determination, and not to have satisfied the liability mentioned in paragraph (1)(a); and
 - (b) any franking credit or debit that arises because of that payment is taken to arise on 7 June 2001 or the day on which the subsidiary company first becomes entitled to offset an

amount mentioned in paragraph (1)(a) against the subsidiary company's company tax, whichever is later.

Consequences for the holding company under this section

- (8) If this section applies, a class C franking debit arises for the holding company on 7 June 2001 or the day on which the subsidiary company first becomes entitled to offset an amount mentioned in paragraph (1)(a) against the subsidiary company's company tax, whichever is later. The amount of the franking debit is worked out using the formula:

$$\frac{\text{Available deficit / deferral}}{\text{tax liability}} \times \frac{64}{36}$$

- (9) The section has effect as if it had come into operation on 4 May 1999. For that purpose:
- (a) any claim for an offset made under section 160AQKA after 4 May 1999 but before the commencement of this section is taken to be a claim made under this section; and
 - (b) on the day on which any such claim under section 160AQKA was made, the Commissioner is taken to have made a determination under this section that the company making the claim is entitled to an offset of the amount claimed.

Schedule 4—Charitable institutions

Fringe Benefits Tax Assessment Act 1986

1 At the end of section 57A

Add:

- (5) A benefit provided in respect of the employment of an employee is an exempt benefit if:
- (a) the employer of the employee is a charitable institution; and
 - (b) the institution’s principal activity is to promote the prevention or the control of diseases in human beings.

2 Subsection 65J(1)

After “public benevolent institution”, insert “, is not a charitable institution described in subsection 57A(5),”.

3 Subsection 135Q(1) (note)

After “public benevolent institutions”, insert “, certain charitable institutions”.

4 Application

- (1) The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 1 of this Schedule applies in respect of the FBT year beginning on 1 April 1998 and in respect of all later FBT years.
- (2) The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 2 of this Schedule applies in respect of the FBT year beginning on 1 April 2000 and in respect of all later FBT years.
- (3) The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 3 of this Schedule applies in respect of the FBT year beginning on 1 April 1999 and in respect of all later FBT years.

Income Tax Assessment Act 1936

5 Subsection 78(3) (index)

After:

Diseases—institutions researching causes, prevention or cure	(4)-Table 1, items 1.1.4 and 1.1.5
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insert:

Diseases—charitable institutions whose principal activity is to promote the prevention or the control of diseases in human beings	(4)-Table 1, item 1.1.6
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6 Subsection 78(4) (after item 1.1.5 of Table 1)

Insert:

1.1.6	a charitable institution whose principal activity is to promote the prevention or the control of diseases in human beings
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7 Application

The amendments of the *Income Tax Assessment Act 1936* made by items 5 and 6 of this Schedule apply to gifts made in the 1996-97 income year and earlier income years.

Income Tax Assessment Act 1997

8 Subsection 30-20(1) (after table item 1.1.5)

Insert:

1.1.6	a charitable institution whose principal activity is to promote the prevention or the control of diseases in human beings	none
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9 Subsection 30-315(2) (after table item 45)

Insert:

- 45A Diseases—charitable institutions whose principal activity is to promote the prevention or the control of diseases in human beings item 1.1.6

10 Application

The amendments of the *Income Tax Assessment Act 1997* made by items 8 and 9 of this Schedule apply to gifts made in the 1997-98 income year and later income years.

Sales Tax (Exemptions and Classifications) Act 1992

11 After item 140 of Sub-Chapter 14.3 of Chapter 14 of Schedule 1

Insert:

Item 140A: [Charitable institutions]

Goods for use by a charitable institution whose principal activity is to promote the prevention or the control of diseases in human beings.

12 Application

The amendment of Sub-Chapter 14.3 of Chapter 14 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* made by item 11 of this Schedule applies to dealings with goods on or after 28 October 1992.

Schedule 5—Treatment of certain income of complying superannuation funds, PSTs and life assurance companies for imputation purposes

Income Tax Assessment Act 1936

1 Paragraph 160AQT(4)(a)

After “sections 282B”, insert “, 283”.

2 Paragraph 160AQU(2)(a)

After “sections 282B”, insert “, 283”.

3 Section 160QWA

Repeal the section, substitute:

160QWA Assumptions when working out rebate

- (1) In determining a taxpayer’s entitlement to a rebate under section 160AQYA or 160AQZA, assume that:
 - (a) sections 282B, 283 and 297B of this Act; and
 - (b) paragraph 320-35(1)(b) and subparagraph 320-35(1)(f)(ii) of the *Income Tax Assessment Act 1997*; had not been enacted.
- (2) In determining the entitlement to a rebate under section 160AQU of an exempt institution whose exempt status is disregarded in relation to the trust amount concerned under section 160ARDAB, assume that section 50-1 of the *Income Tax Assessment Act 1997* had not been enacted.

4 Application

The amendments of the *Income Tax Assessment Tax 1936* made by this Schedule apply to income derived on or after 1 July 2000.

Schedule 6—Miscellaneous amendments

Income Tax Assessment Act 1936

1 Subsection 159J(6) (paragraph (ad) of the definition of separate net income)

Omit “child disability allowance”, substitute “carer allowance”.

2 Subsection 170(6AA) (inserted by item 22 of Schedule 2 to the A New Tax System (Tax Administration) Act (No. 2) 2000)

Renumber as subsection (6A).

3 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to assessments for the 1999-2000 income year and all later income years.

Income Tax Rates Act 1986

4 Paragraph 14(2)(c)

Omit “\$693”, substitute “\$630”.

5 Subsections 20(1) and (2)

Omit “\$450”, substitute “\$500”.

6 Application

The amendments of the *Income Tax Rates Act 1986* made by this Schedule apply to assessments for the 2000-2001 income year and all later income years.

Schedule 7—Conservation covenants

Income Tax Assessment Act 1997

1 Section 12-5 (table)

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

conservation covenants

..... Division 31

2 Paragraph 25-5(1)(d)

After “30-212”, insert “or 31-15”.

3 After paragraph 26-55(1)(ba)

Insert:

(bb) Division 31 (which is about deductions for conservation covenants) of this Act;

4 Section 30-320 (link note)

Repeal the link note.

5 After Division 30

Insert:

Division 31—Conservation covenants

Guide to Division 31

31-1 What this Division is about

You can deduct an amount if you enter into a conservation covenant over land that you own and you satisfy certain conditions.

The amount you can deduct is the difference between the market value of the land just before and after you enter into the covenant.

Table of sections

Operative provisions

- 31-5 Deduction for entering into conservation covenant
- 31-10 Requirements for fund, authority or institution
- 31-15 Valuations by the Commissioner

[This is the end of the Guide.]

Operative provisions

31-5 Deduction for entering into conservation covenant

- (1) You can deduct an amount if:
 - (a) you enter into a *conservation covenant over land you own;
and
 - (b) the conditions set out in subsection (2) are met.
- (2) These conditions must be satisfied:
 - (a) the covenant must be perpetual;
 - (b) you must not receive any money, property or other material benefit for entering into the covenant;
 - (c) the *market value of the land must decrease as a result of your entering into the covenant;
 - (d) one or both of these must apply:
 - (i) the change in the market value of the land as a result of entering into the covenant must be more than \$5,000;
 - (ii) you must have entered into a contract to acquire the land not more than 12 months before you entered into the covenant;
 - (e) the covenant must have been entered into with a fund, authority or institution that meets the requirements of section 31-10.

Note: You must seek a valuation of the change in market value from the Commissioner: see section 31-15.

- (3) The amount you can deduct is the difference between the *market value of the land just before you entered the covenant and its decreased market value just after that time, but only to the extent that the decrease is attributable to your entering into the covenant.

Note: You can spread the deduction over a 5 year period: see Subdivision 30-DE.

-
- (4) For the purposes of paragraph (2)(a), a covenant is treated as being perpetual even if a Minister of a State or Territory has a power to rescind it.
 - (5) A **conservation covenant** over land is a covenant that:
 - (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land; and
 - (b) is permanent and registered on the title to the land (if registration is possible); and
 - (c) is approved in writing by, or is entered into under a program approved in writing by, the Minister for the Environment and Heritage.

31-10 Requirements for fund, authority or institution

- (1) The fund, authority or institution:
 - (a) must be covered by an item in any of the tables in Subdivision 30-B and must meet any conditions set out in the relevant table item; or
 - (b) must be a public fund, or a *prescribed private fund, established under a will or instrument of trust solely for:
 - (i) the purpose of providing money, property or benefits to a fund, authority or institution mentioned in paragraph (a) and for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or
 - (ii) the establishment of such a fund, authority or institution.
- (2) If the fund, authority or institution is not listed specifically in Subdivision 30-B, it must also:
 - (a) be in Australia; and
 - (b) meet the requirements of section 30-17 (about the endorsement of deductible gift recipients) or be a *prescribed private fund.

31-15 Valuations by the Commissioner

- (1) You must seek a valuation of the change in the *market value of the land from the Commissioner for the purposes of this Division.

- (2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

6 Section 104-5 (after the table item dealing with CGT event D3)

Insert:

D4 Entering into a conservation covenant	when covenant is entered into	capital proceeds from covenant <i>less</i> cost base apportioned to the covenant	reduced cost base apportioned to the covenant <i>less</i> capital proceeds from covenant
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[See section 104-47]

7 After section 104-45

Insert:

104-47 Conservation covenants: CGT event D4

- (1) **CGT event D4** happens if you enter into a *conservation covenant over land you own.
- (2) The time of the event is when you enter into the covenant.
- (3) You make a *capital gain if the *capital proceeds from entering into the covenant are *more* than that part of the *cost base of the land that is apportioned to the covenant. You make a *capital loss if those capital proceeds are *less* than the part of the *reduced cost base of the land that is apportioned to the covenant.

Note: The capital proceeds from entering into the covenant are modified if you do not receive anything for entering into the covenant: see section 116-105.

- (4) The part of the *cost base of the land that is apportioned to the covenant is worked out in this way:

$$\text{*Cost base of land} \times \frac{\text{*Capital proceeds from entering into the covenant}}{\text{Those capital proceeds plus the *market value of the land just after you enter into the covenant}}$$

The part of the *reduced cost base of the land that is apportioned to the covenant is worked out similarly.

- (5) The *cost base and *reduced cost base of the land are reduced by the part of the cost base or reduced cost base of the land that is apportioned to the covenant.

Example: Lisa receives \$10,000 for entering into a conservation covenant that covers 15% of the land she owns. Lisa uses the following figures in calculating the cost base of the land that is apportioned to the covenant:

The cost base of the entire land is \$200,000.

The market value of the entire land before entering into the covenant is \$300,000, and its market value after entering into the covenant is \$285,000.

Lisa calculates the cost base of the land that is apportioned to the covenant to be:

$$\$200,000 \times 10,000 \div \left[10,000 + 285,000 \right] = \$6,780$$

Exceptions

- (6) *CGT event D4 does not happen if:
- (a) you did not receive any *capital proceeds for entering into the covenant; and
 - (b) you cannot deduct an amount under Division 31 for entering into the covenant.

Note: In this case, CGT event D1 will apply.

- (7) A *capital gain or *capital loss you make is disregarded if you *acquired the land before 20 September 1985.

8 Subsection 109-5(2) (after table item D3)

Insert:

D4 You enter into a *conservation when the covenant is entered into covenant as a covenantee

9 Section 112-45 (before table item E1)

Insert:

D4 A conservation covenant is entered into over land The total cost base and reduced cost base 104-47

10 Subsection 115-25(2) (before table item 1)

Insert:

1A D4 the land over which the *conservation covenant is entered into

11 Section 116-25 (after table item D3)

Insert:

D4 Entering into a 2, 3, 4, 5 116-105
conservation covenant

12 At the end of Division 116

Add:

116-105 Conservation covenants

If *CGT event D4 happens because you enter into a *conservation covenant over land you own and you can deduct an amount under Division 31 because you enter into the covenant, the *capital proceeds from the event are the amount you can deduct.

Note: To get a deduction under Division 31, you must not receive money, property or other material benefit for entering into the covenant.

13 Subsection 136-10 (after table item D2)

Insert:

D4 Entering into a the land over which the 1
conservation covenant covenant is entered into

14 Subsection 995-1(1)

Insert:

conservation covenant has the meaning given by section 31-5.

15 Application of amendments

- (1) Subject to subitem (2), the amendments made by this Schedule apply to conservation covenants entered into on or after 15 June 2000.
- (2) The amendments made by this Schedule apply to each conservation covenant entered into on or after 1 July 2002 where the covenantor did not receive money, property or other material benefit for entering into the covenant.

Schedule 8—Spreading deductions for property gifts and conservation covenants

1 Subsection 30-5(4B)

Omit “and 30-DD”, substitute “, 30-DD and 30-DE”.

2 After Subdivision 30-DD

Insert:

Subdivision 30-DE—Spreading deductions for other property gifts and conservation covenants over up to 5 income years

Guide to Subdivision 30-DE

30-249F What this Subdivision is about

This Subdivision allows you to choose to spread deductions for certain gifts of property, or for entering into conservation covenants, over up to 5 income years.

Table of sections

Operative provisions

30-249G Making an election

30-249H Effect of election

[This is the end of the Guide.]

Operative provisions

30-249G Making an election

- (1) If you can deduct an amount:
 - (a) under this Division for a gift that is:

- (i) made to a fund, authority or institution covered by item 1 or 2 of the table in section 30-15; and
 - (ii) of property valued by the Commissioner at more than \$5,000; and
 - (iii) not a gift covered by Subdivision 30-DB, 30-DC or 30-DD; or
- (b) under Division 31 for entering into a *conservation covenant; you may make a written election in the *approved form to spread that deduction over the current income year and up to 4 of the immediately following income years.
- (2) You must make the election before you lodge your *income tax return for the income year in which you made the gift or entered into the covenant.
 - (3) You must give a copy of an election for a *conservation covenant to the *Environment Secretary before you lodge your *income tax return for the income year in which you entered into the covenant.
 - (4) You may vary an election at any time in the *approved form. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an *income tax return.
 - (5) You must give a copy of a variation for a *conservation covenant to the *Environment Secretary before you lodge your *income tax return for the first income year to which the variation applies.

30-249H Effect of election

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year in the *approved form.
- (2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift or the covenant in the income year in which you made the gift or entered into the covenant.

3 Subsection 30-315(2) (table item 112AA)

Omit “and 30-DD”, substitute “, 30-DD and 30-DE”.

4 Application

The amendments made by this Schedule apply to gifts made, or conservation covenants entered into, on or after 1 July 2002.

*[Minister's second reading speech made in—
House of Representatives on 7 June 2001
Senate on 26 June 2001]*

(103/01)