

Income Tax Laws Amendment Act 1979

No. 149 of 1979

An Act to amend the law relating to income tax.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

1. This Act may be cited as the *Income Tax Laws Amendment Act* 1979.¹ Short title,
&c.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment

(2) Section 24 shall be deemed to have come into operation on 21 July 1979.

PART II—INCOME TAX ASSESSMENT ACT 1936

3. The *Income Tax Assessment Act* 1936² is in this part referred to as the Principal Act. Interpret-
ation

4. Section 26AD of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) Where, in an application of the formula in sub-section (3) (including an application of that formula for the purposes of sub-section (4)), the component of the formula represented by

Amounts
received on
retirement or
termination
of employ-
ment in lieu
of long
service leave

$$\left[\frac{C(B + D)}{E} - F \right]$$
 comprises a number that is a whole number and a fraction, the fraction shall be disregarded.”.

5. (1) Section 50G of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (1) “section 54, 57AA, 57AB” and substituting “section 54 (including any deduction calculated in accordance with section 57AA, 57AB or 57AE)”;

(b) by inserting in paragraph (a) of sub-section (2) “(not being a deduction calculated in accordance with section 57AA, 57AB or 57AE)” after “under section 54”;

Divisible
deductions

(c) by omitting from paragraph (b) of sub-section (2) “under section 57AA, 57AB or 62A” and substituting “in accordance with section 57AA or 57AB or under section 62A”; and

(d) by inserting after paragraph (b) of sub-section (2) the following paragraphs:

“(ba) where—

(i) a divisible deduction is allowable to the company in relation to the year of income in accordance with section 57AE in respect of property that, during the whole or a part of the relevant period, was owned by the company and used by the company for the purpose of producing assessable income or installed ready for use for that purpose and held in reserve; and

(ii) the year of income is the first year of income in which a deduction is allowable to the company in respect of that property in accordance with section 57AE,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period during which the property was owned by the company and used by the company for the purpose of producing assessable income or installed ready for use for that purpose and held in reserve bears to the number of whole days during the year of income during which the property was owned by the company and used by the company for the purpose of producing assessable income or installed ready for use and held in reserve shall be deemed to be an allowable deduction in respect of that relevant period;

“(bb) where a divisible deduction is allowable to the company in relation to the year of income in accordance with section 57AE in respect of property and the year of income is not the first year of income in which a deduction is allowable to the company in respect of that property in accordance with that section, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;”.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income in which 22 August 1979 occurred and in respect of income of all subsequent years of income.

6. (1) Section 56 of the Principal Act is amended—**(a) by inserting after sub-section (1) the following sub-sections:****Calculation
of
depreciation**

“(1A) Where the unit of property is dealt with by the taxpayer in the prescribed manner during part only of the year of income, the depreciation allowable to the taxpayer in accordance with sub-section (1) in respect of the property in relation to the year of income shall be reduced by so much of the amount of the depreciation applicable in accordance with sub-section (1) as bears to that amount the same proportion as the number of days during the year of income during which the property was not dealt with by the taxpayer in the prescribed manner bears to the number of days in the year of income.

“(1B) For the purposes of the application of sub-sections (1) and (1A) in a case where the unit of property is not dealt with by the taxpayer in the prescribed manner on the first day of the year of income, the reference in paragraph (a) of sub-section (1) to the depreciated value of the unit of property at the beginning of the year of income shall be read as a reference to the depreciated value of the unit of property at the time during the year of income when it is first dealt with by the taxpayer in the prescribed manner.

“(1C) For the purposes of sub-sections (1A) and (1B), a unit of property shall be taken to be dealt with by a taxpayer in the prescribed manner at a particular time if—

- (a) the property is used by the taxpayer at that time for the purpose of producing assessable income; or
 - (b) the property is, at that time, installed ready for use for the purpose of producing assessable income and held in reserve by the taxpayer.”; and
- (b) by adding at the end thereof the following sub-section:**

“(4) For the purposes of the application of paragraph (b) of sub-section (1) in calculating the depreciation allowable to a taxpayer in respect of a unit of property in a case where—

- (a) section 60 does not apply in relation to the unit of property in relation to the taxpayer;
- (b) the amount that, but for this sub-section, would be the cost of the unit for the purposes of that paragraph is attributable, in whole or in part, to a transaction to which the taxpayer was a party;
- (c) the Commissioner is satisfied that, having regard to any connection between any 2 or more of the parties to the transaction and to any other relevant circumstances, those parties were not dealing with each other at arm's length in relation to the transaction; and
- (d) the Commissioner is satisfied that the amount that, but for this sub-section, would be the cost of the unit for the

purposes of paragraph (b) of sub-section (1) is greater than the amount (in this sub-section referred to as the 'arm's length amount') that would have been the cost of the unit if the parties to the transaction had dealt with each other at arm's length in relation to the transaction,

the arm's length amount shall be deemed to be the cost of that unit for the purposes of paragraph (b) of sub-section (1).''.

(2) Subject to sub-section (3), the amendment made by paragraph (1) (a) applies in relation to a taxpayer in relation to property acquired by the taxpayer after 25 June 1979 otherwise than under a contract entered into on or before that date.

(3) The amendment made by paragraph (1) (a) applies in relation to a taxpayer in relation to property constructed by the taxpayer if the construction commenced after 25 June 1979.

(4) Subject to sub-section (5), the amendment made by paragraph (1) (b) applies in relation to a taxpayer in relation to property acquired by the taxpayer after 12 June 1979 otherwise than under a contract entered into on or before that date.

(5) The amendment made by paragraph (1) (b) applies in relation to a taxpayer in relation to property constructed by the taxpayer if the construction commenced after 12 June 1979.

7. After section 57AD of the Principal Act the following section is inserted:

Special
depreciation
on property
used for
storage of
grain, hay or
fodder

“57AE. (1) This section applies to a unit of property in relation to a taxpayer in relation to a year of income if, and only if—

- (a) depreciation is allowable to the taxpayer under section 54 in respect of the unit of property in relation to that year of income;
- (b) the unit of property is situated on land on which a business of primary production was carried on during the year of income;
- (c) the unit of property is a structural improvement that, during the year of income, was used, or was installed ready for use, for the purpose of the storage of grain, hay or fodder in the course of the carrying on of that business; and
- (d) the unit of property—
 - (i) was acquired by the taxpayer under a contract entered into after 21 August 1979; or
 - (ii) was constructed by the taxpayer and commenced to be constructed after 21 August 1979.

“(2) Notwithstanding anything contained in sections 55, 56, 56A and 57—

- (a) the depreciation allowable to a taxpayer under this Act in relation to a year of income in respect of a unit of property to which this section applies in relation to the year of income is 20% of the cost of the unit;
- (b) the depreciation referred to in paragraph (a) shall commence to be allowed to the taxpayer in relation to the year of income (in this sub-section referred to as the ‘relevant year of income’) during which that unit is first used for the purpose of producing assessable income or is first installed ready for use for that purpose; and
- (c) no depreciation is allowable to the taxpayer in respect of that unit in relation to any year of income after the fourth year of income succeeding the relevant year of income.

“(3) For the purposes of the application of paragraph (a) of sub-section (2) in calculating the depreciation allowable to a taxpayer in respect of a unit of property to which this section applies in a case where—

- (a) section 60 does not apply in relation to the unit of property in relation to the taxpayer;
- (b) the amount that, but for this sub-section, would be the cost of the unit for the purposes of that paragraph is attributable, in whole or in part, to a transaction to which the taxpayer was a party;
- (c) the Commissioner is satisfied that, having regard to any connection between any 2 or more of the parties to the transaction and to any other relevant circumstances, those parties were not dealing with each other at arm’s length in relation to the transaction; and
- (d) the Commissioner is satisfied that the amount that, but for this sub-section, would be the cost of the unit for the purposes of that paragraph is greater than the amount (in this sub-section referred to as the ‘arm’s length amount’) that would have been the cost of the unit if the parties to the transaction had dealt with each other at arm’s length in relation to the transaction,

the arm’s length amount shall be deemed to be the cost of that unit for the purposes of that paragraph.”.

8. (1) Section 59 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “The consideration” and substituting “Subject to sub-section (4), the consideration”; and
- (b) by adding at the end thereof the following sub-sections:

“(4) Where, in a case where the property is disposed of by the taxpayer by sale to another person—

Disposal,
loss or
destruction
of
depreciated
property

- (a) the Commissioner is satisfied that, having regard to any connection between the taxpayer and that other person and to any other relevant circumstances, the taxpayer and that other person were not dealing with each other at arm's length in relation to the disposal; and
- (b) the amount receivable by the taxpayer in respect of the disposal was less than the market value of the property immediately before the time of disposal and less than the depreciated value of the property immediately before the time of disposal,

the consideration receivable by the taxpayer in respect of the disposal of the property shall be deemed to be the market value of the property immediately before the time of disposal or the depreciated value of the property immediately before the time of disposal, whichever is the less.

“(5) For the purposes of the application of sub-section (4) in relation to property disposed of by a taxpayer—

- (a) the reference in that sub-section to the amount receivable by the taxpayer in respect of the disposal shall be read as a reference to—
 - (i) in the case of a sale of the property to which subparagraph (ii) does not apply—the sale price less the expenses of the sale of the property; or
 - (ii) in the case where the property is sold with other assets and no separate value is allocated to the property—the amount determined by the Commissioner; and
- (b) a reference to the market value of the property at a particular time shall, if there is insufficient evidence of the market value at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable.”.

(2) The amendments made by sub-section (1) apply in relation to property disposed of by a taxpayer after 12 June 1979 otherwise than under a contract entered into on or before that date.

Disposal of
depreciated
property on
change of
ownership or
interest

9. (1) Section 59AA of the Principal Act is amended—

- (a) by omitting “Where, for any reason” and substituting “Subject to this section, where, for any reason”; and
- (b) by adding at the end thereof the following sub-sections:

“(2) Where—

- (a) the change in the ownership of, or in the interests of persons in, the property occurred in consequence of an agreement;

- (b) an amount was specified in the agreement as the value of the property for the purposes of the agreement; and
- (c) the amount so specified in the agreement is less than the amount that was the market value of the property immediately before the time when the change occurred and is also less than the depreciated value of the property immediately before that time,

the provisions of this Act relating to depreciation apply as if—

- (d) the person or persons who owned the property before the change had, at the time when the change occurred, disposed of the property for a consideration equal to the market value of the property immediately before the time when the change occurred or the depreciated value of the property immediately before that time, whichever is the less; and
- (e) the person or persons who owned the property after the change had, at the time when the change occurred, acquired the property at a cost equal to the amount specified in the agreement.

“(3) A reference in sub-section (2) to the market value of property at a particular time shall, if there is insufficient evidence of the market value of the property at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable.”.

(2) The amendments made by sub-section (1) apply in relation to a change in the ownership of, or in the interests of persons in, property after 12 June 1979 other than a change occurring in consequence of an agreement entered into on or before that date.

10. (1) Section 60 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

Acquisition
of
depreciated
property

“(2) This section does not apply where the Commissioner is of the opinion that the circumstances are such that depreciation in respect of the property should be calculated without regard to this section.”.

(2) The amendment made by sub-section (1) applies in relation to a taxpayer in relation to property acquired by the taxpayer after 12 June 1979 otherwise than under a contract entered into on or before that date.

11. (1) Section 62 of the Principal Act is amended by adding at the end thereof the following sub-section:

Definition of
depreciated
value

“(3) For the purposes of the application of sub-section (1) in relation to a person in relation to a unit of property in a case where—

- (a) sub-section (2) does not apply in relation to that person in relation to that unit;
- (b) the amount that, but for this sub-section, would be the cost of the unit for the purposes of sub-section (1) is attributable, in

whole or in part, to a transaction to which that person was a party;

- (c) the Commissioner is satisfied that, having regard to any connection between any 2 or more of the parties to the transaction and to any other relevant circumstances, those parties were not dealing with each other at arm's length in relation to the transaction; and
- (d) the Commissioner is satisfied that the amount that, but for this sub-section, would be the cost of the unit for the purposes of sub-section (1) is greater than the amount (in this sub-section referred to as the 'arm's length amount') that would have been the cost of the unit if the parties to the transaction had dealt with each other at arm's length in relation to the transaction,

the arm's length amount shall be deemed to be the cost of that unit to that person for the purposes of sub-section (1).''

(2) Subject to sub-section (3), the amendment made by sub-section (1) applies in relation to a taxpayer in relation to property acquired by the taxpayer after 12 June 1979 otherwise than under a contract entered into on or before that date.

(3) The amendment made by the sub-section (1) applies in relation to a taxpayer in relation to property constructed by the taxpayer if the construction commenced after 12 June 1979.

Gifts, calls
on
afforestation
shares,
pensions, &c.

12. (1) Section 78 of the Principal Act is amended by inserting after sub-paragraph (xlviii) of paragraph (a) of sub-section (1) the following sub-paragraph:

“; (xlix) a public fund established and maintained by a Roman Catholic archdiocesan or diocesan authority exclusively for the purpose of providing religious instruction in government schools in Australia,”.

(2) The amendment made by sub-section (1) applies in relation to gifts made on or after 1 July 1979.

Losses of
previous
years

13. Section 80 of the Principal Act is amended—

- (a) by inserting after paragraph (h) of sub-section (5) the following paragraphs:

“(ha) sub-sections (4) and (5) of section 6 of the *Income Tax Laws Amendment Act 1979* were omitted and the following sub-section were substituted:

‘(4) The amendment made by paragraph (b) of sub-section (1) applies in relation to a taxpayer in relation to property acquired or constructed by the taxpayer at any time, whether before or after the commencement of this section.’;

“(hb) ‘after 12 June 1979 otherwise than under a contract entered into on or before that date’ were omitted from sub-section (2) of section 8 and sub-section (2) of section 10 of the *Income Tax Laws Amendment Act 1979* and ‘at any time, whether before or after the commencement of this section’ were substituted;

“(hc) ‘after 12 June 1979 other than a change occurring in consequence of an agreement entered into on or before that date’ were omitted from sub-section (2) of section 9 of the *Income Tax Laws Amendment Act 1979* and ‘at any time, whether before or after the commencement of this section’ were substituted;

“(hd) sub-sections (2) and (3) of section 11 of the *Income Tax Laws Amendment Act 1979* were omitted and the following sub-section were substituted;

‘(2) The amendment made by sub-section (1) applies in relation to a taxpayer in relation to property acquired or constructed by the taxpayer at any time, whether before or after the commencement of this section.’.”;

(b) by omitting “and” from paragraph (k) of sub-section (5); and

(c) by adding at the end of sub-section (5) the following word and paragraph:

“; and (n) ‘after 12 June 1979 other than a change occurring in consequence of an agreement entered into on or before that date’ were omitted from sub-section (2) of section 16, sub-section (2) of section 17 and sub-section (2) of section 18 of the *Income Tax Laws Amendment Act 1979* and ‘at any time, whether before or after the commencement of this section’ were substituted.”.

14. (1) Where—

(a) an amount (in this sub-section referred to as the “relevant amount”) is included in the assessable income of a taxpayer (in this sub-section referred to as the “recipient taxpayer”) of the year of income that commenced on 1 July 1978 (in this sub-section referred to as the “relevant year of income”);

(b) the relevant amount is a loss, outgoing or expenditure (which loss, outgoing or expenditure is in this sub-section referred to as the “relevant expenditure”) incurred (whether before or after

Arrangements to avoid the operation of section 13

the commencement of this section) to the recipient taxpayer by another taxpayer (in this sub-section referred to as the “associated taxpayer”);

- (c) but for this sub-section, a deduction would be allowable to the associated taxpayer in relation to a year of income in respect of the whole or a part of the relevant expenditure;
- (d) if the relevant amount were not included in the assessable income of the recipient taxpayer of the relevant year of income, the recipient taxpayer would be deemed to have incurred a loss in the relevant year of income;
- (e) if, in determining whether the recipient taxpayer is deemed to have incurred a loss in the relevant year of income and in determining the amount of any such loss—
 - (i) the relevant amount were not included in the assessable income of the recipient taxpayer of the relevant year of income; and
 - (ii) the conditions specified in paragraphs 80 (5) (ha), (hb), (hc), (hd) and (n) of the *Income Tax Assessment Act* 1936 were taken to be applicable,

the recipient taxpayer would not be deemed to have incurred a loss in the relevant year of income or would be deemed to have incurred a loss in the relevant year of income of an amount less than the amount of the loss referred to in paragraph (d); and

- (f) the associated taxpayer incurred the whole or a part of the relevant expenditure (which whole or part is in this sub-section referred to as the “prescribed relevant expenditure”) to the recipient taxpayer for the purpose, or for purposes that included the purpose, of wholly or partly preventing the operation of section 13 of this Act in relation to the recipient taxpayer or, if the recipient taxpayer is a partnership, in relation to a partner or partners in the partnership, by securing that the recipient taxpayer would not be deemed to have incurred a loss in the relevant year of income or would be deemed to have incurred a loss in the relevant year of income of an amount less than the amount of the loss that the recipient taxpayer would be deemed to have incurred in the relevant year of income if an amount equal to the prescribed relevant expenditure were not included in the assessable income of the recipient taxpayer of the relevant year of income,

then, notwithstanding anything contained in the *Income Tax Assessment Act* 1936, a deduction is not allowable to the associated taxpayer in respect of any part of the prescribed relevant expenditure.

(2) Where—

- (a) the value of the trading stock of a taxpayer that, but for this sub-section, would be taken into account at the end of the year of income that commenced on 1 July 1978 (in this sub-section referred to as the “relevant year of income”) for the purposes of the *Income Tax Assessment Act* 1936 is greater than the value of that trading stock that would be taken into account at that time if the taxpayer had valued that trading stock in such a way that the value of that trading stock to be taken into account at that time would have been the lowest possible amount at which the value of that trading stock could be taken into account at that time in accordance with Subdivision B of Division 2 of Part III of the *Income Tax Assessment Act* 1936;
- (b) if the taxpayer had valued the trading stock of the taxpayer in such a way that the value of that trading stock to be taken into account at the end of the relevant year of income would have been the lowest possible amount at which the value of that trading stock could have been taken into account at that time in accordance with Subdivision B of Division 2 of Part III of the *Income Tax Assessment Act* 1936, the taxpayer would have been deemed to have incurred a loss in the relevant year of income;
- (c) if, in determining whether the taxpayer is deemed to have incurred a loss in the relevant year of income and in determining the amount of any such loss—
 - (i) the value of the trading stock of the taxpayer to be taken into account at the end of the relevant year of income were the value referred to in paragraph (b); and
 - (ii) the conditions specified in paragraphs 80 (5) (ha), (hb), (hc), (hd) and (n) of the *Income Tax Assessment Act* 1936 were taken to be applicable,

the taxpayer would not be deemed to have incurred a loss in the relevant year of income or would be deemed to have incurred a loss in the relevant year of income of an amount less than the amount of the loss referred to in paragraph (b); and

- (d) some or all of the trading stock was valued by the taxpayer in the way in which it was valued by the taxpayer for the purpose, or for purposes that included the purpose, of wholly or partly preventing the operation of section 13 of this Act in relation to the taxpayer or, if the taxpayer is a partnership, in relation to a partner or partners in the partnership, by securing that the taxpayer would not be deemed to have incurred a loss in the relevant year of income or would be deemed to have incurred a loss in the relevant year of income of an amount less than the amount of the loss that the taxpayer would be deemed to have incurred in the relevant year of income if the trading stock of the taxpayer had been valued by the taxpayer at a lesser value,

then, notwithstanding anything contained in the *Income Tax Assessment Act* 1936, the value of the trading stock of the taxpayer to be taken into account at the end of the relevant year of income and at the commencement of the next succeeding year of income is—

- (e) in a case to which paragraph (f) does not apply—the value referred to in paragraph (b); or
 - (f) if the taxpayer satisfies the Commissioner that, if the taxpayer had not valued the trading stock first referred to in paragraph (d) for the purpose, or for purposes that included the purpose, mentioned in that paragraph, the taxpayer might reasonably be expected to have valued the trading stock of the taxpayer in such a way that the value of the trading stock of the taxpayer to be taken into account at the end of the relevant year of income would be greater than the value of the trading stock referred to in paragraph (b)—that greater value.
- (3) In sub-section (2)—
- (a) a reference to trading stock shall be read as not including a reference to live stock; and
 - (b) a reference to the valuation of trading stock by a taxpayer shall be read as a reference to the exercise by the taxpayer of an option or options under section 31 of the *Income Tax Assessment Act* 1936 in relation to the trading stock of the taxpayer.
- (4) A reference in sub-section (1) or (2), in relation to a taxpayer, to a loss shall be read as a reference to—
- (a) in a case where the taxpayer is a partnership that is being treated as a taxpayer for the purposes of section 90 of the *Income Tax Assessment Act* 1936—a partnership loss for the purposes of section 92 of the *Income Tax Assessment Act* 1936; and
 - (b) in any other case—a loss for the purposes of section 80 or 80AA of the *Income Tax Assessment Act* 1936.
- (5) Notwithstanding anything contained in the *Income Tax Assessment Act* 1936, the Commissioner may amend an assessment for the purpose of giving effect to this section if the amendment is made within 3 years after the date on which the tax became due and payable under the assessment, but nothing in this sub-section limits the power of the Commissioner to amend an assessment in accordance with the provisions of that Act.

Retention
allowance

15. (1) Section 105B of the Principal Act is amended by omitting from paragraph (a) “60” and substituting “70”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

16. (1) Section 122R of the Principal Act is amended—

- (a) by omitting “Where, for any reason” and substituting “Subject to this section, where, for any reason”; and

Change in
interests in
property

- (b) by adding at the end thereof the following sub-sections:

“(2) Where—

- (a) the change in the ownership of, or in the interests of persons in, the property occurred in consequence of a written agreement;
- (b) an amount was specified in the agreement as the value of the property for the purposes of the agreement; and
- (c) the amount so specified in the agreement—
- (i) is less than the amount that was the market value of the property immediately before the time when the change occurred; and
- (ii) is also less than the amount ascertained by deducting from the total expenditure of a capital nature incurred in respect of the property by the person or persons who owned the property before the change the sum of the deductions allowed or allowable in respect of that expenditure under this Division or under provisions of a previous law of the Commonwealth relating to the taxation of income derived from mining operations,

the provisions of this Division apply as if—

- (d) the person or persons who owned the property before the change had, at the time when the change occurred, sold the property for a price equal to the amount referred to in sub-paragraph (i) of paragraph (c) or the amount ascertained in accordance with sub-paragraph (ii) of paragraph (c), whichever is the less; and
- (e) the person or persons who owned the property after the change had, at the time when the change occurred, incurred expenditure of a capital nature on the acquisition of the property of an amount equal to the amount specified in the agreement.

“(3) A reference in sub-section (2) to the market value of property at a particular time shall, if there is insufficient evidence of the market value of the property at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable.”.

(2) The amendments made by sub-section (1) apply in relation to a change in the ownership of, or in the interests of persons in, property after 12 June 1979 other than a change occurring in consequence of an agreement entered into on or before that date.

Change in
interests in
property

17. (1) Section 123F of the Principal Act is amended—

(a) by omitting “Where, for any reason” and substituting “Subject to this section, where, for any reason”; and

(b) by adding at the end thereof the following sub-sections:

“(2) Where—

(a) the change in the ownership of, or in the interests of persons in, the property occurred in consequence of a written agreement;

(b) an amount was specified in the agreement as the value of the property for the purposes of the agreement; and

(c) the amount so specified in the agreement—

(i) is less than the amount that was the market value of the property immediately before the time when the change occurred; and

(ii) is also less than the amount ascertained by deducting from the total expenditure of a capital nature incurred in respect of the property by the person or persons who owned the property before the change the sum of the deductions allowed or allowable in respect of that expenditure under this Division,

the provisions of this Division apply as if—

(d) the person or persons who owned the property before the change had, at the time when the change occurred, sold the property for a price equal to the amount referred to in sub-paragraph (i) of paragraph (c) or the amount ascertained in accordance with sub-paragraph (ii) of paragraph (c), whichever is the less; and

(e) the person or persons who owned the property after the change had, at the time when the change occurred, incurred expenditure of a capital nature on the acquisition of the property of an amount equal to the amount specified in the agreement.

“(3) A reference in sub-section (2) to the market value of property at a particular time shall, if there is insufficient evidence of the market value of the property at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable.”.

(2) The amendments made by sub-section (1) apply in relation to a change in the ownership of, or in the interests of persons in, property after 12 June 1979 other than a change occurring in consequence of an agreement entered into on or before that date.

18. (1) Section 124AO of the Principal Act is amended—

(a) by omitting “Where for any reason” and substituting “Subject to this section, where, for any reason”; and

Change in
interests in
property

(b) by adding at the end thereof the following sub-sections:

“(2) Where—

- (a) the change in the ownership of, or in the interests of persons in, the property occurred in consequence of a written agreement;
- (b) an amount was specified in the agreement as the value of the property for the purposes of the agreement; and
- (c) the amount so specified in the agreement—
 - (i) is less than the amount that was the market value of the property immediately before the time when the change occurred; and
 - (ii) is also less than the amount ascertained by deducting from the total expenditure of a capital nature incurred in respect of the property by the person or persons who owned the property before the change the sum of the deductions allowed or allowable in respect of that expenditure under this Division,

the provisions of this Division apply as if—

- (d) the person or persons who owned the property before the change had, at the time when the change occurred, sold the property for a price equal to the amount referred to in sub-paragraph (i) of paragraph (c) or the amount ascertained in accordance with sub-paragraph (ii) of paragraph (c), whichever is the less; and
- (e) the person or persons who owned the property after the change had, at the time when the change occurred, incurred expenditure of a capital nature on the acquisition of the property of an amount equal to the amount specified in the agreement.

“(3) A reference in sub-section (2) to the market value of property at a particular time shall, if there is insufficient evidence of the market value of the property at that time, be read as a reference to such amount as, in the opinion of the Commissioner, is fair and reasonable.”

(2) The amendments made by sub-section (1) apply in relation to a change in the ownership of, or in the interests of persons in, property after 12 June 1979 other than a change occurring in consequence of an agreement entered into on or before that date.

Rebate of
tax for
certain
primary
producers

19. Section 156 of the Principal Act is amended—

- (a) by inserting in sub-section (4) “number of whole dollars in the” before “deemed taxable income”;
- (b) by omitting from sub-sections (4) and (5) “number of whole dollars in the excess” and substituting “excess”; and
- (c) by inserting in sub-section (5) “number of whole dollars in the” before “amount of the deemed net income”.

Indexation

20. Section 159Z of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) In relation to a relevant year of income, being the year of income that commenced on 1 July 1977 or the next succeeding year of income, this Act shall be deemed to have had effect as if for each relevant amount there were deemed to be substituted an amount calculated by multiplying—

- (a) in the case where the relevant year of income concerned is the year of income that commenced on 1 July 1977—that relevant amount; and
- (b) in the case where the relevant year of income concerned is the year of income that commenced on 1 July 1978—the amount that, for the purposes of this Act, was deemed to be substituted for that relevant amount by the application of this section in relation to the year of income that commenced on 1 July 1977,

by the factor prescribed by regulations made under sub-section (4) of section 9 of the *Income Tax (Rates) Act 1976* in relation to the relevant year of income concerned.

“(2A) In relation to the relevant year of income that commenced on 1 July 1979, this Act shall be deemed to have effect as if for each relevant amount there were deemed to be substituted the amount that, for the purposes of this Act, was deemed to be substituted for that relevant amount by the application of sub-section (2) in relation to the year of income that commenced on 1 July 1978.

“(2B) Where, in relation to a relevant year of income, being the year of income commencing on 1 July 1980 or a subsequent year of income, this Act is not deemed, at a particular time, to have effect in accordance with sub-section (2C), this Act shall be deemed to have effect, in relation to any assessment made at that time in relation to that relevant year of income, as if for each relevant amount there were deemed to be substituted the amount that, for the purposes of this Act, was deemed to be substituted for that relevant amount by the application of this section in relation to the year of income that last preceded the relevant year of income concerned.

“(2C) Where, in relation to a relevant year of income, being the year of income commencing on 1 July 1980 or a subsequent year of income and being a year of income in relation to which the factor ascertained in accordance with sub-section (3) of section 9 of the *Income Tax (Rates) Act 1976* is greater than 1, there is in operation, at a particular time, a provision of an Act declaring the relevant year of income to be a prescribed year of income for the purposes of section 9 of the *Income Tax (Rates) Act 1976*, this Act shall be deemed to have effect, in relation to any assessment made at that time in relation to the relevant year of income, as if for each relevant amount there were deemed to be substituted an amount calculated by multiplying the amount that, for the purposes of this Act, was deemed to be substituted for that relevant amount by the application of this section in relation to the year of income that last preceded the relevant year of income concerned by the factor ascertained in accordance with sub-section (3) of section 9 of the *Income Tax (Rates) Act 1976* in relation to the relevant year of income concerned or, where a lesser factor is prescribed by regulations made under sub-section (4) of section 9 of that last-mentioned Act in relation to the relevant year of income concerned, by that lesser factor.

“(2D) For the purposes of the application of sub-section (2B) or (2C) in relation to a relevant year of income, a reference in that sub-section to the amount that was deemed to be substituted for a relevant amount by the application of this section in relation to the year of income that last preceded the relevant year of income shall, in a case where, in relation to the year of income that last preceded the relevant year of income, an amount was deemed by sub-section (2B) to be substituted for that relevant amount and an amount was also deemed by sub-section (2C) to be substituted for that relevant amount, be read as a reference to the amount that was deemed by sub-section (2C) to be substituted for that relevant amount.”.

21. Section 160AA of the Principal Act is amended—

- (a) by omitting sub-section (3) and substituting the following sub-sections:

“(3) Where, in relation to a relevant year of income, being a year of income in relation to which the factor ascertained in accordance with sub-section (3) of section 9 of the *Income Tax (Rates) Act 1976* is greater than 1, there is in operation, at a particular time, a provision of an Act declaring that relevant year of income to be a prescribed year of income for the purposes of section 9 of the *Income Tax (Rates) Act 1976*, this Act shall be deemed to have effect, in relation to any assessment made at that time in relation to that relevant year of income, as if for each relevant amount there were deemed to be substituted an amount calculated by multiplying—

- (a) in a case to which paragraph (b) does not apply—the relevant amount; or

Rebate in respect of payments received in lieu of annual leave or long service leave

- (b) if, by virtue of the application of this section, this Act was deemed to have effect in relation to the year of income that last preceded the relevant year of income concerned as if another amount were deemed to be substituted for the relevant amount—the amount that, for the purposes of this Act, was deemed to be substituted for the relevant amount by the application of this section in relation to the year of income that last preceded the relevant year of income concerned,

by the factor ascertained in accordance with sub-section (3) of section 9 of the *Income Tax (Rates) Act* 1976 in relation to the relevant year of income concerned or, where a lesser factor is prescribed by regulations made under sub-section (4) of section 9 of that last-mentioned Act in relation to the relevant year of income concerned, by that lesser factor.

“(3A) Where—

- (a) in relation to a relevant year of income, this Act is not deemed, at a particular time, to have effect in accordance with sub-section (3); and
- (b) by virtue of the application of this section, this Act was deemed to have effect in relation to the year of income that last preceded the relevant year of income as if another amount were deemed to be substituted for a relevant amount,

this Act shall be deemed to have effect, in relation to any assessment made at that time in relation to the relevant year of income, as if for that relevant amount there were deemed to be substituted the amount that was deemed to be substituted for that relevant amount by the application of this section in relation to the year of income that last preceded the relevant year of income.

“(3B) For the purposes of the application of sub-section (3) or (3A) in relation to a relevant year of income, a reference in that sub-section to the amount that was deemed to be substituted for a relevant amount by the application of this section in relation to the year of income that last preceded the relevant year of income shall, in a case where, in relation to the year of income that last preceded the relevant year of income, an amount was deemed by sub-section (3) to be substituted for that relevant amount and an amount was also deemed by sub-section (3A) to be substituted for that relevant amount, be read as a reference to the amount that was deemed by sub-section (3) to be substituted for that relevant amount.”; and

- (b) by omitting “1979” from the definition of “relevant year of income” in sub-section (5) and substituting “1980”.

22. Section 193 of the Principal Act is amended by inserting in paragraph (b) of sub-section (2) “or the day upon which the assessment is made in which the rebate is wholly or partly disallowed, as the case may be” after “rebate is made”.

Powers of Board

23. (1) Section 221YC of the Principal Act is amended by omitting sub-sections (1B), (1C) and (1D).

Amount of provisional tax

(2) The amendment made by sub-section (1) applies in relation to the ascertainment of provisional tax payable in respect of income of the year of income that commenced on 1 July 1979 and in respect of income of all subsequent years of income.

24. Section 226 of the Principal Act is amended—

Additional tax in certain cases

- (a) by omitting from sub-section (2) “or includes” and substituting “includes”; and
- (b) by inserting in sub-section (2) “or, in relation to a claim to be entitled to a rebate under section 23AB, 79A, 79B, 159J, 159K or 159L, includes in his return information that is false in any particular” after “actually incurred by him”.

25. For the purposes of the application of sub-section 159N (2) of the *Income Tax Assessment Act* 1936 in ascertaining the amount of any rebate of tax to which a taxpayer is entitled under that sub-section in his assessment in respect of income of the year of income that commenced on 1 July 1979, that sub-section shall have effect as if the reference in that sub-section to 32 were a reference to 33.07.

General concessional rebates for financial year 1979-80

26. For the purposes of the application of section 160AA of the *Income Tax Assessment Act* 1936 in ascertaining the amount of any rebate of tax to which a taxpayer is entitled under that section in his assessment in respect of income of the year of income that commenced on 1 July 1979, that section shall have effect as if the reference in sub-section (1) of that section to 32% were a reference to 33.07%.

Rebate in respect of payments received in lieu of annual leave or long service leave—financial year 1979-80

27. (1) For the purposes of the application of sub-section 221YC (1) of the *Income Tax Assessment Act* 1936 in ascertaining the amount of provisional tax payable by a taxpayer in respect of income of the year of income that commenced on 1 July 1979 (in this sub-section referred to as the “relevant year of income”), being a taxpayer who would, apart from this section and apart from any health insurance levy assessed in respect of his taxable income of the year of income next preceding the relevant year of income, be liable to pay provisional tax calculated in accordance with sub-section 221YC (1) or (1A) of that Act in respect of income of the relevant year of income—

Provisional tax for financial year 1979-80

- (a) if paragraph 221YC (1) (a) of the *Income Tax Assessment Act* 1936 applies to the taxpayer—the amount of provisional tax

payable by the taxpayer in respect of income of the relevant year of income by virtue of that paragraph is the amount ascertained by deducting from the amount of income tax (other than health insurance levy) that would have been assessed in respect of the amount that would have been the taxable income of the taxpayer of the year of income next preceding the relevant year of income if—

- (i) Subdivision BA of Division 3 of Part III of the *Income Tax Assessment Act* 1936 were not applicable in relation to the year of income next preceding the relevant year of income;
- (ii) each reference in column 2 of Schedule 9 to the *Income Tax (Rates) Act* 1976 to 33.5% were a reference to 36.07%;
- (iii) the reference in paragraph 3 (a) of Part II of Schedule 10 to the *Income Tax (Rates) Act* 1976 to 33.5% were a reference to 36.07%;
- (iv) the reference in paragraph 3 (b) of Part II of Schedule 10 to the *Income Tax (Rates) Act* 1976 to \$4,055.84 were a reference to \$4,366.99;
- (v) the reference in sub-section 6F (2) of the *Income Tax (Rates) Act* 1976 to \$3,151 were a reference to \$3,732;
- (vi) the reference in sub-section 6F (4) of the *Income Tax (Rates) Act* 1976 to \$1,260 were a reference to \$1,493;
- (vii) the taxpayer were not entitled to any rebate or credit in his assessment other than any rebate under section 156 of the *Income Tax Assessment Act* 1936 to which the taxpayer would have been entitled if the conditions set out in the preceding sub-paragraphs of this paragraph were applicable for the purposes of making that assessment; and
- (viii) the reference in sub-section 6E (7) of the *Income Tax (Rates) Act* 1976 and in sub-section 7 (3) of the *Income Tax (Companies and Superannuation Funds) Act* 1978 to 61.5% were a reference to 64.07%;

the sum of the rebates and credits (other than a rebate under section 156 of the *Income Tax Assessment Act* 1936) to which the taxpayer was entitled in his assessment in respect of income of the year of income next preceding the relevant year of income; and

- (b) if paragraph 221YC (1) (b) of the *Income Tax Assessment Act* 1936 applies to the taxpayer—the amount of provisional tax payable by him in respect of income of the relevant year of income by virtue of that paragraph is the amount ascertained by deducting from the amount of income tax (other than health insurance levy) that would have been assessed in respect of the taxable income of the taxpayer of the year of income next preceding the relevant year of income if—
- (i) the taxable income of the taxpayer of the year of income next preceding the relevant year of income had been equal to—
 - (A) in a case where paragraph 221YC (1) (a) of the *Income Tax Assessment Act* 1936 would apply to the taxpayer in relation to the relevant year of income but for sub-section 221YA (5) of that Act—the amount that would have been the taxable income of the taxpayer of the year of income next preceding the relevant year of income if Subdivision BA of Division 3 of Part III of the *Income Tax Assessment Act* 1936 and Division 16C of that Part were not applicable in relation to the year of income next preceding the relevant year of income; and
 - (B) in any other case—the amount that the Commissioner estimates would have been the amount of the provisional income of the taxpayer of the relevant year of income if Subdivision BA of Division 3 of Part III of the *Income Tax Assessment Act* 1936 and Division 16C of that Part were not applicable in relation to the year of income next preceding the relevant year of income;
 - (ii) each reference in column 2 of Schedule 9 to the *Income Tax (Rates) Act* 1976 to 33.5% were a reference to 36.07%;
 - (iii) the reference in paragraph 3 (a) of Part II of Schedule 10 to the *Income Tax (Rates) Act* 1976 to 33.5% were a reference to 36.07%;
 - (iv) the reference in paragraph 3 (b) of Part II of Schedule 10 to the *Income Tax (Rates) Act* 1976 to \$4,055.84 were a reference to \$4,366.99;
 - (v) the reference in sub-section 6F (2) of the *Income Tax (Rates) Act* 1976 to \$3,151 were a reference to \$3,732;
 - (vi) the reference in sub-section 6F (4) of the *Income Tax (Rates) Act* 1976 to \$1,260 were a reference to \$1,493;
 - (vii) the taxpayer were not entitled to any rebate or credit in his assessment other than any rebate under section 156 of

the *Income Tax Assessment Act* 1936 to which the taxpayer would have been entitled if the conditions set out in the preceding sub-paragraphs of this paragraph were applicable for the purposes of making that assessment; and

- (viii) the reference in sub-section 6E (7) of the *Income Tax (Rates) Act* 1976 and in sub-section 7 (3) of the *Income Tax (Companies and Superannuation Funds) Act* 1978 to 61.5% were a reference to 64.07%,

the sum of the rebates and credits (other than a rebate under section 156 of the *Income Tax Assessment Act* 1936) to which the taxpayer was entitled in his assessment in respect of income of the year of income next preceding the relevant year of income.

(2) For the purposes of the application of sub-section 221YC (1) of the *Income Tax Assessment Act* 1936 in ascertaining the amount of provisional tax payable by a taxpayer in respect of income of the year of income that commenced on 1 July 1979, not being a taxpayer to whom sub-section (1) of this section applies, sub-section 221YC (1) of that Act shall be read as if “(other than health insurance levy)” were inserted after “income tax” in paragraphs (a) and (b) of that last-mentioned sub-section.

PART III—INCOME TAX (ARRANGEMENTS WITH THE STATES) ACT 1978

Interpret-
ation

28. The *Income Tax (Arrangements with the States) Act* 1978³ is in this Part referred to as the Principal Act.

Tax
instalment
deductions

29. Section 10 of the Principal Act is amended by omitting sub-section (7) and substituting the following sub-section:

“(7) For the purposes of this section, an employer who makes a payment of salary or wages to an employee is a prescribed employer if—

- (a) the employer is the Commonwealth or an authority of the Commonwealth or is a Territory or an authority of a Territory;
- (b) at the time when the payment is made the employer is a State that is a participating State or a supporting State in relation to the year of income in which the payment is made;
- (c) the employer is an authority of such a State;
- (d) the employer is a company incorporated in such a State or in a Territory;
- (e) the employer is a natural person whose sole or principal place of residence in Australia and the Territories on the day on which the salary or wages was or were paid was in such a State or in a Territory;

- (f) the employer carried on business in such a State or in a Territory on that day;
- (g) the salary or wages was or were paid in such a State or in a Territory; or
- (h) the salary or wages was or were paid for work done wholly or partly in such a State or in a Territory.”.

30. Section 78 of the Principal Act is amended by omitting sub-paragraph (i) of paragraph (b) of sub-section (1) and substituting the following sub-paragraph:

“(i) the employer is the Commonwealth or an authority of the Commonwealth or is a Territory or an authority of a Territory;”.

Tax
instalment
deductions
by certain
employers

NOTES

1. Act No. 149, 1979; assented to 28 November 1979.
2. Act No. 27, 1936, as amended. For previous amendments *see* Act No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 64, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; and Nos. 12, 19, 27, 43, 62, 146 and 147, 1979.
3. Act No. 87, 1978.