



Fringe Benefits Tax Assessment Act 1986

No. 39 of 1986

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SCHEDULE

STATUTORY INTEREST RATES FOR PERIODS BETWEEN 1 JANUARY 1946 AND
2 APRIL 1986



Fringe Benefits Tax Assessment Act 1986

No. 39 of 1986

An Act relating to the assessment and collection of the tax imposed by the *Fringe Benefits Tax Act 1986*, and for related purposes

[Assented to 24 June 1986]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Fringe Benefits Tax Assessment Act 1986*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

PART II—ADMINISTRATION

General administration of Act

3. The Commissioner has the general administration of this Act.

Annual report

4. (1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.

(2) The Minister shall cause a copy of a report furnished under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by sub-section (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

Secrecy

5. (1) In this section, “officer” means a person—

(a) who is or has been appointed or employed by the Commonwealth;
or

(b) to whom powers or functions have been delegated by the Commissioner,

and who, by reason of the appointment or employment or in the course of the employment, or by reason of, or in the course of the exercise of powers or the performance of functions under, the delegation, as the case may be, may acquire or has acquired information with respect to the affairs of any other person disclosed or obtained under or for the purposes of this Act.

(2) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.

(3) Subject to sub-section (5), a person who is or has been an officer shall not, except for the purposes of this Act or otherwise than in the performance of the person’s duties as an officer, directly or indirectly—

(a) make a record of any information with respect to the affairs of a second person; or

(b) divulge or communicate to a second person any information with respect to the affairs of a third person,

being information disclosed or obtained under or for the purposes of this Act and acquired by the person by reason of the person’s appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in the course of the exercise of such powers or performance of such functions, as the case may be.

Penalty: \$5,000 or imprisonment for 12 months, or both.

(4) Except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act, a person who is or has been an officer shall not be required—

- (a) to produce in court any document made or given under or for the purposes of this Act; or
- (b) to divulge or communicate to a court a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act,

being a document or information acquired by the person by reason of the person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in the course of the exercise of such powers or the performance of such functions, as the case may be.

(5) Nothing in sub-section (3) shall be taken to prohibit the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner from communicating any information to a person performing, as an officer, duties arising under an Act administered by the Commissioner or regulations under such an Act for the purpose of enabling the person to perform those duties.

(6) For the purposes of sub-section (3), an officer shall be deemed to have communicated information to another person in contravention of that sub-section if the officer communicates the information to any Minister.

(7) An officer shall, if and when required by the Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in conformity with the provisions of this section.

PART III—FRINGE BENEFITS

Division 1—Preliminary

Part not to limit generality of “benefit”

6. The provisions of this Part do not limit the generality of the expression “benefit”.

Division 2—Car Fringe Benefits

Subdivision A—Car Benefits

Car benefits

7. (1) Where—

- (a) at any time on a day, in respect of the employment of an employee, a car held by a person (in this sub-section referred to as the “provider”)—

- (i) is applied to a private use by the employee or an associate of the employee; or
 - (ii) is taken to be available for the private use of the employee or an associate of the employee; and
- (b) either of the following conditions is satisfied:
- (i) the provider is the employer, or an associate of the employer, of the employee;
 - (ii) the car is so applied or available, as the case may be, under an arrangement between—
 - (A) the provider or another person; and
 - (B) the employer, or an associate of the employer, of the employee,

that application or availability of the car shall be taken to constitute a benefit provided on that day by the provider to the employee or associate in respect of the employment of the employee.

(2) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

- (a) a car is held by a person, being—
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- (b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee,

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

(3) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

- (a) a car is held by a person, being—
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
- (b) the car is not at business premises of—
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer

or an associate of the employer has an arrangement relating to the use or availability of the car;

- (c) any of the following conditions is satisfied:
- (i) the employee is entitled to apply the car to a private use;
 - (ii) the employee is not performing the duties of his or her employment and has custody or control of the car;
 - (iii) an associate of the employee is entitled to use, or has custody or control of, the car,

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

(4) For the purposes of sub-section (3), where a prohibition on the application of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person shall be deemed to be entitled to use the car, or to apply the car to a private use, notwithstanding the prohibition.

(5) For the purposes of this Act, a car shall be deemed to be applied by a person if it is applied in accordance with the directions, instructions or wishes of the person.

(6) For the purposes of this Division, a car that is let on hire to a person under a hire-purchase agreement shall be deemed—

- (a) to have been purchased by the person at the time when the person first took the car on hire; and
- (b) to have been owned by the person at all material times.

(7) A reference in this Division to a car held by a person (in this sub-section referred to as the "provider") does not include a reference to—

- (a) a taxi let on hire to the provider; or
- (b) a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis unless the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

Exempt car benefits

8. (1) Except insofar as section 7 provides that the application or availability of a car held by a person is a benefit, the application or availability of a car held by a person is an exempt benefit.

(2) A car benefit provided in a year of tax in respect of the employment of a current employee is an exempt benefit in relation to the year of tax if—

- (a) the car is—
 - (i) a taxi, panel van or utility truck; or

- (ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
- (b) either of the following conditions is satisfied:
 - (i) the car was not applied to a private use at any time during the year of tax when the benefit was provided;
 - (ii) all private use of the car during the year of tax and at a time when the benefit was provided consisted of work-related travel of the employee.

Subdivision B—Taxable Value of Car Fringe Benefits

Taxable value of car fringe benefits—statutory formula

9. (1) Subject to this Subdivision, where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a particular car held by a particular person (in this section referred to as the “provider”), the taxable value of that fringe benefit, or the aggregate of the taxable values of those fringe benefits, as the case may be, in relation to that year of tax, is the amount calculated in accordance with the formula

$$\frac{ABC}{D} - E, \text{ where—}$$

- A** is the base value of the car;
- B** is the statutory fraction;
- C** is the number of days during that year of tax on which the car fringe benefits were provided by the provider;
- D** is the number of days in that year of tax; and
- E** is the amount (if any) of the recipient’s payment.

(2) For the purposes of this section—

- (a) the base value of the car is the sum of—
 - (i) where, at the earliest holding time, the car was owned by the provider or an associate of the provider, the amount calculated in accordance with the formula **AB**, where—
 - A** is the cost price of the car to the provider or associate, as the case may be; and
 - B** is—
 - (A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time— $\frac{1}{3}$; or
 - (B) in any other case—1;
 - (ii) in a case to which sub-paragraph (i) does not apply—the amount calculated in accordance with the formula **AB**, where—
 - A** is the leased car value of the car at the earliest holding time; and

B is—

- (A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time— $\frac{1}{3}$; or
 - (B) in any other case—1; and
- (iii) the cost price of each non-business accessory that—
- (A) was fitted to the car after the earliest holding time and before the end of the year of tax; and
 - (B) remained fitted to the car at a time during the year of tax when the car was held by the provider;
- (b) the earliest holding time, in relation to a car held by the provider at a particular time (in this paragraph referred to as the “current time”), is the earliest time before the current time when the car was held by the provider or an associate of the provider;
- (c) the statutory fraction is—
- (i) in the case of the transitional year of tax—
 - (A) where the annualised number of whole kilometres travelled by the car during the year of tax was more than 30,000—0.045;
 - (B) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 18,750 and not more than 30,000—0.075;
 - (C) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 11,250 and not more than 18,749—0.135; or
 - (D) in any other case—0.18; and
 - (ii) in relation to a standard year of tax—
 - (A) where the annualised number of whole kilometres travelled by the car during the year of tax was more than 40,000—0.06;
 - (B) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 25,000 and not more than 40,000—0.1;
 - (C) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 15,000 and not more than 24,999—0.18; or
 - (D) in any other case—0.24;
- (d) the annualised number of whole kilometres travelled by the car during the year of tax is the number calculated in accordance with the formula $\frac{AB}{C}$, where—

A is the number of whole kilometres travelled by the car during the period in the year of tax when the car was held by the

provider (in this sub-section referred to as the "holding period");

B is the number of days in the year of tax; and

C is the number of days in the holding period; and

(e) the amount of the recipient's payment is the sum of—

(i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ii) in a case where—

(A) car expenses in respect of the car were incurred during the holding period by recipients of the car fringe benefits; and

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date,

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.

Taxable value of car fringe benefits—cost basis

10. (1) An employer may, in relation to a particular car, elect that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to that car.

(2) Where an election is made under sub-section (1), the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits in relation to the employer in relation to the year of tax that relate to the car while it was held by a particular person (in this section referred to as the "provider") continuously during a particular period (in this section referred to as the "holding period") in the year of tax is the amount calculated in accordance with the formula $\frac{AB}{C} - D$, where—

A is the operating cost of the car during the holding period;

B is the number of whole private kilometres travelled by the car during the holding period;

C is the number of whole kilometres travelled by the car in the holding period; and

D is the amount (if any) of the recipient's payment.

(3) For the purposes of sub-section (2)—

(a) the operating cost of the car during the holding period is the sum of—

- (i) any car expenses (other than expenses in respect of registration and insurance) relating to the car incurred during the holding period (whether the expenses are incurred by the provider or by any other person), not including, in a case where the car is leased to the provider, any car expenses incurred by the lessor pursuant to the lease agreement;
- (ii) so much of any expense paid or payable in respect of the registration of, or insurance in respect of, the car as is attributable to the holding period (whether the expenses are incurred by the provider or by any other person), not including—
 - (A) in a case where the car is owned by the provider—any expense incurred before the provider became the owner of the car; or
 - (B) in a case where the car is leased to the provider—any expense incurred by the lessor pursuant to the lease agreement;
- (iii) in a case where the car is owned by the provider—
 - (A) the amount of depreciation that is deemed to have been incurred by the provider in respect of the car in respect of the year of tax; and
 - (B) the amount of interest that is deemed to have been incurred by the provider in respect of the car in respect of the year of tax;
- (iv) in a case where the car is owned by the provider and a non-business accessory was fitted to the car during the period when the car was owned by the provider and remained fitted to the car at a time during the holding period—
 - (A) the amount of depreciation that would be deemed to have been incurred by the provider in respect of the accessory in respect of the year of tax if the accessory were a car; and
 - (B) the amount of interest that would be deemed to have been incurred by the provider in respect of the accessory in respect of the year of tax if the accessory were a car;
- (v) in a case where the car is leased to the provider—
 - (A) where sub-sub-paragraph (B) does not apply—so much of the charges paid or payable under the lease agreement as are attributable to the holding period; or
 - (B) where the lessor was entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the lessor purchased the car—the amount that could reasonably be expected to have been applicable under sub-sub-paragraph (A)

if the lessor had not been entitled to those privileges or exemptions; and

- (vi) in a case where the car is neither owned by, nor leased to, the provider—the amount of depreciation and interest that would be deemed to have been incurred by the provider in respect of the car in respect of the year of tax if the car had been purchased by the provider at the time when the provider commenced to hold the car for a consideration equal to the leased car value of the car at that time;
 - (b) the number of whole private kilometres travelled by the car during the holding period is—
 - (i) in a case where relevant car documents in relation to the car are maintained by or on behalf of the provider during the holding period and, if the provider is not the employer, are given to the employer before the declaration date, the number ascertained in accordance with the formula $A - B$, where—
 - A** is the number of whole kilometres travelled by the car during the holding period; and
 - B** is the number of whole kilometres travelled by the car during the holding period in respect of business journeys undertaken in the car; and
 - (ii) in any other case—the number of whole kilometres travelled by the car during the holding period; and
 - (c) the amount of the recipient's payment is the sum of—
 - (i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
 - (ii) in a case where—
 - (A) car expenses in respect of the car were incurred during the holding period by recipients of the car fringe benefits; and
 - (B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date,the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.
- (4) An election by an employer under sub-section (1) in relation to a year of tax—
- (a) shall be made by notice in writing to the Commissioner; and

(b) shall be lodged with the Commissioner on or before the declaration date.

(5) Where—

(a) an employer is entitled to make, but does not make, an election under sub-section (1) in relation to a car in relation to a year of tax; or

(b) an associate of an employer is entitled to make, but does not make, an election under sub-section (1) in relation to a car in relation to a year of tax, not being a year of tax in relation to which the employer makes an election under sub-section (1) in relation to the car,

the employer is not entitled to make an election under sub-section (1) in relation to the car in relation to a later year of tax.

(6) Where an employer—

(a) makes an election under sub-section (1) in relation to a car in relation to a year of tax; and

(b) is entitled to make an election under sub-section (1) in relation to the car in relation to a later year of tax,

the employer shall be deemed, for the purposes of this section, to have made the election referred to in paragraph (b).

Calculation of depreciation and interest

11. (1) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance

with the formula $\frac{ABC}{D}$, where—

A is—

(a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time; or

(b) in any other case—the cost price of the car to the person;

B is 0.225;

C is the number of days in the period in the year of tax during which the car was owned by the person; and

D is—

(c) in the case of the transitional year of tax—365; or

(d) in the case of a standard year of tax—the number of days in the year of tax.

(2) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula

$\frac{ABC}{D}$, where—

A is—

- (a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time; or
- (b) in any other case—the cost price of the car to the person;

B is the statutory interest rate in relation to the year of tax;

C is the number of days in the period in the year of tax during which the car was owned by the person; and

D is—

- (c) in the case of the transitional year of tax—365; or
- (d) in the case of a standard year of tax—the number of days in the year of tax.

Depreciated value

12. A reference in this Subdivision to the depreciated value of a car at a particular time (in this section referred to as the “relevant time”) is a reference to—

- (a) if the relevant time is the beginning of the transitional year of tax—the cost price of the car to the person who owns the car at the relevant time reduced by the total amount of depreciation that would have been deemed to have been incurred by the person in respect of the car for the period (in this paragraph referred to as the “relevant period”) before that time when it was owned by the person if—
 - (i) the depreciation deemed to have been incurred for the relevant period were calculated in accordance with sub-section 11 (1); and
 - (ii) each year commencing on 1 July were a standard year of tax; and
- (b) if the relevant time is the beginning of a standard year of tax—the amount calculated in accordance with the formula $A - B$, where—

A is—

- (i) if the car was owned by the person at the beginning of the transitional year of tax—the depreciated value of the car at the beginning of the transitional year of tax; or
- (ii) in any other case—the cost price of the car to the person; and

B is the total amount of depreciation (if any) that would have been deemed to have been incurred by the person in respect of the car for the period (in this paragraph referred to as the “relevant period”) after the beginning of the transitional year of tax and before the relevant time when the car was owned by the person if the depreciation deemed to have been incurred

for the relevant period were calculated in accordance with sub-section 11 (1).

Expenditure to be increased in certain circumstances

13. (1) The following provisions apply for the purpose of determining the base value of a car for the purposes of section 9 or the operating cost of a car for the purposes of section 10.

(2) Where the amount (if any) of expenditure incurred by a person under a transaction that is not an arm's length transaction is less than the amount (in this sub-section referred to as the "increased amount") of expenditure that could reasonably have been expected to have been incurred by the person under the transaction if it had been an arm's length transaction, the person shall be deemed, under the transaction, to have incurred the increased amount of expenditure.

(3) The reference in sub-section (2) to expenditure does not include a reference to expenditure by a recipient of a car benefit in relation to the car by way of reimbursement of expenditure incurred by another person.

(4) Where, in a case to which sub-section (2) does not apply—

- (a) a person acquires any property, or is provided with any benefit; and
- (b) the person incurs no expenditure in respect of the acquisition of that property or the provision of that benefit,

the person shall be deemed to have incurred, in respect of the acquisition of that property or the provision of that benefit, expenditure equal to the amount that the person could reasonably be expected to have been required to pay to purchase that property, or obtain the provision of that benefit, on the open market.

Division 3—Debt Waiver Fringe Benefits

Subdivision A—Debt Waiver Benefits

Debt waiver benefits

14. Where, at a particular time, a person (in this section referred to as the "provider") waives the obligation of another person (in this section referred to as the "recipient") to pay or repay to the provider an amount, the waiver shall be taken to constitute a benefit provided at that time by the provider to the recipient.

Subdivision B—Taxable Value of Debt Waiver Fringe Benefits

Taxable value of debt waiver fringe benefits

15. The taxable value in relation to a year of tax of a debt waiver fringe benefit provided in the year of tax is the amount the payment or repayment of which is waived.

Division 4—Loan Fringe Benefits

Subdivision A—Loan Benefits

Loan benefits

16. (1) Where a person (in this sub-section referred to as the “provider”) makes a loan to another person (in this sub-section referred to as the “recipient”), the making of the loan shall be taken to constitute a benefit provided by the provider to the recipient and that benefit shall be taken to be provided in respect of each year of tax during the whole or a part of which the recipient is under an obligation to repay the whole or any part of the loan.

(2) For the purposes of this Act, where—

- (a)** a person (in this sub-section referred to as the “debtor”) is under an obligation to pay or repay an amount (in this sub-section referred to as the “principal amount”) to another person (in this sub-section referred to as the “creditor”);
- (b)** the principal amount is not the whole or a part of the amount of a loan; and
- (c)** after the due date for payment or repayment of the principal amount, the whole or part of the principal amount remains unpaid,

the following provisions have effect:

- (d)** the creditor shall be deemed, immediately after the due date, to have made a loan (in this sub-section referred to as the “deemed loan”) of the principal amount to the debtor;
- (e)** at any time when the debtor is under an obligation to repay any part of the principal amount, the debtor shall be deemed to be under an obligation to repay that part of the deemed loan;
- (f)** the deemed loan shall be deemed to have been made—
 - (i)** if interest accrues on so much of the principal amount as remains from time to time unpaid—at the rate of interest at which that interest accrues; or
 - (ii)** in any other case—at a nil rate of interest.

(3) For the purposes of this Act, where a person (in this sub-section referred to as the “provider”) makes a deferred interest loan (in this sub-section referred to as the “principal loan”) to another person (in this sub-section referred to as the “recipient”)—

- (a)** the provider shall be deemed, at the end of—
 - (i)** the period of 6 months commencing on the day on which the principal loan was made; and
 - (ii)** each subsequent period of 6 months,(being in either case a period ending on or after 1 July 1986 during the whole of which the recipient is under an obligation to repay the whole or any part of the principal loan) to have made a loan (in this sub-section referred to as the “deemed loan”) to the recipient

of an amount equal to the amount by which the interest (in this sub-section referred to as the "accrued interest") that has accrued on the principal loan in respect of that period exceeds the amount (if any) paid in respect of the accrued interest before the end of that period;

- (b) where any part of the accrued interest becomes payable or is paid after the time when the deemed loan is deemed to have been made, the deemed loan shall be reduced accordingly; and
- (c) the deemed loan shall be deemed to have been made at a nil rate of interest.

(4) In sub-section (3), "deferred interest loan" means a loan in respect of which interest is payable at a rate exceeding nil, other than—

- (a) a loan where the whole of the interest is due for payment within 6 months after the loan is made; or
- (b) a loan where—
 - (i) the interest is payable by instalments;
 - (ii) the intervals between instalments do not exceed 6 months; and
 - (iii) the first instalment is due for payment within 6 months after the loan is made.

(5) For the purposes of this Act, where no interest is payable in respect of a loan, a nil rate of interest shall be taken to be payable in respect of the loan.

Exempt loan benefits

17. (1) Where—

- (a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and
- (b) the rate of interest payable in respect of the loan—
 - (i) is specified in a document in existence at the time the loan is made;
 - (ii) is not less than the rate of interest in respect of a similar arm's length loan made by the person, at or about that time, to a member of the public in the ordinary course of carrying on that business; and
 - (iii) cannot be varied,

the making of the loan is an exempt benefit.

(2) Where—

- (a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and
- (b) the rate of interest from time to time payable in respect of the loan in respect of a year of tax is not less than the rate of interest applicable at the time concerned in respect of a similar arm's length loan made by the person, at or about the time the loan referred to

in paragraph (a) is made, to a member of the public in the ordinary course of carrying on that business,
the making of the loan is an exempt benefit in relation to that year of tax.

(3) Where—

- (a) a loan consists of an advance by an employer to a current employee of the employer in respect of his or her employment;
- (b) the sole purpose of the making of the loan is to enable the employee to meet expenses incurred by the employee—
 - (i) in the course of performing the duties of his or her employment; and
 - (ii) not later than 6 months after the loan is made;
- (c) the amount of the loan does not substantially exceed the amount of those expenses that could reasonably be expected to be incurred by the employee; and
- (d) the employee is required—
 - (i) to account to the employer, not later than 6 months after the loan is made, for expenses met from the loan; and
 - (ii) to repay (whether by set-off or otherwise) any amount not so accounted for,

the making of the loan is an exempt benefit.

Subdivision B—Taxable Value of Loan Fringe Benefits

Taxable value of loan fringe benefits

18. (1) Subject to this Part, the taxable value, in relation to a year of tax, of a loan fringe benefit provided in respect of the year of tax is the amount (if any) by which the notional amount of interest in relation to the loan in respect of the year of tax exceeds the amount of interest that has accrued on the loan in respect of the year of tax.

(2) In this section—

“eligible pre-commencement loan” means a loan made before 1 July 1986 at a rate of interest that—

- (a) is specified in a document in existence at the time when the loan was made; and
- (b) cannot be varied;

“notional amount of interest”, in relation to a loan in relation to a year of tax, means the amount of interest that would have accrued on the loan in respect of the year of tax if the interest were calculated on the daily balance of the loan at—

- (a) where the loan is an eligible pre-commencement loan—
 - (i) the statutory interest rate in relation to the time when the loan was made; or
 - (ii) the statutory interest rate in relation to the year of tax,
- whichever is the less;

- (b) where the loan is not an eligible pre-commencement loan, was made before 3 April 1986 and is a housing loan relating to a dwelling—
 - (i) the statutory interest rate in relation to the year of tax; or
 - (ii) 13.5% per annum,whichever is the less; or
- (c) in any other case—the statutory interest rate in relation to the year of tax.

Reduction of taxable value

19. (1) Where—

- (a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had, on the last day of the period during the year of tax when the recipient was under an obligation to repay the whole or any part of the loan, incurred and paid interest in respect of the loan in respect of that period and had not been reimbursed in respect of any part of that interest—
 - (i) a once-only deduction would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable under that Act to the recipient in respect of a percentage (in this sub-section referred to as the “deductible percentage”) of that interest; and
 - (ii) that deduction would not be—
 - (A) a deduction in respect of rental property loan interest within the meaning of Subdivision G of Division 3 of Part III of that Act; or
 - (B) an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the loan concerned; and
- (d) where the loan was used by the recipient to purchase a car owned by the recipient during a period (in this paragraph referred to as the “holding period”) in the year of tax—the recipient gives to the employer, before the declaration date—
 - (i) a declaration, in a form approved by the Commissioner, that purports to set out—
 - (A) the holding period;
 - (B) the number of whole business kilometres travelled by the car during the holding period; and

- (C) the number of whole kilometres travelled by the car during the holding period; or
- (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—
 - (A) a declaration referred to in sub-paragraph (i); or
 - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for section 60, of the loan fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula $A(1 - B)$ where—

A is the amount that, but for this sub-section and section 60, would be the taxable value of the loan fringe benefit in relation to the year of tax; and

B is—

- (e) in a case where paragraph (d) does not apply—the deductible percentage;
- (f) where paragraph (d) applies and a declaration referred to in sub-paragraph (d) (i) has been given to the employer—
 - (i) in a case to which sub-paragraph (ii) of this paragraph does not apply—the deductible percentage or 33½%, whichever is the less; or
 - (ii) in a case where the declaration contains a statement that relevant car documents were maintained by or on behalf of the recipient and the declaration is accompanied by a copy of those documents—the deductible percentage; or
- (g) where sub-paragraph (d) (ii) applies but a declaration referred to in sub-paragraph (d) (i) has not been given to the employer—33½%.

(2) Where a part of a loan to which a loan fringe benefit relates is used by an employee to purchase a particular car, sub-section (1) applies as if that part of the loan had been a separate loan.

Division 5—Expense Payment Fringe Benefits

Subdivision A—Expense Payment Benefits

Expense payment benefits

20. Where a person (in this section referred to as the “provider”)—

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the “recipient”) to pay an amount to a third person in respect of expenditure incurred by the recipient; or

- (b) reimburses another person (in this section also referred to as the "recipient"), in whole or in part, in respect of an amount of expenditure incurred by the recipient,

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

Exempt accommodation expense payment benefits

21. Where—

- (a) an expense payment benefit is provided in a year of tax to a current employee of an employer in respect of his or her employment;
- (b) the recipients expenditure is in respect of accommodation for eligible family members and is not expenditure to which paragraph 24 (1) (b) applies;
- (c) the accommodation is required solely by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of his or her employment; and
- (d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out—
 - (i) the employee's usual place of residence; and
 - (ii) the place at which the employee actually resided while living away from his or her usual place of residence,

the benefit is an exempt benefit in relation to the year of tax.

Exempt car expense payment benefits

22. Where—

- (a) an expense payment benefit provided to an employee of an employer in respect of his or her employment is constituted by the reimbursement of the employee, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the employee in relation to a car owned by, or leased to, the employee;
- (b) in a case where the car is leased to the employee—the recipients expenditure is not attributable to a period when the lessor is the provider of a car benefit in relation to the car in relation to the employee;
- (c) the recipients expenditure is not in respect of remote area holiday transport; and
- (d) the reimbursement is calculated by reference to the distance travelled by the car,

the expense payment benefit is an exempt benefit.

Subdivision B—Taxable Value of Expense Payment Fringe Benefits

Taxable value of expense payment fringe benefits

23. Subject to this Part, the taxable value in relation to a year of tax of an expense payment fringe benefit provided during the year of tax is the amount of the payment referred to in paragraph 20 (a), or the reimbursement referred to in paragraph 20 (b), as the case requires, reduced, in a case to which paragraph 20 (a) applies, by the amount of the recipients contribution.

Reduction of taxable value

24. (1) Where—

- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had paid the whole of the recipients expenditure and had not been reimbursed in respect of any part of that expenditure—
 - (i) a once-only deduction would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act, in respect of a percentage (in this sub-section referred to as the “deductible percentage”) of the expenditure; and
 - (ii) that deduction would not be—
 - (A) a deduction in respect of rental property loan interest within the meaning of Subdivision G of Division 3 of Part III of that Act; or
 - (B) an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;
- (c) in the case of an expense payment fringe benefit that is not an eligible incidental travel expense benefit or an eligible overtime meal expense benefit—
 - (i) where the fringe benefit is an eligible small expense payment benefit—
 - (A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or
 - (B) substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is not the employer, that documentary evidence, or a copy, is given to the employer before the declaration date; or
 - (ii) in any other case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary

evidence, or a copy, is given to the employer before the declaration date;

- (d) where the expense payment fringe benefit is an extended travel expense payment benefit—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates;
- (e) except where the expense payment fringe benefit is—
 - (i) an exclusive employee expense payment benefit;
 - (ii) an eligible overtime meal expense payment benefit;
 - (iii) an eligible incidental travel expense payment benefit;
 - (iv) an extended travel expense payment benefit; or
 - (v) a car expense payment benefit,

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; and

- (f) where the expense fringe benefit is a car expense payment benefit in respect of a car owned by, or leased to, the recipient during a period (in this paragraph referred to as the “holding period”) in the year of tax—the recipient gives to the employer, before the declaration date—
 - (i) a declaration, in a form approved by the Commissioner, that purports to set out—
 - (A) the holding period;
 - (B) the number of whole business kilometres travelled by the car during the holding period; and
 - (C) the number of whole kilometres travelled by the car during the holding period; or
 - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—
 - (A) a declaration referred to in sub-paragraph (i); or
 - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for this sub-section and Division 13, of the expense payment fringe benefit in relation to the year of tax shall be reduced by the amount calculated in accordance with the formula **AB**, where—

A is—

- (g) in a case where paragraph (f) does not apply—the deductible percentage;
- (h) where paragraph (f) applies and a declaration referred to in sub-paragraph (f) (i) has been given to the employer—

- (i) in a case to which sub-paragraph (ii) of this paragraph does not apply—the deductible percentage or 33½%, whichever is the less; or
- (ii) in a case where the declaration contains a statement that relevant car documents were maintained by or on behalf of the recipient and the declaration is accompanied by a copy of those documents—the deductible percentage; or
- (j) where sub-paragraph (f) (ii) applies but a declaration referred to in sub-paragraph (f) (i) has not been given to the employer—33½%; and

B is the amount of the recipients expenditure.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient—

- (a) while undertaking travel referred to in paragraph (1) (d), engages in an activity in the course of producing assessable income of the recipient; and
- (b) does not make, as mentioned in the definition of “travel diary” in sub-section 136 (1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

(3) Where the sum of—

- (a) the recipients expenditure in respect of a small expense payment fringe benefit in relation to an employee in relation to an employer in relation to a year of tax; and
- (b) the total of the recipients expenditure in respect of all other small expense payment fringe benefits in relation to the employer in relation to the employee in relation to the year of tax, being fringe benefits provided before the fringe benefit referred to in paragraph (a),

does not exceed \$200, the fringe benefit referred to in paragraph (a) is an eligible small expense payment fringe benefit.

(4) For the purposes of paragraph (1) (c), the part of a petty cash book or similar document—

- (a) that contains an entry in the English language setting out the particulars that would be set out in documentary evidence of the recipients expenditure in relation to an expense payment fringe benefit (other than particulars of the date on which the documentary evidence was made out); and
 - (b) that is signed by or on behalf of the provider of the benefit,
- shall be deemed to be substitute documentary evidence of the recipients expenditure.

(5) Where—

(a) the recipients expenditure in relation to each of 2 or more expense payment fringe benefits (whether or not in relation to the same year of tax) is the same expenditure; and

(b) paragraph (1) (b) applies in relation to the recipients expenditure, this Act applies, and shall be deemed always to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise, and nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this sub-section.

Division 6—Housing Fringe Benefits

Subdivision A—Housing Benefits

Housing benefits

25. The subsistence during the whole or a part of a year of tax of a housing right granted by a person (in this section referred to as the “provider”) to another person (in this section referred to as the “recipient”) shall be taken to constitute a benefit provided by the provider to the recipient in respect of the year of tax.

Subdivision B—Taxable Value of Housing Fringe Benefits

Taxable value of non-remote housing fringe benefits

26. (1) The taxable value of a housing fringe benefit provided in respect of the employment of an employee (not being a remote area housing fringe benefit) in relation to a year of tax is—

(a) where the recipients unit of accommodation is not located in a State or internal Territory—so much of the market value of the recipients current housing right as exceeds the recipients rent;

(b) where—

(i) paragraph (a) does not apply;

(ii) the recipients unit of accommodation is a caravan or mobile home or is in a hotel, motel, hostel or guesthouse; and

(iii) during the whole or a part of the tenancy period, the provider carried on a business consisting of or including the provision to outsiders, in respect of identical or similar units of accommodation in the hotel, motel, hostel or guesthouse, of leases or licences that are identical or similar to the recipients overall housing right,

the amount calculated in accordance with the formula **AB**, where—

A is the market value of the recipients current housing right; and

B is—

(iv) in a case where, if the fringe benefit were not a housing fringe benefit, it would be an in-house residual fringe benefit—0.75; and

(v) in any other case—1,

- reduced by the recipients rent; and
- (c) in any other case—the amount calculated in accordance with the formula $\frac{AB}{C}$, where—

A is the statutory annual value of the recipients current housing right;

B is the number of whole days in the tenancy period; and

C is—

(i) in the case of the transitional year of tax—365; and

(ii) in the case of a standard year of tax—the number of days in the year of tax,

reduced by the recipients rent.

(2) For the purposes of the application of sub-section (1) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this sub-section referred to as the “current year of tax”), the statutory annual value of the recipients current housing right is—

- (a) if the current year of tax is a base year of tax in relation to the recipients current housing right—the amount calculated in accordance with the formula $\frac{AB}{C}$, where—

A is the market value of the recipients current housing right;

B is—

(i) in a case where the current year of tax is the transitional year of tax—365; and

(ii) in a case where the current year of tax is a standard year of tax—the number of days in the current year of tax; and

C is the number of whole days in the tenancy period; and

- (b) in any other case—the amount ascertained in accordance with the formula $\frac{AB}{C}$, where—

A is—

(i) if the year of tax immediately preceding the current year of tax was a base year of tax for the purpose of calculating the taxable value of—

(A) a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or in respect of an equivalent housing right; or

(B) each of 2 or more such housing fringe benefits, the statutory annual value for the purposes of calculating the taxable value of the fringe benefit referred to in sub-sub-paragraph (A) or the weighted average of the statutory annual values for the purpose of calculating

the taxable values of the housing fringe benefits referred to in sub-sub-paragraph (B) (those statutory annual values being weighted on the basis of the lengths of the respective periods during that preceding year of tax during which the housing rights to which those housing fringe benefits relate subsisted), as the case may be; and

- (ii) in any other case—the statutory annual value for the purpose of calculating the taxable values of housing fringe benefits in relation to the employer in relation to the year of tax immediately preceding the current year of tax, being housing fringe benefits in respect of the recipients overall housing right or equivalent housing rights; and

B is the indexation factor in respect of the current year of tax in respect of the State or Territory in which the recipients unit of accommodation is situated.

(3) For the purposes of the application of sub-section (2) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this sub-section referred to as the “current year of tax”), the current year of tax is a base year of tax in relation to the recipients current housing right if—

- (a) the current year of tax is the transitional year of tax;
- (b) there was no housing fringe benefit, in relation to the employer in relation to the year of tax immediately preceding the current year of tax, in respect of the recipients overall housing right or in respect of an equivalent housing right; or
- (c) the following conditions are satisfied:
 - (i) in relation to each of the 9 years of tax immediately preceding the current year of tax there was a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or an equivalent housing right;
 - (ii) none of those 9 years of tax was a base year of tax for the purpose of calculating the taxable value of a housing fringe benefit to which sub-paragraph (i) applies.

(4) For the purposes of this section—

- (a) 2 or more housing rights shall be taken to be included in the same class of housing rights if—
 - (i) the housing rights are in respect of the same unit of accommodation; and
 - (ii) the conditions (other than as to duration or consideration) of the housing rights are the same or substantially the same; and

- (b) a housing right shall be taken to be equivalent to another housing right if each of those housing rights is included in the same class of housing rights.
- (5) For the purposes of this section, where a material alteration to a unit of accommodation results in an increase or decrease of not less than 10% in the market value of the right to occupy or use the unit—
 - (a) the unit of accommodation after the alteration shall be deemed to be a different unit of accommodation from the unit of accommodation before the alteration; and
 - (b) if the alteration occurs during the subsistence of a housing right granted to a person in respect of the unit of accommodation, that housing right, as it subsists after the alteration, shall be deemed to have been granted to the person in respect of the unit of accommodation as it existed after the alteration and to have been so granted in the same circumstances as the first-mentioned housing right.
- (6) A reference in sub-section (5) to a material alteration to a unit of accommodation is a reference to—
 - (a) additions or improvements made to, or other work carried out in relation to;
 - (b) any damage to; or
 - (c) the addition of facilities to, or the removal of facilities from,the unit of accommodation or any building, place or facility associated with the occupation or use of the unit of accommodation.

Determination of market value of housing right

27. (1) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit, where the recipient is entitled, pursuant to the housing right, to require a second person to—

- (a) make a payment in discharge, in whole or in part, of an obligation of the recipient to pay an amount to a third person in respect of expenditure incurred by the recipient; or
 - (b) to reimburse the recipient, in whole or in part, in respect of an amount of expenditure incurred by the recipient,
- that entitlement shall be disregarded.

(2) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit provided in respect of the employment of an employee, any onerous conditions that are attached to the housing right and that relate to his or her employment shall be disregarded.

Indexation factor for valuation purposes

28. (1) For the purposes of this Subdivision, the indexation factor in respect of a year of tax (in this sub-section referred to as the “current year of tax”) in respect of a State or Territory is the number (calculated to 3

decimal places) ascertained, as at the date on which the rent index number in respect of the State or Territory for the December quarter immediately preceding the current year of tax was first published, by dividing the sum of—

- (a) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the current year of tax; and
- (b) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded that quarter,

by the sum of—

- (c) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the year of tax that next preceded the current year of tax; and
- (d) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded the last-mentioned quarter.

(2) Subject to sub-section (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes a rent index number in respect of a State or Territory in respect of a quarter in substitution for a rent index number in respect of the State or Territory previously published in respect of that quarter, the publication of the later rent index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the rent sub-group of the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index numbers published in terms of the new reference base.

(4) Where the factor ascertained in accordance with sub-section (1) in relation to a year of tax would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that sub-section in relation to that year of tax shall be taken to be the factor calculated to 3 decimal places in accordance with that sub-section and increased by 0.001.

(5) For the purposes of this Subdivision—

- (a) the Jervis Bay Territory shall be deemed to be part of the State of New South Wales; and
- (b) the Territory of Christmas Island shall be deemed to be part of the Northern Territory.

Taxable value of remote area accommodation

29. (1) The taxable value of a remote area housing fringe benefit in relation to an employer in relation to a year of tax is—

- (a) if the employer has made an election under sub-section (2) in relation to the year of tax—the amount calculated in accordance with the formula $\frac{3AB}{5C}$, where—

A is the statutory annual rent amount in relation to the year of tax;

B is the number of whole days in the tenancy period; and

C is—

(i) in the case of the transitional year of tax—365; and

(ii) in any other case—the number of days in the year of tax,

reduced by the recipients rent;

- (b) where—

(i) paragraph (a) does not apply; and

(ii) if the housing fringe benefit were not a remote area housing fringe benefit, the taxable value of the fringe benefit would be calculated under paragraph 26 (1) (b),

the amount that would be calculated under that paragraph if component B in the formula in that paragraph were 0.6; or

- (c) in any other case—the amount that would be calculated under paragraph 26 (1) (c) if the amount represented by component A in the formula in that paragraph were reduced by 40%.

(2) An employer may elect, on or before the declaration date, that paragraph (1) (a) be applied in determining the taxable values of all remote area housing fringe benefits in relation to the employer in relation to the year of tax.

(3) Where an employer makes an election under sub-section (2) in relation to a year of tax, the employer shall be deemed also to have made an election under that sub-section in respect of each subsequent year of tax.

(4) For the purposes of this section, a housing fringe benefit in relation to an employer in relation to a year of tax in relation to a unit of accommodation shall be taken to be a remote area housing fringe benefit if—

- (a) during the whole of the tenancy period, the unit of accommodation was located in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area;

- (b) during the whole of the tenancy period, the recipient was a current employee of the employer and the usual place of employment of the recipient was not at a location in, or adjacent to, an eligible urban area;

- (c) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees without charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned;
 - (d) it would be concluded that it was necessary for the employer, during the year of tax, to provide or to arrange for the provision of residential accommodation for employees of the employer by reason that—
 - (i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence;
 - (ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or
 - (iii) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees free of charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned; and
 - (e) the recipients overall housing right was not granted to the recipient pursuant to—
 - (i) an arrangement other than an arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section.
- (5) For the purposes of sub-section (4)—
- (a) where a unit of accommodation is at a location in, or adjacent to, an eligible urban area and adjacent to, or in close proximity to, another unit of accommodation that is occupied or used and is not at a location in, or adjacent to, an eligible urban area, the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat the first-mentioned unit of accommodation as not being at a location in, or adjacent to, an eligible urban area; and
 - (b) where the usual place of employment of a person is at a location in, or adjacent to, an eligible urban area and adjacent to, or in close proximity to, another location at which persons are employed, being another location that is not in, or adjacent to, an eligible urban area, the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat

that place of employment of the first-mentioned person as not being at a location in, or adjacent to, an eligible urban area.

Division 7—Living-away-from-home Allowance Fringe Benefits

Subdivision A—Living-away-from-home Allowance Benefits

Living-away-from-home allowance benefits

30. Where—

- (a) at a particular time, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and
- (b) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for—
 - (i) additional expenses (not being deductible expenses) incurred by the employee during a period; or
 - (ii) additional expenses (not being deductible expenses) incurred by the employee, and other additional disadvantages to which the employee is subject, during a period,

by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of his or her employment,

the payment of the whole, or of the part, as the case may be, of the allowance constitutes a benefit provided by the employer to the employee at that time.

Subdivision B—Taxable Value of Living-away-from-home Allowance Fringe Benefits

Taxable value of living-away-from-home allowance fringe benefits

31. The taxable value of a living-away-from-home allowance fringe benefit in relation to a year of tax is the amount of the recipients allowance reduced by—

- (a) any exempt accommodation component; and
- (b) any exempt food component.

Division 8—Airline Transport Fringe Benefits

Subdivision A—Airline Transport Benefits

Airline transport benefits

32. Where—

- (a) in respect of the employment of an employee of an employer, a person (in this section referred to as the “provider”) provides transport, in a passenger aircraft of the provider, to another person (in this section referred to as the “recipient”), being the employee or an associate of the employee;

- (b) at or about the time when that transport commences to be provided—
 - (i) the provider is an airline operator; and
 - (ii) either of the following conditions is satisfied:
 - (A) the employer, or an associate of the employer, is an airline operator;
 - (B) the employer is a travel agent; and
- (c) the transport is provided subject to the stand-by restrictions that customarily apply in relation to the provision of airline transport to employees in the airline industry,

the provision of that transport and any incidental services provided on board the aircraft shall be deemed to constitute a benefit provided by the provider to the recipient at the time when the transport commences to be provided, and not otherwise.

Subdivision B—Taxable Value of Airline Transport Fringe Benefits

Taxable value of airline transport fringe benefits

33. Subject to this Part, the taxable value of an airline transport fringe benefit in relation to a year of tax is the stand-by value of the recipients transport reduced by the amount of the recipients contribution.

Reduction of taxable value

34. (1) Where—

- (a) the recipient of an airline transport fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had, at the comparison time, incurred and paid expenditure in respect of the provision of the recipients transport and had not been reimbursed in respect of any part of that expenditure, a once-only deduction would, or would but for section 82A, and Subdivision F of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of a percentage (in this sub-section referred to as the “deductible percentage”) of the expenditure;
- (c) except where the fringe benefit is—
 - (i) an exclusive employee airline transport benefit; or
 - (ii) an extended travel airline transport benefit,the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients transport; and
- (d) where the fringe benefit is an extended travel airline transport benefit—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient in connection with the recipients transport,

the amount that, but for this sub-section and Division 13, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the deductible percentage.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient—

- (a) while undertaking travel referred to in paragraph (1) (d), engages in an activity in the course of producing assessable income of the recipient; and
- (b) does not make, as mentioned in the definition of “travel diary” in sub-section 136 (1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

Division 9—Board Fringe Benefits

Subdivision A—Board Benefits

Board benefits

35. Where, at a particular time, a person (in this section referred to as the “provider”) provides a board meal to another person (in this section referred to as the “recipient”), the provision of the meal shall be taken to constitute a benefit provided by the provider to the recipient at that time.

Subdivision B—Taxable Value of Board Fringe Benefits

Taxable value of board fringe benefits

36. Subject to this Part, the taxable value of a board fringe benefit in relation to a year of tax is—

- (a) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—\$2.00; or
- (b) in any other case—\$1.00,

reduced by the amount of the recipients contribution.

Reduction of taxable value

37. Where—

- (a) the recipient of a board fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, at the time when the benefit was provided, incurred and paid expenditure in respect of the provision of the recipients meal and had not been reimbursed in respect of any part of that expenditure, a deduction would, or would but for section 82A, and Subdivision F of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable under section 51 of that Act to the recipient in a year of income in respect of a percentage

(in this sub-section referred to as the “deductible percentage”) of the expenditure,
the amount that, but for this section, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the deductible percentage.

Division 10—Tax-exempt Body Entertainment Fringe Benefits

Subdivision A—Tax-exempt Body Entertainment Benefits

Tax-exempt body entertainment benefits

38. Where, at a particular time, a person (in this section referred to as the “provider”) incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision, in respect of the employment of an employee, of entertainment to a person (in this section referred to as the “recipient”) being the employee or an associate of the employee, the incurring of the expenditure shall be taken to constitute a benefit provided by the provider to the recipient at that time in respect of that employment.

Subdivision B—Taxable Value of Tax-exempt Body Entertainment Fringe Benefits

Taxable value of tax-exempt body entertainment fringe benefits

39. The taxable value of a tax-exempt body entertainment fringe benefit in relation to an employer in relation to a year of tax is so much of the expenditure referred to in section 38 as is attributable to the provision of the entertainment referred to in that section.

Division 11—Property Fringe Benefits

Subdivision A—Property Benefits

Property benefits

40. Where, at a particular time, a person (in this section referred to as the “provider”) provides property to another person (in this section referred to as the “recipient”), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

Exempt property benefits

41. Where—

- (a) a property benefit is provided to a current employee of an employer in respect of his or her employment; and
- (b) the property is provided to, and consumed by, the employee on a working day and on business premises of—
 - (i) the employer; or
 - (ii) if the employer is a company, of the employer or of a company that is related to the employer,

the benefit is an exempt benefit.

Subdivision B—Taxable Value of Property Fringe Benefits

Taxable value of in-house property fringe benefits

42. (1) Subject to this Part, the taxable value of an in-house property fringe benefit in relation to an employer in relation to a year of tax is—

(a) where the recipients property was manufactured, produced, processed or treated by the provider—

(i) if identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider in the ordinary course of business to purchasers being manufacturers, wholesalers or retailers, an amount equal to—

(A) if any of that identical property was, at or about the provision time, sold by the provider under an arm's length transaction or arm's length transactions—the lowest price at which it was sold under such a transaction; or

(B) if sub-sub-paragraph (A) does not apply—the lowest price at which any of that identical property could reasonably be expected to have been sold by the provider at or about the provision time under an arm's length transaction,

increased, where sales tax was not, or would not have been, payable, by the provider in respect of the sale concerned, by the amount of any sales tax payable by the provider in respect of the provision of the recipient's property to the recipient;

(ii) where sub-paragraph (i) does not apply but identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider—

(A) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and

(B) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients property to the recipient,

an amount equal to 75% of the lowest price at which that property was so sold to a member of the public; or

(iii) in any other case—an amount equal to 75% of the notional value of the recipients property at the provision time;

(b) where paragraph (a) does not apply and the property was acquired by the provider—an amount equal to the lesser of—

- (i) the arm's length price in respect of the acquisition of the recipients property by the provider increased, in a case where sales tax was not payable by the person from whom the provider acquired the property in respect of the disposal of the property to the provider, by the amount of any sales tax payable in respect of the provision of the recipients property to the recipient; or
 - (ii) the notional value of the recipients property at the provision time; or
- (c) in any other case—an amount equal to 75% of the notional value of the recipients property at the provision time, reduced by the amount of the recipients contribution.

(2) In sub-section (1), "arm's length price", in respect of the acquisition of the recipients property by the provider, means—

- (a) if the recipients property was acquired by the provider in the ordinary course of business under an arm's length transaction—the cost price of the recipients property to the provider; or
- (b) in any other case—the amount that the provider could reasonably be expected to have been required to pay to acquire the recipients property under an arm's length transaction in the ordinary course of business.

Taxable value of external property fringe benefits

43. Subject to this Part, the taxable value of an external property fringe benefit in relation to an employer in relation to a year of tax is—

- (a) where the provider was the employer or an associate of the employer and the recipients property was purchased by the provider under an arm's length transaction at or about the provision time—the cost price of the recipients property to the provider;
 - (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the property—the amount of that expenditure; or
 - (c) in any other case—the notional value of the recipients property at the provision time,
- reduced by the amount of the recipients contribution.

Reduction of taxable value

44. (1) Where—

- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had, at the provision time, incurred and paid expenditure in respect of the purchase of the recipients property and had not been reimbursed in respect of any part of that expenditure—

- (i) a once-only deduction would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of a percentage (in this sub-section referred to as the “deductible percentage”) of the expenditure; and
 - (ii) the deduction would not be an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;
- (c) except where the property fringe benefit is—
- (i) an exclusive employee property benefit;
 - (ii) an extended travel property benefit; or
 - (iii) a car property benefit,
- the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients property;
- (d) where the property fringe benefit is an extended travel property benefit—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and
- (e) where the property fringe benefit is a car property benefit in respect of a car owned by, or leased to, the recipient during a period (in this section referred to as the “holding period”) in the year of tax—the recipient gives to the employer, before the declaration date—
- (i) a declaration, in a form approved by the Commissioner, that purports to set out—
 - (A) the holding period;
 - (B) the number of whole business kilometres travelled by the car during the holding period; and
 - (C) the number of whole kilometres travelled by the car during the holding period; or
 - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—
 - (A) a declaration referred to in sub-paragraph (i); or
 - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for Division 13, of the property fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula $A - B$, where—

- A** is the amount that, but for this sub-section and Division 13, would be the taxable value of the property fringe benefit in relation to the year of tax; and

B is—

- (f) in a case where paragraph (e) does not apply—the deductible percentage;
- (g) where paragraph (e) applies and a declaration referred to in sub-paragraph (e) (i) has been given to the employer—
 - (i) in a case to which sub-paragraph (ii) of this paragraph does not apply—the deductible percentage or 33½%, whichever is the less; or
 - (ii) in a case where the declaration contains a statement that relevant car documents were maintained by or on behalf of the recipient and the declaration is accompanied by a copy of those documents—the deductible percentage; or
- (h) where sub-paragraph (e) (ii) applies but a declaration referred to in sub-paragraph (e) (i) has not been given to the employer—33½%.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient—

- (a) while undertaking travel referred to in paragraph (1) (d), engages in an activity in the course of producing assessable income of the recipient; and
- (b) does not make, as mentioned in the definition of “travel diary” in sub-section 136 (1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

Division 12—Residual Fringe Benefits

Subdivision A—Residual Benefits

Residual benefits

45. A benefit is a residual benefit for the purposes of this Act if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive).

Year of tax in which residual benefits taxed

46. (1) Subject to this section, a residual benefit that is provided during a period shall be deemed to have been provided in respect of each year of tax during which any part of that period occurred.

(2) Where—

- (a) a residual benefit (in this sub-section referred to as the “eligible benefit”), not being a residual benefit constituted by a lease or licence in respect of property, is provided on the basis that, in respect of each of a number of regular periods (in this sub-section

referred to as a “billing period”) commencing on or after 1 July 1986 (whether or not there were any such periods before that date), a payment is to be made in respect of the provision of the benefit during the billing period; and

- (b) identical benefits are provided to members of the public on the same basis and in the ordinary course of a business carried on by the person providing the eligible benefit,

the following provisions have effect:

- (c) the provision of the eligible benefit during each billing period shall be taken to constitute a separate benefit;
- (d) each such separate residual benefit shall be deemed to have been provided at the time at which the payment in respect of the billing period concerned is due and payable, and not otherwise.

Exempt residual benefits

47. (1) Where—

- (a) in respect of the employment of a current employee, the employer, or an associate of the employer, provides a residual benefit to the employee that consists of transport of the employee, otherwise than in an aircraft—
 - (i) between—
 - (A) the place of residence of the employee; and
 - (B) the place of employment of the employee or any other place from which or at which the employee performs duties of his or her employment; or
 - (ii) in a case where the place referred to in sub-sub-paragraph (i) (B) is in a metropolitan area—on a regular and scheduled service over a route wholly within that metropolitan area;
- (b) where the provider is the employer—the employer carries on a business of providing transport to members of the public;
- (c) where the provider is an associate of the employer—the employer and the associate each carries on a business of providing transport to members of the public;
- (d) the transport referred to in paragraph (a) is provided in the same, or substantially the same, circumstances as transport provided to members of the public in the ordinary course of carrying on a business of providing transport to members of the public; and
- (e) the employee is employed in the business of providing transport to members of the public,

the benefit is an exempt benefit.

(2) Where—

- (a) a residual benefit provided to a current employee in respect of his or her employment consists of—
 - (i) the provision, or use, of a recreational facility; or

- (ii) the care of children of the employee in a child care facility;
and
- (b) the recreational facility or child care facility, as the case may be, is located on business premises of—
 - (i) the employer; or
 - (ii) if the employer is a company, of the employer or of a company that is related to the employer,the benefit is an exempt benefit.

(3) Where a residual benefit provided to a current employee in respect of his or her employment consists of the use, on a working day, of property that is located on business premises of, and is wholly or principally used directly in connection with business operations of—

- (a) the employer; or
 - (b) if the employer is a company—the employer or a company that is related to the employer,
- the benefit is an exempt benefit.

(4) For the purposes of sub-section (3), toilets, bathroom facilities, food or drink vending machines, tea or coffee making facilities, water dispensers or other amenities (not being facilities for drinking or dining) for the use of employees of an employer shall be taken to be principally used directly in connection with business operations of the employer.

(5) Where—

- (a) a residual benefit consisting of the subsistence, during a year of tax, of a lease or licence in respect of a unit of accommodation is provided to an employee of an employer in respect of his or her employment;
- (b) the unit of accommodation is for the accommodation of eligible family members and is provided solely by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of his or her employment;
- (c) if the recipient had, at the time when the lease or licence was granted, incurred expenditure in respect of the provision of the benefit and had not been reimbursed in respect of any part of that expenditure, paragraph 52 (1) (b) would not apply to that expenditure; and
- (d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out—
 - (i) the employee's usual place of residence; and
 - (ii) the place at which the employee actually resided while living away from his or her usual place of residence,the benefit is an exempt benefit in relation to the year of tax.

(6) Where—

- (a) a residual benefit consisting of the provision or use of a motor vehicle is provided in a year of tax in respect of the employment of a current employee; and
- (b) either of the following conditions is satisfied:
 - (i) the motor vehicle was not applied to a private use at any time during the year of tax when the benefit was provided;
 - (ii) all private use of the motor vehicle during the year of tax and at a time when the benefit was provided consisted of work-related travel of the employee,

the benefit is an exempt benefit in relation to the year of tax.

(7) Where, during a period of employment with an employer—

- (a) an employee's usual place of employment is—
 - (i) on an oil rig, or other installation, at sea; or
 - (ii) at a location in a State or internal Territory but not in, or adjacent to, an eligible urban area;
- (b) the employee is provided with residential accommodation, at or near that usual place of employment, by—
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (in this sub-paragraph referred to as the "arranger") other than the employer or an associate of the employer under an arrangement between—
 - (A) the employer or an associate of the employer; and
 - (B) the arranger or another person;
- (c) the employee, on a regular basis—
 - (i) works for a number of days and has a number of days off; and
 - (ii) on completion of the working days, travels from that usual place of employment to his or her usual place of residence and, on completion of the days off, returns from his or her usual place of residence to that usual place of employment; and
- (d) the employee is provided with transport on a regular basis in connection with the travel referred to in sub-paragraph (c) (ii) and that transport is provided by—
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (in this sub-paragraph referred to as the "arranger") other than the employer or an associate of the employer under an arrangement between—
 - (A) the employer or an associate of the employer; and
 - (B) the arranger or another person,

and, having regard to the location of that usual place of employment and the location of the employee's usual place of residence, it would be unreasonable to expect the employee to travel between those places on work days on a daily basis, the residual benefit constituted by the provision of the transport referred to in paragraph (d) is an exempt benefit.

(8) Where—

- (a) a residual benefit provided in respect of the employment of an employee arose out of priority of access, for a child or children of the employee, to a child care facility operated by an eligible organisation within the meaning of section 4 of the *Child Care Act 1972*;
- (b) the employer of the employee, or an associate of the employer, made a contribution, under the scheme administered by the Commonwealth and known as the Children's Services Program, to obtain that priority of access; and
- (c) a grant has been made to the eligible organisation in respect of the child care facility under section 11 of the *Child Care Act 1972*,

the residual benefit is an exempt benefit.

Subdivision B—Taxable Value of Residual Fringe Benefits

Taxable value of in-house non-period residual fringe benefits

48. Subject to this Part, the taxable value of an in-house non-period residual fringe benefit in relation to an employer in relation to a year of tax is—

- (a) where, at or about the comparison time, identical benefits were provided by the provider—
 - (i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
 - (ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients benefit to the recipient,

an amount equal to 75% of the lowest price at which an identical benefit was so sold to a member of the public; or

- (b) in any other case—an amount equal to 75% of the notional value of the benefit at the comparison time,

reduced by the amount of the recipients contribution.

Taxable value of in-house period residual fringe benefits

49. Subject to this Part, the taxable value of an in-house period residual fringe benefit in relation to a year of tax is—

- (a) where, at or about the comparison time, identical overall benefits were provided by the provider—

- (i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
 - (ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients overall benefit, an amount equal to 75% of the lowest amount paid or payable by any such member of the public in respect of the current identical benefit in relation to an identical overall benefit so provided; or
- (b) in any other case—an amount equal to 75% of the notional value of the recipients current benefit,
- reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

Taxable value of external non-period residual fringe benefits

50. Subject to this Part, the taxable value of an external non-period residual fringe benefit in relation to an employer in relation to a year of tax is—

- (a) where the provider was the employer or an associate of the employer and the benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider for the benefit;
 - (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the benefit—the amount of that expenditure; or
 - (c) in any other case—the notional value of the benefit at the comparison time,
- reduced by the amount of the recipients contribution.

Taxable value of external period residual fringe benefits

51. Subject to this Part, the taxable value of an external period residual fringe benefit in relation to an employer in relation to a year of tax is—

- (a) where the provider was the employer or an associate of the employer and the recipients overall benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider in respect of the recipients current benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the recipients current benefit—the amount of that expenditure; or
- (c) in any other case—the notional value of the recipients current benefit,

reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

Reduction of taxable value

52. (1) Where—

- (a) the recipient of a residual fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had, at the comparison time, incurred and paid expenditure in respect of the provision of the recipients benefit and had not been reimbursed in respect of any part of that expenditure—
 - (i) a once-only deduction would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of a percentage (in this sub-section referred to as the “deductible percentage”) of the expenditure; and
 - (ii) the deduction would not be an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;
- (c) except where the fringe benefit is—
 - (i) an exclusive employee residual benefit;
 - (ii) an extended travel residual benefit; or
 - (iii) a car residual benefit,the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients benefit;
- (d) where the fringe benefit is an extended travel residual benefit—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and
- (e) where the fringe benefit is a car residual benefit in respect of a car owned by, or leased to, the recipient during a period (in this section referred to as the “holding period”) in the year of tax—the recipient gives to the employer, before the declaration date—
 - (i) a declaration, in a form approved by the Commissioner, that purports to set out—
 - (A) the holding period;
 - (B) the number of whole business kilometres travelled by the car during the holding period; and
 - (C) the number of whole kilometres travelled by the car during the holding period; or
 - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—
 - (A) a declaration referred to in sub-paragraph (i); or

- (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for Division 13, of the residual fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula $A(1 - B)$, where—

A is the amount that, but for this sub-section and Division 13, would be the taxable value of the residual fringe benefit in relation to the year of tax; and

B is—

- (f) in a case where paragraph (e) does not apply—the deductible percentage;
- (g) where paragraph (e) applies and a declaration referred to in sub-paragraph (e) (i) has been given to the employer—
 - (i) in a case to which sub-paragraph (ii) of this paragraph does not apply—the deductible percentage or 33½%, whichever is the less; or
 - (ii) in a case where the declaration contains a statement that relevant car documents were maintained by or on behalf of the recipient and the declaration is accompanied by a copy of those documents—the deductible percentage; or
- (h) where sub-paragraph (e) (ii) applies but a declaration referred to in sub-paragraph (e) (i) has not been given to the employer—33½%.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient—

- (a) while undertaking travel referred to in paragraph (1) (d), engages in an activity in the course of producing assessable income of the recipient; and
- (b) does not make, as mentioned in the definition of “travel diary” in sub-section 136 (1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

Division 13—Miscellaneous

Motor vehicle fringe benefit fuel, &c., to be exempt in certain cases

53. (1) For the purposes of this Act—

- (a) a car expense payment benefit;
- (b) a car property benefit; or

(c) a car residual benefit,
in respect of a car, being a benefit that is attributable to a period when a car fringe benefit was provided, or would but for sub-section 8 (2) have been provided, in relation to the car, is an exempt benefit.

(2) Where the provision or use of a motor vehicle would, but for sub-section 47 (6), be a residual fringe benefit in relation to a period in a year of tax, sub-section (1) applies in relation to the motor vehicle as if—

- (a) the motor vehicle were a car; and
- (b) a car fringe benefit were provided during that period in relation to the motor vehicle.

(3) In this section—

“car expense payment benefit” means an expense payment benefit where the recipients expenditure is a car expense;

“car property benefit” means a property benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a car expense;

“car residual benefit” means a residual benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a car expense.

Provision of food or drink to be exempt benefit in certain cases

54. Where—

- (a) a board fringe benefit in relation to an employer is provided on a particular day;
- (b) on that day, the provider of the fringe benefit also provides food or drink (not being a meal) to the recipient of the fringe benefit; and
- (c) the food or drink—
 - (i) is provided to, and consumed by, the recipient on that day on eligible premises of the employer; and
 - (ii) is not provided at a party, reception or other social function,

the provision of the food or drink is an exempt benefit.

Benefits provided by certain international organisations to be exempt

55. A benefit provided in respect of the employment of an employee of an employer is an exempt benefit if—

- (a) the employer is an organisation that, but for sub-sections 66 (2) and (3), would be exempt from a liability to pay tax in respect of the benefit by virtue of the operation of the *International Organizations (Privileges and Immunities) Act 1963*; or
- (b) the employer is an organisation established by an agreement to which Australia is a party and which obliges Australia to grant the employer an exemption from a liability to pay tax in respect of the benefit.

Preservation of diplomatic and consular immunities

56. A benefit that, but for sub-sections 66 (2) and (3), would be exempt from tax by virtue of the *Consular Privileges and Immunities Act 1972* or the *Diplomatic Privileges and Immunities Act 1967* is an exempt benefit.

Provision of benefits to employees of religious institutions to be exempt in certain cases

57. Where—

- (a) the employer of an employee is a religious institution;
- (b) the employee is—
 - (i) a minister of religion;
 - (ii) a full-time member of a religious order; or
 - (iii) a student at a college conducted solely for training persons to become members of religious orders;
- (c) a benefit is provided to, or to a spouse or a child of, the employee; and
- (d) the benefit is not provided principally in respect of duties of the employee other than—
 - (i) any pastoral duties; or
 - (ii) any other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs,

the benefit is an exempt benefit.

Provision of benefits to employees of public benevolent institutions to be exempt

57A. Where a public benevolent institution provides a benefit to an employee of the institution, the benefit is an exempt benefit.

Provision of live-in residential accommodation, or residential fuel, to live-in residential care workers to be exempt benefits

58. (1) Where, during a period—

- (a) the employer of an employee is—
 - (i) a government body; or
 - (ii) a religious institution or a non-profit company, whose activities consist of, or include, caring for disadvantaged persons;
- (b) the duties of the employment of the employee consist of, or consist principally of, caring for disadvantaged persons;
- (c) in the performance of those duties, the employee lives, together with disadvantaged persons, in residential premises of the employer; and
- (d) the fact that the person lives in those premises is directly related to the provision, in the course of the performance of the duties of the

employment of the employee, of care to the disadvantaged persons living in those premises,

any benefit arising from the provision, during that period, of—

- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in those premises with the employee; or
- (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee,

is an exempt benefit.

(2) In this section—

“disadvantaged person” means a person who is intellectually, psychiatrically or physically handicapped or is in necessitous circumstances;

“residential premises” means a house or hostel used exclusively for the provision of residential accommodation to—

- (a) disadvantaged persons;
- (b) persons the duties of whose employment consist of, or consist principally of, caring for persons referred to in paragraph (a); and
- (c) spouses and children of persons referred to in paragraph (b).

Taxable value of certain fringe benefits in respect of remote area residential fuel

59. (1) Where—

- (a) residential fuel is for use—
 - (i) in connection with the recipients unit of accommodation; and
 - (ii) during the subsistence of the recipients overall housing right, in relation to a remote area housing fringe benefit in relation to an employer in relation to a year of tax; and
- (b) any of the following conditions are satisfied—
 - (i) the recipients expenditure in relation to an expense payment fringe benefit in relation to the employer in relation to the year of tax or a subsequent year of tax is in respect of the supply of that residential fuel;
 - (ii) the recipients property in relation to a property fringe benefit in relation to the employer in relation to the year of tax is that residential fuel;
 - (iii) the recipients benefit in relation to a residual fringe benefit in relation to the employer in relation to the year of tax is the benefit of the consumption of that residential fuel,

the following provisions have effect:

- (c) if the taxable value of the fringe benefit referred to in paragraph (a) is ascertained under paragraph 29 (1) (a)—the taxable value of the fringe benefit referred to in paragraph (b) shall be taken to be nil;
- (d) in any other case—the amount that, but for this sub-section and section 62, would be the taxable value of the fringe benefit referred to in paragraph (b) in relation to the year of tax shall be reduced by 40%.

(2) Where—

- (a) any of the following conditions are satisfied:
 - (i) the recipients expenditure in relation to an expense payment fringe benefit in relation to a year of tax is in respect of the supply of residential fuel;
 - (ii) the recipients property in relation to a property fringe benefit in relation to a year of tax is residential fuel;
 - (iii) the recipients benefit in relation to a residual fringe benefit in relation to a year of tax is the benefit of the consumption of residential fuel; and
- (b) the residential fuel is for use in connection with a dwelling during a period in the year of tax or, in a case to which sub-paragraph (a) (i) applies, a preceding year of tax, when the recipient of the fringe benefit occupied or used the dwelling as his or her usual place of residence and was under an obligation to repay the whole or a part of a remote area housing loan connected with the dwelling,

the amount that, but for this sub-section and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 40%.

Reduction of taxable value of certain fringe benefits related to remote area housing

60. (1) Where—

- (a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) the loan is a remote area housing loan connected with a dwelling; and
- (c) the recipient occupied or used the dwelling as his or her usual place of residence during a period in the year of tax (in this section referred to as the “occupation period”) during which the recipient was under an obligation to repay the whole or a part of the loan,

the amount that, but for this sub-section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 40% of so much of that amount as relates to the occupation period.

(2) Where—

- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

- (b) the recipients expenditure is in respect of interest in respect of a remote area housing loan connected with a dwelling; and
- (c) the recipient occupied or used the dwelling as his or her usual place of residence during a period in the year of tax (in this section referred to as the "occupation period") during which the interest accrued,

the amount that, but for this sub-section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 40% of so much of that amount as relates to the occupation period.

(3) Where—

- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) the recipients property is remote area residential property,
- the amount that, but for this sub-section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 40%.

Reduction of taxable value of certain fringe benefits in respect of remote area holiday transport

61. (1) Where—

- (a) the recipients expenditure in relation to an expense payment fringe benefit in relation to a year of tax is in respect of remote area holiday transport;
- (b) in a case to which paragraph (c) does not apply—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
- (c) in a case where—

- (i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient; and
- (ii) the reimbursement is calculated by reference to the distance travelled by the car,

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out—

- (iii) particulars of the car; and
- (iv) the number of whole kilometres travelled by the car in providing transport by virtue of which the recipients expenditure is in respect of remote area holiday transport,

the amount that, but for this sub-section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by—

- (d) where paragraph (c) does not apply—50%; and

- (e) where paragraph (c) applies—50% of so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the rate prescribed for the purposes of paragraph 82KX (1) (a) of the *Income Tax Assessment Act 1936*.

(2) Where the recipients benefit in relation to a residual fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this sub-section and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by 50%.

Reduction of aggregate taxable value of certain fringe benefits

62. (1) Where one or more eligible fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee of the employer, the taxable value of that fringe benefit, or the sum of the taxable values of those fringe benefits, as the case may be, in relation to that year shall be reduced by—

- (a) in the case of the transitional year of tax—
 - (i) where the taxable value or the sum of the taxable values does not exceed \$150—an amount equal to the taxable value or the sum of the taxable values, as the case may be; or
 - (ii) in any other case—\$150; and
- (b) in relation to a standard year of tax—
 - (i) where the taxable value or the sum of the taxable values does not exceed \$200—an amount equal to the taxable value or the sum of the taxable values, as the case may be; or
 - (ii) in any other case—\$200.

(2) In this section, “eligible fringe benefit” means—

- (a) an in-house fringe benefit; or
- (b) an airline transport fringe benefit.

Reduction of taxable value of living-away-from-home food fringe benefits

63. Where—

- (a) a living-away-from-home food fringe benefit, or 2 or more living-away-from-home food fringe benefits, in relation to an employer in relation to a year of tax relates or relate to a particular employee;
- (b) the fringe benefit or fringe benefits are equivalent to the food component of a living-away-from-home allowance fringe benefit in respect of a particular period in the year of tax;
- (c) that food component exceeds the sum of the statutory food amounts in respect of eligible family members in respect of that period; and
- (d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of—

- (i) the employee's usual place of residence during that period; and
- (ii) the place at which the employee actually resided during that period,

the following provisions apply:

- (e) if there is only one living-away-from-home food fringe benefit—the amount that, but for this section and section 62 and the recipients contribution, would be the taxable value of that fringe benefit, shall be reduced by the amount of the excess referred to in paragraph (c);
- (f) if there are 2 or more living-away-from-home food fringe benefits—the amounts that, but for this section and section 62 and the recipients contribution, would be the taxable values of those fringe benefits shall be reduced by amounts proportionate to those taxable values and equal in total to the amount of the excess referred to in paragraph (c).

Reduction of taxable value in respect of entertainment component of certain fringe benefits

64. (1) Where a percentage of the expenditure incurred by the provider of an expense payment fringe benefit in respect of the provision of the benefit is eligible entertainment expenditure, the amount that, but for this sub-section, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage of the expenditure.

(2) For the purposes of sub-section (1), where—

- (a) the expenditure incurred by the provider of an expense payment fringe benefit in respect of the provision of the benefit (in this sub-section referred to as the "providers expenditure") is not incurred in producing assessable income; and
- (b) the whole or a part (which whole or part is in this sub-section referred to as the "entertainment amount") of the providers expenditure—

- (i) would, but for this sub-section, be eligible entertainment expenditure; and

- (ii) is not expenditure to which section 38 applies,

so much of the providers expenditure as is equal to the entertainment amount shall be taken not to be eligible entertainment expenditure.

(3) Where a percentage of the expenditure (if any) incurred by the provider in respect of the provision of a property fringe benefit or airline transport fringe benefit in relation to a year of tax is eligible entertainment expenditure, the amount that, but for this sub-section and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage of the expenditure.

(4) Where—

- (a) a residual fringe benefit in relation to a year of tax is constituted by the use of depreciable property; and
- (b) a percentage of that use is for the purposes of, or in connection with, the provision of entertainment,

the amount that, but for this sub-section and section 62 and the recipients contribution, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage.

(5) For the purposes of sub-section (4), a use of property shall not be taken to be for the purposes of, or in connection with, the provision of entertainment to the extent to which, if the provider of the fringe benefit referred to in that sub-section had incurred expenditure in respect of leasing the property referred to in that sub-section, sub-section 65 (1) would apply in relation to that expenditure.

(6) Where—

- (a) a residual fringe benefit in relation to a year of tax is constituted by the use, during a period during the year of tax, of property (other than depreciable property) leased to the provider;
- (b) the provider incurs expenditure in respect of leasing the property during that period; and
- (c) a percentage of that expenditure is eligible entertainment expenditure,

the amount that, but for this sub-section and section 62 and the recipients contribution, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage.

(7) Where a percentage of the total expenditure (if any) incurred by the provider in respect of the provision of a residual fringe benefit in relation to a year of tax that is not constituted by the use of property is eligible entertainment expenditure, the amount that, but for this sub-section and section 62, would be the taxable value of that fringe benefit shall be reduced by that percentage of the expenditure.

(8) Where the Commissioner is satisfied that the taxable value of a fringe benefit has been reduced under Division 5, 8, 11 or 12 by reason of a particular matter or thing, the Commissioner may determine that the taxable value of the fringe benefit shall not be reduced under this section in respect of the same matter or thing.

Reduction of taxable value in relation to expenditure on leisure facilities and travel with accompanying relatives

65. (1) Where—

- (a) the provider of an expense payment fringe benefit, an airline transport fringe benefit, a property fringe benefit or a residual fringe benefit (other than a residual fringe benefit constituted by the use of depreciable property) in relation to a year of tax incurs expenditure in respect of the provision of the fringe benefit;

(b) but for sections 51AB and 51AG of the *Income Tax Assessment Act 1936*, a deduction would be allowable to the provider under that Act in respect of a percentage of that expenditure; and

(c) a deduction is not so allowable to the provider, the amount that, but for this sub-section and section 62, would be the taxable value of the fringe benefit referred to in paragraph (a) in relation to the year of tax shall be reduced by that percentage of the expenditure.

(2) Where—

(a) a residual fringe benefit in relation to a year of tax is constituted by the use of depreciable property that is a leisure facility for the purposes of section 51AB of the *Income Tax Assessment Act 1936*;

(b) but for sub-section 54 (3) of that Act, a deduction would be allowable to the provider under that Act in respect of a percentage of the depreciation of the property during the year of tax; and

(c) a deduction is not so allowable to the provider, the amount that, but for this sub-section and section 62 and the recipients contribution, would be the taxable value of the fringe benefit in relation to the year of tax, shall be reduced by that percentage.

PART IV—LIABILITY TO TAX

Liability to pay tax

66. (1) Subject to this Act, tax imposed in respect of the fringe benefits taxable amount of an employer of a year of tax is payable by the employer.

(2) A law, or a provision of a law, passed before the commencement of this Act that purports to exempt a person from liability to pay fringe benefits tax or to pay taxes that include that tax does not exempt that person from liability to pay that tax.

(3) A law, or a provision of a law, passed after the commencement of this Act that purports to exempt a person from liability to pay taxes under the laws of the Commonwealth or to pay certain taxes under those laws that include fringe benefits tax, other than a law or a provision that expressly exempts a person from liability to pay that tax, shall not be construed as exempting the person from liability to pay that tax.

Arrangements to avoid or reduce fringe benefits tax

67. (1) Where—

(a) an employer (in this sub-section referred to as the “eligible employer”) has obtained or, but for this section, would obtain, a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is or was provided to a person, being an arrangement that was entered into, or commenced to be carried out, on or after 19 September 1985; and

- (b) it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part of the arrangement did so for the sole or dominant purpose of enabling the eligible employer to obtain a tax benefit in connection with the arrangement or of enabling the eligible employer and another employer or other employers each to obtain a tax benefit in connection with the arrangement (whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the eligible employer or is the other employer or one of the other employers),

the Commissioner—

- (c) may determine that the fringe benefits taxable amount (if any) of the eligible employer of the year of tax be increased by the amount of the tax benefit; and
- (d) may determine that appropriate adjustments (if any) be made to the fringe benefits taxable amount of the eligible employer in respect of another year of tax or of another employer in respect of any year of tax,

and any such determination has effect accordingly.

(2) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person is a reference to an amount not being included in the fringe benefits taxable amount of the employer of the year of tax in respect of that benefit where the amount would have been included, or could reasonably be expected to have been included, in that fringe benefits taxable amount if the arrangement had not been entered into or carried out.

(3) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person does not include a reference to an amount not being included in the fringe benefits taxable amount of the employer of the year of tax in respect of that benefit, being an amount that would have been included, or could reasonably be expected to have been included, in that fringe benefits taxable amount if the arrangement had not been entered into or carried out, where the non-inclusion of the amount in that fringe benefits taxable amount is attributable to the payment or provision by a person of consideration in respect of the provision of the benefit.

(4) Where, at any time, an employer considers that the Commissioner ought to make a determination under paragraph (1) (d) in relation to the employer in relation to a year of tax, the employer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that paragraph.

(5) The Commissioner shall consider the request and serve on the employer a written notice of the Commissioner's decision on the request.

(6) If the employer is dissatisfied with the Commissioner's decision on the request, the employer may, within 60 days after service on the employer of notice of the decision of the Commissioner, post to or lodge with the Commissioner an objection in writing against the decision stating fully and in detail the grounds on which the employer relies.

(7) The provisions of Part VI (other than section 80) apply in relation to an objection made under sub-section (6) in like manner as those provisions apply in relation to an objection against an assessment.

(8) Nothing in section 74 prevents the amendment of an assessment at any time before the end of 6 years after the original assessment date if the amendment is for the purposes of giving effect to sub-section (1) of this section as it applies by virtue of paragraph (1) (c).

(9) Nothing in section 74 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to sub-section (1) of this section as it applies by virtue of paragraph (1) (d).

(10) In this section, a reference to an employer, in relation to an arrangement, includes a reference to a person who would be, or might reasonably be expected to be, an employer but for the arrangement.

(11) A reference in this section to the carrying out of an arrangement by a person shall be read as including a reference to the carrying out of an arrangement by a person together with another person or other persons.

(12) Nothing in the provisions of this Act other than this section shall be taken to limit the operation of this section.

PART V—RETURNS AND ASSESSMENTS

Division 1—Returns

Annual returns

68. Where there is a fringe benefits taxable amount of an employer of a year of tax, the employer shall, unless the employer has furnished a return or returns under section 69 in relation to the fringe benefits taxable amount of the year of tax, furnish to the Commissioner a return not later than 28 days after the end of the year or such later date as the Commissioner allows.

Further returns

69. Where the Commissioner, by notice in writing served on a person, requires the person, whether an employer or not, to furnish to the Commissioner a return in relation to a year of tax, the person shall furnish the return in the manner and within the time specified in the notice, whether or not the person has furnished, or is or was required to furnish, a return under section 68 or this section in respect of that year of tax.

Requirements for returns

70. A return under section 68 or 69 shall—

- (a) be in the form provided or authorised by the Commissioner for the purposes of that section;
- (b) be furnished in accordance with the regulations;
- (c) be signed by or on behalf of the person furnishing the return;
- (d) specify—
 - (i) the fringe benefits taxable amount of the employer of the year of tax concerned; and
 - (ii) the amount of tax payable on that amount; and
- (e) contain such other information as is required for the due completion of the form of return.

Certificate of sources of information

71. (1) A person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return under this Act shall sign a certificate in the prescribed form to be endorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.

Penalty: \$1,000.

(2) The agent's certificate shall, for the purposes of this Act, be deemed to be duly signed, in the case of a partnership, or a company, that is registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*, if, and only if, it is signed in the name of the partnership or company, as the case requires, by a person who is registered as a nominee of that partnership or company for the purposes of that Part, and that person's name is also appended.

(3) An employer who does not furnish with his or her return an agent's certificate shall furnish information to the Commissioner in the prescribed form, endorsed on or annexed to the return, setting out such particulars as to the sources available for the compilation of the return as are prescribed.

Division 2—Assessments

First return deemed to be an assessment

72. Where—

- (a) at a particular time, a return under this Act in relation to an employer in relation to a year of tax is furnished; and
- (b) before that time, no return has been furnished, and no assessment has been made, in relation to the employer in relation to the year of tax,

the following provisions have effect:

- (c) the Commissioner shall be deemed at that time to have made an assessment (in this section referred to as the "deemed assessment") of—

- (i) the fringe benefits taxable amount (including a nil amount) of the employer of the year of tax; and
 - (ii) the amount (including a nil amount) of tax payable on that fringe benefits taxable amount,
- being those respective amounts as specified in the return referred to in paragraph (a);
- (d) the return referred to in paragraph (a) shall be deemed to be a notice of the deemed assessment and to be under the hand of the Commissioner;
 - (e) the notice referred to in paragraph (d) shall be deemed to have been served at that time on the person liable to pay the tax.

Default assessments

73. Where—

- (a) an employer has not furnished a return in respect of a year of tax; and
- (b) the Commissioner is of the opinion that the employer is liable to pay tax in respect of that year,

the Commissioner may, whether during that year or after the end of that year, make an assessment of—

- (c) the fringe benefits taxable amount of the employer of the year of tax; and
- (d) the amount of tax payable on that fringe benefits taxable amount.

Amendment of assessments

74. (1) The Commissioner may, at any time within a period of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(2) Subject to this section, the Commissioner may, after the end of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(3) Where—

- (a) an employer does not make a full and true disclosure of all the material facts necessary for an assessment of the tax payable by the employer;
- (b) the Commissioner makes an assessment; and
- (c) there is an avoidance of tax,

the Commissioner may—

- (d) where the Commissioner is of the opinion that the avoidance of tax is due to fraud or evasion—at any time; and
- (e) in any other case—within 6 years after the original assessment date in relation to the assessment,

amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(4) No amendment effecting a reduction in the liability of an employer under an assessment shall be made after the end of 3 years after the original assessment date.

(5) Where an assessment has been amended under this section in any particular, the Commissioner may, within 3 years after the date on which the amended assessment is made, make, in or in respect of that particular, such further amendment of the assessment as, in the Commissioner's opinion, is necessary to effect such reduction in the liability of the employer liable to pay tax under the assessment as is just.

(6) Where an employer—

(a) applies, within 3 years after the original assessment date in relation to an assessment, for an amendment of an assessment; and

(b) supplies to the Commissioner within that period all information needed by the Commissioner for the purposes of determining the application made by the employer,

the Commissioner may amend the assessment, notwithstanding that that period has expired.

(7) Nothing in this section prevents the amendment of an assessment—

(a) in order to give effect to a decision on a review or appeal; or

(b) by way of reduction in any particular pursuant to an objection made under this Act or pending an appeal or review.

(8) The Commissioner may, at any time, amend an assessment of additional tax under Part VIII.

Refund of amounts overpaid

75. (1) Where, by reason of an amendment of an assessment, a person's liability to tax is reduced—

(a) the amount by which the tax is so reduced shall be taken, for the purposes of section 93, never to have been payable; and

(b) the Commissioner shall—

(i) refund the amount of any tax overpaid; or

(ii) apply the amount of any tax overpaid against any liability of the person to the Commonwealth and refund any part of the amount that is not so applied.

(2) In sub-section (1), unless the contrary intention appears, "tax" includes additional tax under section 93 or Part VIII.

Amended assessment to be an assessment

76. Except as otherwise provided, an amended assessment is an assessment for all the purposes of this Act.

Notice of assessment

77. As soon as practicable after an assessment is made, the Commissioner shall serve notice of the assessment in writing on the person liable to pay the tax.

Validity of assessment

78. The validity of any assessment is not affected by reason that any provision of this Act has not been complied with.

PART VI—OBJECTIONS, REVIEWS AND APPEALS

Interpretation

79. In this Part, “Supreme Court” means—

- (a) the Supreme Court of a State; or
- (b) the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory.

Objections

80. (1) An employer who is dissatisfied with an assessment may, within 60 days after service of the notice of that assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which the employer relies.

(2) The Commissioner shall consider the objection, and may either disallow it or allow it wholly or in part.

(3) The Commissioner shall cause notice in writing of the Commissioner’s decision on the objection to be served on the employer.

(4) An employer does not have any further right of objection in relation to an amended assessment than the employer would have had if the amendment had not been made, except in respect of matters in relation to which a fresh liability is, by reason of the amendment, imposed on the employer or an existing liability on the employer is, by reason of the amendment, increased.

Reference to Board or Court

81. (1) An employer who is dissatisfied with the decision of the Commissioner on an objection by the employer may, within 60 days after service on the employer of notice of that decision, request the Commissioner, in writing, either—

- (a) to refer the decision to a Board of Review for review; or
- (b) to treat the objection as an appeal and to forward it to a specified Supreme Court.

(2) If the request is accompanied by a fee of \$2, the Commissioner shall refer the decision to a Board, or forward the objection to the specified Court, in accordance with the request as soon as is practicable after receipt of the request.

(3) The fee shall be refunded to the employer if the assessment is reduced, either by amendment or as a result of the decision of the Board or Court.

(4) Upon a reference or appeal—

- (a) the employer is limited to the grounds stated in the objection; and
- (b) the burden of proving that the assessment is excessive lies on the employer.

Powers of Board

82. (1) A Board of Review has power to review such decisions of the Commissioner, a Second Commissioner or a Deputy Commissioner as are referred to it under this Part.

(2) For the purpose of reviewing decisions referred to it under this Part, a Board of Review has, subject to this section, all the powers and functions of the Commissioner in making assessments, and assessments made by the Board shall, for the purposes of this Act (except for the purpose of objections to, review of and appeals from assessments), be deemed to be assessments of the Commissioner.

(3) If the Commissioner amends an assessment that is subject to an objection the decision on which has been referred to a Board of Review for review, the amended assessment is the assessment to be dealt with by the Board under this Part.

(4) A Board of Review does not have power to review decisions of the Commissioner relating to the remission of additional tax payable by way of penalty, except decisions relating to the remission of additional tax payable under Part VIII.

Decision of Board

83. (1) Upon a reference under this Part to a Board of Review, the Board shall give a decision in writing and may confirm, reduce, increase or vary the assessment.

(2) Upon the request of the Commissioner or the employer, made at the hearing, a Board of Review, when giving its decision, shall state in writing its findings of fact and its reasons in law for the decision.

Decision of Supreme Court

84. (1) Where, at the request of the employer, the Commissioner has treated an objection as an appeal and forwarded it to a Supreme Court, the appeal shall be heard by a single Judge of the Court.

(2) The Supreme Court hearing an appeal under this section may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment.

(3) Except as provided in section 86, an appeal does not lie from an order referred to in sub-section (2) of this section.

(4) The Supreme Court hearing an appeal under this section may, if it thinks fit, state a case in writing for the opinion of the Federal Court of Australia upon a question of law arising on the appeal.

(5) A Full Court of the Federal Court of Australia shall hear and, by order, determine the question of law stated under sub-section (4) and remit the case with its opinion to the Supreme Court, and may make such order as to the costs of the case stated as it thinks fit.

Appeal or reference to Supreme Court

85. (1) The Commissioner or the employer may appeal to a Supreme Court against a decision of a Board of Review that involves a question of law.

(2) A Board of Review shall, upon the request of the Commissioner or the employer, refer a question of law arising before the Board of Review to such Supreme Court as is agreed upon by the parties or, in the absence of agreement, to such Supreme Court as the Board of Review considers appropriate.

(3) An appeal or reference to a Supreme Court under this section shall be heard by a single Judge of the Court.

(4) Except as provided in section 86, an appeal does not lie from a decision of a Supreme Court on an appeal or reference under this section.

Appeals from Supreme Court and Federal Court

86. The Commissioner or the employer may appeal against an order of a Supreme Court made under section 84 or a decision of a Supreme Court on an appeal or a reference under section 85—

- (a) by leave of the Federal Court of Australia, to that Court; or
- (b) by special leave of the High Court, to that Court.

Practice and procedure of Supreme Court

87. Until regulations have been made under this Act for or in relation to the practice and procedure of a Supreme Court in proceedings under this Part, and so far as regulations so made do not make adequate provision, the High Court Rules as in force under the *Judiciary Act 1903* immediately before the date of commencement of this Act apply, so far as practicable, *mutatis mutandis*, to and in relation to a proceeding under this Part which this section applies in like manner as they would apply if the proceeding were a proceeding in the High Court.

A pending reference or appeal not to affect payment of tax

88. The fact that a reference or an appeal is pending does not, in the meantime, affect the assessment that is the subject of the reference or appeal, and tax, or additional tax under section 93 or Part VIII may be recovered as if no reference or appeal were pending.

Adjustment of assessment after appeal

89. (1) If an assessment is varied on a reference or appeal under this Part—

- (a) the Commissioner shall—
 - (i) cause all necessary adjustments to be made; and
 - (ii) cause notice in writing of the varied assessment to be given to the employer;
- (b) in a case where the variation of the assessment results in a reduction of tax—the amount by which the tax is so reduced shall be taken, for the purposes of section 93, never to have been payable;
- (c) the amount of any tax not paid or underpaid as a result of the variation of the assessment is recoverable from the employer; and
- (d) the Commissioner shall—
 - (i) refund the amount of any tax overpaid as a result of the variation of the assessment; or
 - (ii) apply the amount of any tax overpaid as a result of the variation of the assessment against any liability of the employer to the Commonwealth and refund any part of the amount that is not so applied.

(2) In sub-section (1), unless the contrary intention appears, “tax” includes additional tax under section 93 or Part VIII.

PART VII—COLLECTION AND RECOVERY OF TAX

Division 1—General

When tax payable

90. (1) Subject to this Part, tax assessed in respect of a year of tax becomes due and payable, or shall be deemed to have become due and payable, as the case requires, on the twenty-eighth day after the end of the year of tax.

(2) Subject to this Part, additional tax under Part VIII is due and payable on the date specified in the notice of assessment of the additional tax as the date on which the additional tax is due and payable.

Taxpayer leaving Australia

91. (1) Where the Commissioner has reason to believe that a person liable to pay tax may leave Australia before the date on which the tax would, but for this section, be due and payable, the tax is due and payable on such date as the Commissioner notifies to that person.

(2) In sub-section (1), “tax” includes additional tax under Part VIII.

Extension of time and payment by instalments

92. (1) The Commissioner may, in such circumstances as the Commissioner thinks fit, extend the time for payment of an amount of tax for such period or periods as the Commissioner determines, and, where the Commissioner does so, the tax shall be due and payable accordingly.

(2) The Commissioner may, in such circumstances as the Commissioner thinks fit, permit the payment of an amount of tax to be made by instalments in such amounts and at such times as the Commissioner determines, and, subject to sub-section (3), each instalment is due and payable at the time so determined in relation to that instalment.

(3) If the Commissioner permits the payment of an amount of tax to be made by instalments and an instalment of an amount of tax is not paid on or before the time for the due payment of the instalment, the whole of the amount outstanding becomes due and payable at that time.

(4) In this section, "tax" includes additional tax under Part VIII.

Penalty for unpaid tax

93. (1) Subject to this section, if any tax remains unpaid after the time when it became due and payable, or would, but for section 92, have become due and payable, additional tax is due and payable by way of penalty by the person liable to pay the tax at the rate of 20% per annum on the amount unpaid, computed from that time or, where, under section 92, the Commissioner has granted an extension of time for payment of the tax or has permitted payment of the tax to be made by instalments, from such date as the Commissioner determines, not being a date before the date on which the tax was originally due and payable.

(2) Where—

- (a) the Commissioner amends an assessment (in this sub-section referred to as the "former assessment") in relation to an employer in relation to a year of tax;
- (b) the tax payable under the amended assessment exceeds the tax payable under the former assessment; and
- (c) the whole or a part (which whole or part is in this sub-section referred to as the "non-penalised amount") of the excess referred to in paragraph (b) relates to a matter in respect of which the employer is not liable (otherwise than by reason of the operation of sub-section 8ZE (1) of the *Taxation Administration Act 1953* or sub-section 117 (3) of this Act) to pay additional tax under Part VIII (other than section 114) of this Act,

the additional tax under sub-section (1), insofar as it—

- (d) would relate to so much of the unpaid amount referred to in sub-section (1) as is attributable to the non-penalised amount; and
- (e) would be calculated in respect of the period—
 - (i) commencing on—

(A) the day on which tax would, but for section 92, have become due and payable by the employer in respect of the year of tax; or

(B) the original assessment date,
whichever is the later; and

(ii) ending on the thirtieth day after the day on which the amended assessment was made,

shall be calculated as if the reference in sub-section (1) to 20% per annum were a reference to such rate of interest as is, or such rates of interest as are, applicable under regulations made for the purposes of paragraph 10 (1) (b) of the *Taxation (Interest on Overpayments) Act 1983*.

(3) Until regulations are made for the purposes of paragraph 10 (1) (b) of the *Taxation (Interest on Overpayments) Act 1983*, the rate of interest applicable for the purposes of sub-section (2) is 14.026% per annum.

(4) Where additional tax is due and payable by a person under this section in relation to an amount of tax and—

(a) the Commissioner is satisfied that—

(i) the circumstances that contributed to the delay in payment of the tax were not due to, or caused directly or indirectly by, an act or omission of the person; and

(ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances;

(b) the Commissioner is satisfied that—

(i) the circumstances that contributed to the delay in payment of the tax were due to, or caused directly or indirectly by, an act or omission of the person;

(ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and

(iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or part of the additional tax; or

(c) the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax or part of the additional tax,

the Commissioner may remit the additional tax or part of the additional tax.

(5) Where judgment is given by, or entered in, a court for payment of—

(a) an amount of tax; or

(b) an amount that includes an amount of tax,

then—

(c) the tax shall not be taken, for the purposes of sub-section (1), to have ceased to be due and payable by reason only of the giving or entering of the judgment; and

- (d) if the judgment debt carries interest, the additional tax that would, but for this paragraph, be payable under this section in relation to the tax shall, by force of this paragraph, be reduced by—
 - (i) in a case to which paragraph (a) applies—the amount of the interest; or
 - (ii) in a case to which paragraph (b) applies—an amount that bears the same proportion to the amount of the interest as the amount of the tax bears to the amount of the judgment debt.

(6) In this section, unless the contrary intention appears, “tax” includes additional tax under Part VIII.

Recovery of tax

94. (1) Tax when it becomes due and payable—

- (a) is a debt due to the Commonwealth and payable to the Commissioner in the manner and at the place prescribed; and
- (b) may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.

(2) In sub-section (1), “tax” includes additional tax under section 93 or Part VIII.

Substituted service

95. (1) Where—

- (a) a document is required to be served on a person for the purposes of proceedings against the person for recovery of tax; and
- (b) the Commissioner is satisfied, after reasonable enquiry, that the person—
 - (i) is absent from Australia and has no attorney or agent in Australia on whom service of process can be effected; or
 - (ii) cannot be found,

service of the document on the person may be effected, without leave of the court, by posting the document or a sealed copy of it in a letter addressed to the person at his or her last known place of business or residence in Australia.

(2) In sub-section (1), “tax” includes additional tax under section 93 or Part VIII.

Liquidators, &c.

96. (1) Where a person (in this section referred to as the “asset holder”)—

- (a) becomes, on a particular date, a liquidator of a company, being a company that is an employer;

- (b) is a receiver, or a receiver and manager, for debenture holders of a company, being a company that is an employer, and, on a particular date, takes possession of assets of the company; or
- (c) is agent for a non-resident principal, being a principal who is an employer, and, on a particular date, is instructed by the principal to wind up the whole or part of a business of the principal,

the asset holder shall, within 14 days of that date, give notice in writing of the fact to the Commissioner, and the succeeding provisions of this section apply.

(2) The Commissioner shall, as soon as practicable, notify the asset holder of the amount that, in the opinion of the Commissioner, is sufficient to provide for any amount of tax that is or may become payable by the company or principal, as the case may be.

(3) Subject to sub-section (5), if the asset holder is a person of the kind referred to in paragraph (1) (a) or (b), the asset holder—

- (a) shall not, without the leave of the Commissioner, part with any of the assets of the company until the asset holder has been notified by the Commissioner under sub-section (2);
- (b) shall set aside, out of the assets available for payment of ordinary debts of the company, assets to the value of an amount that bears to the value of the assets available for payment of ordinary debts of the company the same proportion as the amount notified by the Commissioner under sub-section (2) bears to the sum of—
 - (i) the amount notified by the Commissioner under sub-section (2);
 - (ii) any amount of prescribed tax that the Commissioner is required to notify to the asset holder under an Act other than this Act and has so notified; and
 - (iii) the aggregate of the ordinary debts of the company (excluding any debt in respect of tax or prescribed tax); and
- (c) is, to the extent of the value of the assets that the asset holder is so required to set aside, liable as trustee to pay the tax.

(4) If the asset holder is a person of the kind referred to in paragraph (1) (c), the asset holder—

- (a) shall not, without the leave of the Commissioner, part with any of the assets of the principal until the asset holder has been notified by the Commissioner under sub-section (2);
- (b) shall set aside, out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are less than that value; and
- (c) is, to the extent of the value of the assets that the asset holder is so required to set aside, liable as trustee to pay the tax.

(5) Nothing in paragraph (3) (a) prevents the asset holder parting with assets of the company for the purpose of paying debts of the company that are not ordinary debts of the company.

(6) For the purposes of sub-sections (3) and (5), a debt of a company is an ordinary debt if—

- (a) the debt is an unsecured debt; and
- (b) the debt is not required, under a law of the Commonwealth or of a State or Territory, to be paid in priority to some or all of the other debts of the company.

(7) In sub-section (3), “prescribed tax” means—

- (a) tax within the meaning of sub-section 215 (2) of the *Income Tax Assessment Act 1936* or of that sub-section as applied by the *Taxation (Unpaid Company Tax) Assessment Act 1982* or the *Trust Recoupment Tax Assessment Act 1985*;
- (b) tax within the meaning of sub-section 32 (2) of the *Sales Tax Assessment Act (No. 1) 1930* or of that sub-section as applied by any other Act providing for the assessment of sales tax;
- (c) tax within the meaning of sub-section 30 (2) of the *Pay-roll Tax (Territories) Assessment Act 1971*;
- (d) charge within the meaning of sub-section 27 (2) of the *Tobacco Charges Assessment Act 1955*; or
- (e) tax within the meaning of sub-section 47 (2) of the *Wool Tax (Administration) Act 1964*.

(8) If the asset holder refuses or fails to comply with any provision of this section or refuses or fails as trustee duly to pay the tax for which the asset holder is liable under sub-section (3) or (4), the asset holder—

- (a) is, to the extent of the value of the assets that the asset holder is required under sub-section (3) or (4) to set aside, personally liable to pay the tax; and
- (b) is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

(9) Nothing in this section shall be taken to limit an obligation or liability of the asset holder arising otherwise than under this section.

(10) Where 2 or more persons—

- (a) are liquidators of a particular company of a kind referred to in paragraph (1) (a);
- (b) are receivers, or receivers and managers, for debenture holders of a particular company of a kind referred to in paragraph (1) (b) and take possession of assets of the company; or
- (c) are agents for a particular non-resident principal of a kind referred to in paragraph (1) (c) and are instructed by the principal to wind up the whole or a part of a business of the principal,

then—

- (d) a reference in this section to the asset holder is a reference to both or all of those persons; and
- (e) the obligations and liabilities attaching to the asset holder under this section attach to both or all of those persons jointly.

(11) In this section, unless the contrary intention appears, "tax" includes additional tax under section 93 or Part VIII.

Recovery of tax from trustee of deceased employer

97. (1) The succeeding provisions of this section apply where, at the time of an employer's death—

- (a) the employer has not paid the whole of the tax payable in respect of fringe benefits provided to, or to associates of, employees of the employer up to the time of the death of the employer; or
- (b) additional tax under Part VIII to which the employer is liable has not been assessed or paid.

(2) The Commissioner has the same powers and remedies for the assessment and recovery of tax from a trustee of the estate of the employer as the Commissioner would have had against the employer if the employer were still living.

(3) The trustee shall—

- (a) furnish such returns and such information as the employer was, or would but for the employer's death have been, liable to furnish; and
- (b) furnish such further returns and information as the Commissioner requires.

(4) Where the trustee is unable or refuses or fails to furnish a return in respect of a year of tax, the Commissioner may make an assessment of—

- (a) the fringe benefits taxable amount of the employer of that year; and
- (b) the amount of tax payable on that fringe benefits taxable amount.

(5) The trustee is subject to additional tax under section 93 or Part VIII to the same extent as the employer would be if the employer were still living.

(6) The amount of any tax payable by the trustee is a charge on all of the employer's estate in the trustee's hands in priority to any other encumbrance other than a charge in respect of a debt payable to the Commissioner.

(7) In this section, unless the contrary intention appears, "tax" includes additional tax under section 93 or Part VIII.

Where no administration of deceased employer's estate

98. (1) Where a grant has not been made of probate of the will, or of letters of administration of the estate, of a deceased employer within 6 months after the employer's death, the succeeding provisions of this section apply.

(2) The Commissioner may make an assessment of—

- (a) the fringe benefits taxable amount or amounts in respect of which tax was payable by the deceased employer; and
- (b) the amount of tax payable on that amount or those amounts,

and, in a case where the deceased employer resided in a State or Territory immediately before the employer's death, shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory in which the deceased employer resided immediately before the employer's death.

(3) A person who claims an interest in the deceased employer's estate may, within 60 days after the first publication of notice of the assessment, lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which the person relies.

(4) Subject to any amendment by the Commissioner, or by a Board of Review or by a court, the assessment is conclusive evidence of the liability of the deceased employer.

(5) The Commissioner may give an order in writing, in the prescribed form, authorising a member or special member of the Australian Federal Police or a member of the police force of a State or Territory, or any other person specified in the order, to levy the amount of tax assessed, with costs, by distress and sale of any property of the deceased employer.

(6) A person authorised under such an order has power to levy, in the prescribed manner, the amount specified in the order.

(7) Notwithstanding sub-sections (4), (5) and (6), if probate of the will, or letters of administration of the estate, of the deceased employer is or are granted to a person on a particular date, that person may, within 60 days after that date, lodge with the Commissioner an objection against the assessment, stating fully and in detail the grounds on which the person relies.

(8) Part VI applies in relation to an objection made by a person under sub-section (3) or (7) as if the person were the deceased employer.

Commissioner may collect tax from person owing money to person liable to tax

99. (1) The Commissioner may, by notice in writing, require a person (in this section referred to as the "debtor")—

- (a) by whom money is due or accruing, or may become due, to an employer;
- (b) who holds, or may subsequently hold, money for or on account of an employer, or for or on account of another person for payment to an employer; or
- (c) who has, or may subsequently have, authority from another person to pay money to an employer,

to pay to the Commissioner, at or before a time (in this section referred to as the “payment time”) specified in the notice (not being a time before the notice is served on the debtor, or before the money becomes due or is held, or the debtor so has authority, as the case may be) an amount (in this section referred to as the “garnisheed amount”) equal to—

- (d) the whole of the money, or so much of it as is sufficient to pay the amount due by the employer in respect of tax; or
- (e) such amount as is specified in the notice out of each payment that the debtor becomes liable to make to the employer, or, not being liable to make, makes to the employer, until the amount of tax is paid.

(2) The Commissioner may, by further notice in writing, revoke or vary a notice under sub-section (1).

(3) The Commissioner shall cause a notice under sub-section (1) or (2) to be served on the debtor and a copy of the notice to be served on the employer.

(4) A person who refuses or fails to comply with a notice under this section is guilty of an offence.

Penalty: \$1,000.

(5) Where a person (in this sub-section referred to as the “convicted person”) is convicted of an offence against sub-section (4) in relation to the refusal or failure of the convicted person or another person to comply with a notice under this section, the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding the amount or the aggregate of the amounts, as the case requires, that the convicted person or the other person, as the case may be, refused or failed to pay to the Commissioner in accordance with the notice.

(6) A person making a payment pursuant to this section shall be deemed to be acting with the authority of the employer and of all other persons concerned and is, by force of this sub-section, indemnified in respect of the payment.

(7) If any payment in respect of the amount due by the employer is made before payment is made by a person under a notice given pursuant to this section, the Commissioner shall forthwith give notice to that person in accordance with sub-section (2).

(8) The garnisheed amount is, from the payment time, a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.

(9) Where—

- (a) money has been paid by a person to a building society in respect of the issue of shares in the capital of the society (not being shares listed for quotation on a Stock Exchange); and
- (b) the money has not been repaid,

the money shall, for the purposes of this section, be taken—

- (c) in a case where the money is repayable on demand—to be due by the building society to the person; or
- (d) in any other case—to be money that may become due by the building society to the person.

(10) Where, but for this sub-section, money is not due, or repayable on demand, to a person unless a condition is fulfilled, the money shall be taken, for the purposes of this section, to be due, or repayable on demand, as the case may be, to the person notwithstanding that the condition has not been fulfilled.

(11) A notice to be served under this section on the Commonwealth or on a State or Territory may be served on a person employed by the Commonwealth or by that State or Territory, as the case may be, being a person who, by or under a law of the Commonwealth or of that State or Territory, is charged with a duty of disbursing public money, and a notice so served shall be deemed, for the purposes of this section, to have been served on the Commonwealth or that State or Territory, as the case may be.

(12) In this section—

“building society” means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory;

“tax” includes—

- (a) additional tax under section 93 or Part VIII;
- (b) an amount that a person is liable to pay to the Commissioner under Division 2;
- (c) a judgment debt or costs in respect of—
 - (i) tax;
 - (ii) additional tax under section 93 or Part VIII; or
 - (iii) an amount that a person is liable to pay to the Commissioner under Division 2;
- (d) any fine or costs imposed by a court in respect of an offence against this Act; and
- (e) any amount ordered by a court, upon the conviction of a person for an offence against this Act, to be paid by the person to the Commissioner.

Person in receipt or control of money of non-resident

100. (1) A person who has authority to receive, control or dispose of money belonging to a non-resident who is liable to an amount of tax shall, when required by the Commissioner by notice in writing served on the person, pay the amount of tax and, by force of this section, is, when so required—

- (a) authorised and required to retain from time to time any money that comes to the person on behalf of the non-resident or so much of it as is sufficient to pay the amount of tax payable by the non-resident;
- (b) made personally liable for the amount of tax after it becomes payable to the extent of any amount so retained, or which should have been so retained, under paragraph (a); and
- (c) indemnified for all payments that the person makes pursuant to this section.

(2) For the purposes of sub-section (1), a person who is liable to pay money to a non-resident shall be deemed to be a person who has the control of money belonging to the non-resident, and all money due by the person to the non-resident shall be deemed to be money that comes to the person on behalf of the non-resident.

(3) Where the Commonwealth, a State or Territory, or an authority of the Commonwealth, a State or Territory has the receipt, control or disposal of money belonging to a non-resident, this section (other than paragraph (1) (b)) applies to and in relation to the Commonwealth, the State or the Territory, or the authority of the Commonwealth, of the State or of the Territory, as the case may be, in the same manner as it applies to and in relation to any other person.

(4) In this section, "tax" includes additional tax under section 93 or Part VIII.

Division 2—Collection by Instalments

Subdivision A—General

Interpretation

101. (1) In sections 92, 93, 94, 95, 100, 129, 130 and 131, but not in any other section of this Act, "tax" includes an instalment of tax payable under this Division.

(2) In sections 94, 95, 100, 129, 130 and 131, but not in any other section of this Act, "tax" includes additional tax payable under sub-section 112 (4).

(3) The ascertainment of the notional tax amount, or the amount of any instalment of tax, in accordance with this Division shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(4) All amounts of instalments of tax shall be calculated to the nearest dollar.

Liability to pay instalments of tax

102. For the purpose of securing generally the more expeditious collection of tax, an employer is liable to pay in accordance with this Division—

- (a) 2 instalments of tax in respect of the transitional year of tax; and

- (b) 3 instalments of tax in respect of each standard year of tax.

When instalment of tax payable

103. Subject to this Division—

- (a) the 2 instalments of tax payable in respect of the transitional year of tax are due and payable respectively on 28 October 1986 and 28 January 1987; and
- (b) the 3 instalments of tax payable in respect of a standard year of tax are due and payable respectively on 28 July, 28 October and 28 January in the year of tax concerned.

Application of payments of instalments of tax

104. Where—

- (a) an employer has paid an amount in respect of an instalment of tax in respect of a year of tax; and
- (b) an assessment has been made of the amount of tax payable by the employer in respect of that year of tax,

the Commissioner shall credit the amount so paid in payment successively of—

- (c) any tax payable by the employer in respect of that year of tax whether or not that tax is due for payment; and
- (d) any other liability of the employer to the Commonwealth,

and shall refund to the employer so much of the amount as is not so credited.

Unpaid instalments

105. (1) If, on the date on which tax becomes or became due and payable by an employer in respect of a year of tax, the whole or a part of an amount payable as an instalment of tax in respect of that year of tax has not or had not been paid and there is or was no other instalment in respect of that year of tax the whole or a part of which has not or had not been paid—

- (a) where no part of the tax in respect of that year of tax has or had been paid—so much (if any) of the amount unpaid in respect of that instalment as exceeds the amount of that tax ceases or shall be deemed to have ceased, on that date, to be payable;
- (b) where part only of the tax in respect of that year of tax has or had been paid—so much (if any) of the amount unpaid in respect of that instalment as exceeds the amount of that tax that has not or had not been paid ceases or shall be deemed to have ceased, on that date, to be payable; or
- (c) where the whole of the tax in respect of that year of tax has or had been paid—the amount unpaid in respect of that instalment ceases or shall be deemed to have ceased, on that date, to be payable.

(2) If, on the date on which tax becomes or became due and payable by an employer in respect of a year of tax, there are 2 or more instalments of tax in respect of that year of tax the whole or a part of each of which has not or had not been paid—

- (a) where no part of the tax in respect of that year of tax has or had been paid or part only of that tax has or had been paid—the Commissioner may determine that the whole or any part of all or any of the amounts unpaid in respect of those instalments shall cease or shall be deemed to have ceased, on that date, to be payable; or
- (b) where the whole of the tax in respect of that year of tax has or had been paid—each of the amounts unpaid in respect of those instalments ceases or shall be deemed to have ceased, on that date, to be payable.

(3) In making a determination for the purposes of sub-section (2), the Commissioner shall have regard to—

- (a) the extent (if any) to which the sum of the amounts unpaid in respect of the instalments of tax referred to in that sub-section exceeds or exceeded the amount of the tax referred to in that sub-section that has not or had not been paid; and
- (b) any other relevant matters.

(4) Where, by reason of the making of a determination by the Commissioner under sub-section (2), the amount payable by an employer as an instalment has been reduced or an instalment is not payable, the Commissioner shall cause to be served on the employer a notice in writing specifying the reduced amount as the amount that is or was payable as the instalment or stating that the instalment is or was not payable, as the case may be.

Subdivision B—Transitional Year of Tax

Notional tax amount

106. (1) Subject to this section, the notional tax amount of an employer in respect of a quarter in the transitional year of tax is an amount equal to the tax that would be assessed in respect of the transitional year of tax if—

- (a) except for the purpose of calculating, for the purposes of Division 2 of Part III, the amount of depreciation or interest that is deemed to have been incurred in respect of a car, the quarter (in this sub-section referred to as the “notional year of tax”) were the transitional year of tax;
- (b) the amount of the depreciation or interest that is deemed, for the purposes of Division 2 of Part III, to have been incurred by the provider of a car fringe benefit in respect of a car in respect of the notional year of tax were calculated in accordance with the formula **A – B**, where—

A is the amount of the depreciation or interest that would be deemed to have been incurred by the provider in respect of the car in respect of the transitional year of tax if the person who owned the car at the end of the notional year of tax were to continue to own the car during the period (if any) after the end of the notional year of tax and before the end of the transitional year of tax; and

B is so much of the amount represented by component A as is not attributable to the notional year of tax;

- (c) a reference in the definition of "declaration date" in sub-section 136 (1) to the date of lodgment of the return of the fringe benefits taxable amount of the employer of a year of tax were a reference to the date of lodgment of the information furnished by the employer under section 108 relating to the basis of the calculation of the instalment of tax relating to the notional year of tax;
- (d) sub-sub-paragraphs 9 (2) (a) (i) (A) and (ii) (A) applied as if "the commencement of the year of tax" were omitted and "1 July 1986" were substituted;
- (e) a number referred to in sub-paragraph 9 (2) (c) (i) were divided by 3;
- (f) a reference to 365 in section 26 or 29 were a reference to the number of days in the notional year of tax;
- (g) component A in the formula in paragraph 29 (1) (a) were divided by 4; and
- (h) an amount referred to in paragraph 62 (1) (a) were divided by 3.

(2) For the purposes of calculating under sub-section (1) the notional tax amount of an employer in respect of a notional year of tax, where the notional tax amount of an employer in respect of an earlier notional year of tax is calculated on the basis that an election was made under a provision of Part III in relation to that earlier notional year of tax, that election shall be deemed also to have been made in relation to the first-mentioned notional year of tax.

(3) Where—

- (a) an employer has not furnished information under section 108 in relation to an instalment of tax in respect of the transitional year of tax; or
- (b) the Commissioner is not satisfied with information furnished by an employer under section 108 in relation to an instalment of tax,

the Commissioner may determine that the notional tax amount of the employer in respect of the quarter to which that instalment of tax relates is such amount that, in the opinion of the Commissioner, might reasonably be expected to be the notional tax amount, ascertained in accordance with sub-section (1), of the employer in respect of the quarter.

(4) As soon as practicable after a determination is made under sub-section (3) in relation to an employer, the Commissioner shall cause notice of the determination to be served on the employer.

Amount of instalment of tax

107. The amount payable by an employer as an instalment of tax in respect of the transitional year of tax is—

- (a) in the case of the first instalment—the notional tax amount of the employer in respect of the quarter commencing on 1 July 1986; and
- (b) in the case of the second instalment—the notional tax amount of the employer in respect of the quarter commencing on 1 October 1986.

Instalment statement

108. Where an employer is liable to pay an instalment of tax in respect of the transitional year of tax, the employer shall, not later than the date on which the instalment is due and payable or such later date as the Commissioner allows, furnish to the Commissioner, in accordance with a form approved by the Commissioner, such information relating to the basis of calculation of that instalment as is required by the form.

Subdivision C—Standard Years of Tax

Interpretation

109. In this Subdivision—

“employer’s estimate”, in relation to an employer, in relation to an instalment of tax in relation to a standard year of tax, means the amount shown in a statement by the employer under sub-section 112 (1) in relation to the instalment as the employer’s estimate of the tax that will be payable by the employer in respect of the year of tax;

“estimated tax”, in relation to an employer in relation to a standard year of tax, means the amount determined, or last determined, as the case requires, under sub-section 112 (2) or (3) as the estimated tax of the employer in respect of the year of tax;

“penalty period”, in relation to an instalment in relation to a standard year of tax, means—

- (a) in the case of a first instalment—the period commencing on 29 July in the year of tax and ending on 28 October in the year of tax;
- (b) in the case of a second instalment—the period commencing on 29 October in the year of tax and ending on 28 January in the year of tax; or
- (c) in the case of a third instalment—the period commencing on 29 January in the year of tax and ending on 28 April in the next succeeding year of tax;

“relevant fraction”, in relation to an instalment, means—

- (a) in the case of a first instalment—0.25;
- (b) in the case of a second instalment—0.50; or
- (c) in the case of a third instalment—0.75;

Notional tax amount

110. (1) Subject to this section, the notional tax amount of an employer in respect of a standard year of tax is—

- (a) in the case of the year of tax commencing on 1 April 1987—the amount ascertained by multiplying by 1.42 the tax that was assessed in respect of the employer in respect of the immediately preceding year of tax; and
- (b) in the case of a subsequent year of tax—the amount of the tax that was assessed in respect of the employer in respect of the immediately preceding year of tax.

(2) Subject to the following provisions of this section, where—

- (a) the rate of tax declared by the Parliament for a standard year of tax is different from the rate declared for the immediately preceding year of tax; and
- (b) provision is made by the regulations for varying the notional tax amount of employers in respect of the year of tax,

then, on and after such date as is prescribed, the notional tax amount of the employer in respect of that year of tax is the amount ascertained in accordance with sub-section (1) as varied in accordance with the provision so made by the regulations.

(3) Where the Commissioner has reason to believe that the tax assessed in respect of an employer in respect of the year of tax will be greater than the tax (if any) that was assessed in respect of the immediately preceding year of tax, the Commissioner may determine that the notional tax amount of the employer in respect of the year of tax is such amount as the Commissioner estimates will be the tax payable by the employer in respect of the year of tax.

(4) Where the Commissioner makes a determination under sub-section (3)—

- (a) the Commissioner shall cause a notice in writing to be served on the employer specifying—
 - (i) the notional tax amount determined by the Commissioner; and
 - (ii) the date on which the determination takes effect, being a date not less than 30 days after the date of service of the notice; and

- (b) subject to sub-section (5), the notional tax amount of the employer in respect of the year of tax is, on and after the date specified in the notice, the amount determined by the Commissioner.

(5) Where, in relation to an instalment of tax in respect of a standard year of tax, being an instalment that becomes due and payable on the twenty-eighth day after the end of a quarter, an employer has estimated pursuant to sub-section 112 (1) the amount of tax that will be payable in respect of that year of tax and has furnished to the Commissioner a statement in accordance with that sub-section, then, on and after the last day of the quarter and until such time as there is a further application of this sub-section in relation to a subsequent instalment of tax payable by the employer, the notional tax amount of the employer in respect of the year of tax is, or shall be deemed to have been, as the case requires, an amount equal to the estimated tax.

Amount of instalment of tax

111. (1) Subject to sub-section (2), the amount payable by an employer as an instalment of tax (in this sub-section referred to as the "current instalment") in respect of a standard year of tax, being an instalment that becomes due and payable on the twenty-eighth day after the end of a quarter, is the amount ascertained in accordance with the formula $AB-C$, where—

A is the amount that, on the last day of the quarter, is the notional tax amount of the employer in respect of the year of tax;

B is the relevant fraction; and

C is the amount, or the sum of the amounts, of any instalments of tax in respect of that year of tax that have become due and payable before the date on which the current instalment is due and payable.

(2) An instalment of tax in respect of a standard year of tax is not payable if—

(a) the instalment is calculated by reference to a notional tax amount ascertained under sub-section 110 (1) or (2); and

(b) the notional tax amount by reference to which the instalment was calculated is less than—

(i) if a determination of an amount is in force under sub-section (3) in respect of the year of tax—that amount; or

(ii) in any other case—\$1,000.

(3) The Commissioner may, by notice in writing in the *Gazette*, determine an amount other than \$1,000 as the amount applicable for the purposes of sub-section (2) in respect of a year or years of tax specified in the determination.

Estimated tax

112. (1) An employer may, not later than the date on which an instalment of tax in respect of a standard year of tax is due and payable or within such further period as the Commissioner allows—

- (a) make an estimate of the amount of the tax (if any) that will be payable by the employer in respect of that year of tax; and
 - (b) furnish to the Commissioner a statement in writing showing—
 - (i) the amount so estimated; and
 - (ii) the basis on which the estimate has been made,
- unless the employer has previously furnished a statement under this sub-section in relation to the instalment of tax.

(2) Where an employer furnishes to the Commissioner, in relation to an instalment of tax, a statement under sub-section (1), the estimated tax is, subject to sub-section (3), an amount equal to the employer's estimate.

(3) Where, having regard to information in returns furnished by the employer and any other information in the Commissioner's possession, the Commissioner has reason to believe that the amount of tax that will be payable by the employer in respect of the year of tax is greater than the employer's estimate—

- (a) the Commissioner may estimate the amount that, in the Commissioner's opinion, should have been the amount estimated by the employer pursuant to sub-section (1) in respect of that year of tax; and
- (b) the estimated tax is—
 - (i) an amount equal to the amount of tax so estimated by the Commissioner; or
 - (ii) the amount that would be the notional tax amount of the employer in respect of the year of tax if the employer had not furnished a statement under sub-section (1),

whichever is the less.

(4) Where—

- (a) an amount payable by an employer as an instalment of tax (in this sub-section referred to as the "insufficient instalment") in respect of a year of tax was calculated by reference to the employer's estimate;
- (b) the notional tax amount is less than 90% of the amount of tax assessed to the employer in respect of the year of tax; and
- (c) the tax referred to in paragraph (b) has become due and payable, additional tax, by way of penalty, in respect of the penalty period, is due and payable by the employer to the Commissioner at the rate of 20% per annum on the amount by which the insufficient instalment is less than the amount ascertained in accordance with the formula $AB-C$, where—

A is—

- (d) the amount that, but for sub-section 110 (5), would have been the notional tax amount; or
- (e) the amount of tax referred to in paragraph (b),

whichever is the less;

B is the relevant fraction; and

C is the amount, or the sum of the amounts, of any instalments of tax in respect of that year of tax that became due and payable before the date on which the insufficient instalment became due and payable.

(5) Where—

(a) but for the operation of sub-section 110 (5), an employer would have been liable to pay an instalment of tax in respect of a year of tax; and

(b) the employer's estimate in relation to the year of tax is nil,

sub-section (4) applies in relation to the instalment as if a nil amount were payable as that instalment of tax.

(6) Where the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to do so, the Commissioner may remit the whole or any part of the additional tax payable by the employer under sub-section (4).

(7) In determining for the purposes of this section whether an amount of tax has become due and payable by an employer and, if an amount of tax has become due and payable by an employer, the day on which that amount became due and payable, the operation of section 92 shall be disregarded.

Notice of alteration of amount of instalment

113. Where, by reason of the operation of sub-section 112 (3), the amount payable by an employer as an instalment of tax is greater than the instalment that would have been payable if it had been ascertained by reference to the employer's estimate, the Commissioner shall cause to be served on the employer a notice in writing specifying—

(a) the amount of the increase in the instalment of tax which became payable by reason of sub-section 112 (3); and

(b) a date as the due date for payment of that amount, being a date not less than 14 days after the date of service of the notice,

and the amount of the increase in the instalment of tax so specified is, notwithstanding section 103, due and payable on the date so specified.

PART VIII—PENALTY TAX

Penalty for failure to furnish return

114. (1) Where an employer other than a government body refuses or fails to furnish, when and as required under or pursuant to this Act to do so, a return, or any information, relating to a year of tax, being a return relevant to or information relevant to ascertaining the employer's liability under this Act, the employer is liable to pay, by way of penalty, additional tax equal to double the amount of tax payable by the employer in respect of the year of tax.

(2) Where, but for this sub-section, an amount of additional tax, being an amount less than \$20, is payable by an employer under this section in respect of an act or omission, then, by force of this sub-section, the amount of additional tax shall be taken to be \$20.

Penalty for false or misleading statements

115. (1) Where—

- (a) an employer other than a government body—
 - (i) makes a statement to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, that is false or misleading in a material particular; or
 - (ii) omits from a statement made to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, any matter or thing without which the statement is misleading in a material particular; and
- (b) the tax properly payable by the employer exceeds the tax that would have been payable by the employer if it were assessed on the basis that the statement were not false or misleading, as the case may be,

the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the excess.

(2) Where, but for this sub-section, an amount of additional tax, being an amount less than \$20, is payable by an employer under this section in respect of an act or omission, then, by force of this sub-section, the amount of the additional tax shall be taken to be \$20.

(3) A reference in sub-section (1) to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes a statement—

- (a) made in an application, certificate, notification, declaration, objection, return or other document made, given or furnished, under or pursuant to this Act;
- (b) made in answer to a question asked of a person under or pursuant to this Act;
- (c) made in any information furnished, or purporting to be furnished, under or pursuant to this Act; or
- (d) made in a document furnished to a taxation officer otherwise than under or pursuant to this Act,

but does not include a statement made in a document produced pursuant to paragraph 128 (1) (c).

(4) A reference in sub-section (1) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of

this Act is a reference to such a statement made orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes such a statement—

- (a) made in an application, certificate, declaration, notification or other document made, given or furnished to the person;
- (b) made in answer to a question asked by the person; or
- (c) made in any information furnished to the person.

(5) In this section—

“data processing device” means any article or material from which information is capable of being reproduced with or without the aid of any other article or device;

“taxation officer” means a person exercising powers, or performing functions under, pursuant to or in relation to this Act.

Penalty tax where arrangement to avoid tax

116. Where—

- (a) for the purpose of making an assessment or arising out of the consideration of an objection, the Commissioner has calculated the tax that is assessable to an employer in respect of a year of tax;
- (b) in calculating the tax assessable to the employer, a determination or determinations made by the Commissioner under sub-section 67 (1) was or were taken into account; and
- (c) either of the following sub-paragraphs applies:
 - (i) no tax would have been assessable to the employer in respect of the year of tax if no determination had been made under sub-section 67 (1) in relation to the employer in relation to the year of tax;
 - (ii) the amount of tax (in this section referred to as the “amount of claimed tax”) that would, but for this section, have been assessable to the employer in respect of the year of tax if no determination had been made under sub-section 67 (1) in relation to the employer in respect of the year of tax is less than the amount of tax referred to in paragraph (a),

the employer is liable to pay, by way of penalty, additional tax equal to—

- (d) in a case to which sub-paragraph (c) (i) applies—double the amount of the tax referred to in paragraph (a); or
- (e) in a case to which sub-paragraph (c) (ii) applies—double the amount by which the amount of tax referred to in paragraph (a) exceeds the amount of claimed tax.

Assessment of additional tax

117. (1) The Commissioner shall make an assessment of the additional tax payable by an employer under a provision of this Part and shall, as soon as practicable after the assessment is made, cause notice in writing of the assessment to be served on the employer.

(2) Nothing in this Act shall be taken to preclude notice of an assessment made in respect of an employer under sub-section (1) from being incorporated in notice of any other assessment made in respect of the employer under this Act.

(3) The Commissioner may, in the Commissioner's discretion, remit the whole or any part of the additional tax payable by an employer under a provision of this Part, but, for the purposes of the application of sub-section 33 (1) of the *Acts Interpretation Act 1901* to the power of remission conferred by this sub-section, nothing in this Act shall be taken to preclude the exercise of the power at a time before an assessment is made under sub-section (1) of the additional tax.

PART IX—TAX AGENTS

Interpretation

118. In this Part, "registered tax agent" means a person or partnership who or which is registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*.

Unregistered tax agents not to charge fees

119. (1) A person shall not demand or receive any fee for or in relation to the preparation of any fringe benefits tax return or objection, or for or in relation to the transaction of any business on behalf of an employer in fringe benefits tax matters, unless the person is a registered tax agent.

Penalty: \$2,000.

(2) Sub-section (1) does not apply to a solicitor or counsel acting in the course of his or her profession in the preparation of any objection or in any litigation or proceedings before a board, or so acting in an advisory capacity either in connection with the preparation of any fringe benefits tax return or objection or with any fringe benefits tax matter.

(3) A person is not entitled to sue for, recover or set-off any amount which the person is prohibited by this section from demanding.

Negligence of registered tax agents

120. (1) If, through the negligence of a registered tax agent, an employer becomes liable to pay a fine or other penalty or any additional tax, the registered tax agent is liable to pay to the employer the amount of that fine, penalty or additional tax, and that amount may be sued for and recovered by the employer as a debt in any court of competent jurisdiction.

(2) Nothing in this section shall exonerate the employer from his or her liability.

Preparation of returns, &c., on behalf of registered tax agents

121. (1) A registered tax agent shall not allow any person, not being his or her employee, a registered tax agent or, in the case of a partnership which is registered as a tax agent, a member of that partnership—

- (a) to prepare on the registered tax agent's behalf, either directly or indirectly, a fringe benefits tax return or objection; or
- (b) to conduct on the registered tax agent's behalf, either directly or indirectly, any business relating to any fringe benefits tax return or objection or fringe benefits tax matter.

Penalty: \$1,000.

(2) A partnership or company that is registered as a tax agent shall not allow any person to do anything specified in paragraph (1) (a) or (b) except under the supervision and control of a person who is a registered nominee of the partnership or company for the purposes of Part VIIA of the *Income Tax Assessment Act 1936*.

Penalty: \$1,000.

(3) Nothing in this section shall be construed as prohibiting the employment by a registered tax agent of a solicitor or counsel to act in the course of his or her profession in the preparation of any objection or in any litigation or proceedings before a board, or in an advisory capacity either in connection with the preparation of any fringe benefits tax return or the conduct of any such business as is referred to in paragraph (1) (b).

Advertising, &c., by persons other than registered tax agents

122. A person, not being a registered tax agent, shall not, directly or indirectly, advertise in any manner that fringe benefits tax returns will be prepared by the person or that any other matter in connection with fringe benefits tax will be attended to by the person.

Penalty: \$1,000.

PART X—RETENTION OF STATUTORY EVIDENTIARY DOCUMENTS

Retention of statutory evidentiary documents

123. (1) For the purposes of Part III, where an employer fails to retain, for the retention period, a statutory evidentiary document given to the employer, the statutory evidentiary document shall be deemed never to have been given to the employer.

(2) For the purposes of paragraph 10 (3) (b), where an employer fails to retain, for the retention period, statutory evidentiary documents, being relevant car documents maintained by or on behalf of the employer, those documents shall be deemed never to have been maintained.

(3) For the purposes of sub-paragraph 24 (1) (c) (i), where an employer fails to retain, for the retention period, statutory evidentiary documents, being substitute documentary evidence maintained by or on behalf of the employer, those documents shall be deemed never to have been maintained.

(4) Where—

- (a) a statutory evidentiary document (in this sub-section referred to as the “original document”) in relation to an employer is lost or destroyed; and
- (b) the Commissioner is satisfied that—
 - (i) the employer took all reasonable precautions to prevent loss or destruction of the original document;
 - (ii) the original document was lost or destroyed because of circumstances beyond the control of the employer; and
 - (iii) the employer has a document (in this sub-section referred to as the “substitute document”) that—
 - (A) is a copy of the original document; or
 - (B) properly records all of the matters set out in the original document and was in existence when the original document was lost or destroyed,

the substitute document shall be deemed, for the purposes of this section, to be, and to have been at all times after the original document was lost or destroyed, the original document.

(5) Where—

- (a) a statutory evidentiary document in relation to an employer is lost or destroyed; and
- (b) the Commissioner is satisfied that—
 - (i) the employer took all reasonable precautions to prevent loss or destruction of the document;
 - (ii) the document was lost or destroyed because of circumstances beyond the control of the employer;
 - (iii) sub-section (4) does not apply in relation to the document; and
 - (iv) it is not reasonably practicable for the employer to obtain a substitute document,

sub-section (1), (2) or (3), as the case requires, does not apply, and shall be deemed not to have applied, at any time after the document was lost or destroyed.

(6) Where—

- (a) a provision of this Act makes provision for a person to give a statutory evidentiary document (in this sub-section referred to as the “original document”) to an employer;
- (b) the original document is lost or destroyed before it is given to the employer; and
- (c) the Commissioner is satisfied that—
 - (i) the person took all reasonable precautions to prevent loss or destruction of the document;
 - (ii) the document was lost or destroyed because of circumstances beyond the control of the person;

- (iii) the person does not have a document that—
 - (A) is a copy of the original document; or
 - (B) properly records all of the matters set out in the original document and was in existence when the original document was lost or destroyed; and
- (iv) it is not reasonably practicable for the employer to obtain a substitute document,

that provision of this Act has effect as if the original document had been given by the person to the employer and had been retained by the employer for the retention period.

(7) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this section.

PART XI—MISCELLANEOUS

Assessments

124. (1) Where the Commissioner does not have sufficient information to make an assessment of the fringe benefits taxable amount of an employer of a year of tax, that fringe benefits taxable amount shall be deemed, for the purposes of making an assessment under this Act, to be such amount as, in the opinion of the Commissioner, might reasonably be expected to be that fringe benefits taxable amount.

(2) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment shall be deemed to have been made, held or formed when the assessment was made.

Judicial notice of signature

125. All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, shall take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner of Taxation or Deputy Commissioner attached or appended to any official document in connection with this Act.

Evidence

126. (1) The mere production of—

- (a) a notice of assessment; or
- (b) a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment,

is conclusive evidence of the due making of the assessment and, except in proceedings under Part VI on a review, reference or appeal relating to the

assessment, that the amounts and all of the particulars of the assessment are correct.

(2) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is *prima facie* evidence that the second-mentioned document was so issued or given.

(3) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, a return or a notice of assessment is evidence of the matter set out in the document to the same extent as the original return or notice, as the case may be, would be if it were produced.

(4) The mere production of a certificate in writing signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due and payable by a person in respect of an amount of tax or an amount payable by way of an instalment of tax under Division 2 of Part VII or by way of penalty under section 93 or 112 or Part VIII, is *prima facie* evidence of the matters stated in the certificate.

(5) The mere production of a *Gazette* containing a notice purporting to be issued by the Commissioner is *prima facie* evidence that the notice was so issued.

(6) A return under this Act purporting to be made or signed by or on behalf of a person is *prima facie* evidence that the return was made by the person or with the authority of the person.

Access to premises, &c.

127. (1) For the purposes of this Act, an officer authorised in writing by the Commissioner to exercise powers under this section—

- (a) may, at all reasonable times, enter and remain on any land or premises;
- (b) is entitled to full and free access at all reasonable times to all documents; and
- (c) may inspect, examine, make copies of, or take extracts from, any documents.

(2) An officer is not entitled to enter or remain on any land or premises under this section if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce an authority in writing signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

(3) The occupier of land or premises entered or proposed to be entered by an officer under sub-section (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: \$1,000.

Commissioner to obtain information and evidence

128. (1) The Commissioner may, for the purposes of this Act, by notice in writing, require a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any public authority, and whether or not the person is liable to pay an amount of tax)—

- (a) to furnish the Commissioner with such information as the Commissioner requires;
- (b) to attend before the Commissioner, or before an officer authorised by the Commissioner for the purpose, at a time and place specified in the notice, and then and there answer questions; and
- (c) to produce to the Commissioner any documents in the custody or under the control of the person.

(2) The Commissioner may require the information or answers to questions to be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner, or an officer authorised by the Commissioner in writing for the purpose, may administer an oath or affirmation.

(3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.

(4) The regulations may prescribe scales of expenses to be allowed to persons required to attend under this section.

Agents and trustees

129. (1) The following provisions of this section apply in relation to a person (in this section referred to as the “representative”) being—

- (a) a person who, as agent for an employer, provides or arranges for the provision of benefits that are fringe benefits in relation to the employer;
- (b) an employer in the capacity of a trustee, being an employer in relation to whom fringe benefits are provided; or
- (c) a trustee in respect of the affairs of an employer where the trustee, as trustee, provides or arranges for the provision of benefits that are fringe benefits in relation to the employer.

(2) The representative—

- (a) shall furnish returns in relation to the fringe benefits; and
- (b) is liable to any tax payable in respect of the provision of the fringe benefits,

but only in the capacity of agent or trustee, as the case requires, and each such return shall be separate and distinct from any other return furnished or lodged by the representative.

- (3) The representative is, by force of this section—
- (a) authorised and required to retain from time to time any money that comes to the representative in the capacity as agent for the other person or trustee of the trust estate, or so much of it as is sufficient to pay the amount of tax;
 - (b) made personally liable for the amount of tax after it becomes payable to the extent of any amount that the representative is required to retain under paragraph (a); and
 - (c) indemnified for all payments that the representative makes pursuant to this section.

(4) For the purposes of ensuring payment of the amount of tax, the Commissioner has the same remedies against attachable property of any kind vested in, under the control or management of, or in the possession of, the representative as the Commissioner would have against the property of any other person in respect of an amount of tax payable by the other person.

(5) In this section, unless the contrary intention appears, “tax” includes additional tax under section 93 or Part VIII.

Recovery of tax paid on behalf of another person

130. (1) A person who pays an amount of tax for or on behalf of another person may recover the amount from the other person as a debt, together with the cost of recovery, or retain or deduct the amount out of money in his or her hands belonging or payable to the other person.

(2) In sub-section (1), “tax” includes additional tax under section 93 or Part VIII.

Right of contribution

131. (1) Where—

- (a) 2 or more persons are jointly liable or jointly and severally liable to pay tax; and
- (b) one of those persons has paid any of the tax,

the person referred to in paragraph (b) may, in a court of competent jurisdiction, recover by way of contribution and as a debt from any of the other persons referred to in paragraph (a) such part of the amount paid as the court considers just and equitable.

(2) In sub-section (1), “tax” includes additional tax under section 93 or Part VIII.

Records to be kept and preserved

132. (1) An employer shall—

- (a) keep records that record and explain all transactions and other acts engaged in by the employer or any other person that are relevant for the purpose of ascertaining the employer’s liability under this Act; and

- (b) retain those records, and any records given to the employer under paragraph (2) (b), for a period of 7 years after the completion of the transactions or acts to which they relate.

(2) Where an associate of an employer provides, or arranges for the provision of, fringe benefits to, or to associates of, employees of the employer, the associate shall—

- (a) keep records that record and explain all transactions and other acts engaged in by the associate or any other person in respect of the provision of those fringe benefits, being transactions or acts that are relevant for the purpose of ascertaining the employer's liability under this Act;
- (b) give to the employer a copy of the records, so far as they relate to a year of tax, not later than 21 days after the end of that year of tax; and
- (c) retain those records for a period of 7 years after the completion of the transactions or acts to which they relate.

(3) A person who is required by this section to keep records shall keep the records—

- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) so as to enable the employer's liability under this Act to be readily ascertained.

(4) Nothing in this section shall be taken to require a person (in this sub-section referred to as the "record keeper") to keep a record of information relating to a transaction or act engaged in by another person if—

- (a) where the transaction or act was entered into or done under an arrangement to which the record keeper was a party—
 - (i) the record keeper made all reasonable efforts—
 - (A) to ascertain whether the transaction had been entered into or the act had been done; and
 - (B) to obtain the information; and
 - (ii) did not know, and could not reasonably be expected to have known, the information; or
- (b) in any other case—the record keeper did not know, and could not reasonably be expected to have known, the information.

(5) Nothing in this section shall be taken to require a person to retain records where—

- (a) the Commissioner has notified the person that retention of the records is not required; or
- (b) the person is a company that has gone into liquidation and been finally dissolved.

Penalty: \$2,000.

Release of employers in cases of hardship

133. (1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Department of Finance and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that—

- (a) an employer has suffered such a loss or is in such circumstances; or
- (b) owing to the death of a person who, if he or she had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the Board may release the employer or the trustee of the estate of the deceased person, as the case may be, wholly or in part from his or her liability, and the Commissioner may make such entries as are necessary for that purpose.

(2) The Commissioner or his or her substitute shall be the Principal Member of, and shall preside at meetings of, the Board, and the decision of the majority shall prevail.

(3) Where an application is made for release in respect of an amount of tax, if that amount is not less than \$10,000 the Board shall, and if that amount is less than \$10,000 the Board may, refer the application to a Board of Review and shall notify the applicant in writing of its having done so.

(4) An application that is referred to a Board of Review under sub-section (3) shall be dealt with in accordance with sub-sections (5) to (10) (inclusive) by a person (in this section referred to as the “designated person”) who—

- (a) is a member of that Board (who may be the Chairman of that Board); or
- (b) is an officer of the Department of the Treasury who performs administrative duties for that Board,

and is designated by the Chairman of that Board.

(5) A designation for the purposes of sub-section (4) may be a designation of a person as the person who is to deal with applications included in a class of applications.

(6) The applicant may appear before the designated person or the designated person may require the applicant to appear before him or her, either in person or by a representative, and the designated person may examine the applicant or his or her representative upon oath or affirmation concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.

(7) The designated person shall be assisted in his or her examination of the applicant by an officer employed in the Australian Taxation Office who is a qualified accountant.

(8) The designated person may permit the applicant to be assisted at the examination by such persons as the designated person considers the circumstances justify.

(9) A record shall be made of the information elicited by the designated person during his or her examination.

(10) The designated person shall—

- (a) submit a report to the Board constituted under this section upon the facts disclosed by his or her examination, together with the record referred to in sub-section (9); and
- (b) draw the attention of that Board to facts that, in his or her opinion, have particular bearing upon the application.

(11) In any case where the amount of the liability does not exceed \$500, the powers conferred by sub-section (1) on the Board specified in that sub-section may be exercised by the Commissioner.

(12) In this section, “tax” includes additional tax under section 93 or Part VIII.

Service on partnerships and associations

134. Service, whether by post or otherwise, of a notice or document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons shall be deemed, for the purposes of this Act, to constitute service of the notice or other document on each member of the partnership or each member of the association or other body of persons, as the case may be.

Regulations

135. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, may make regulations prescribing penalties not exceeding a fine of \$500 for offences against the regulations.

PART XII—INTERPRETATION

Interpretation

136. (1) In this Act, unless the contrary intention appears—

“agent” includes—

- (a) a person who, for and on behalf of a person out of Australia, has the management or control in Australia of the whole or a part of a business of the second-mentioned person; and

- (b) a person declared by the Commissioner, by notice in writing served on the person, to be an agent or the sole agent of a person for the purposes of this Act;

“agent’s certificate” means a certificate under sub-section 71 (1);

“airline operator”, in relation to transport in a passenger aircraft provided in respect of the employment of an employee, means a person who, at or about the time when that transport commenced to be provided, carried on a business of providing transport on passenger aircraft principally to outsiders;

“airline transport benefit” means a benefit referred to in section 32;

“airline transport fringe benefit” means a fringe benefit that is an airline transport benefit;

“arm’s length loan” means a loan where the parties to the loan are dealing with each other at arm’s length in relation to the loan;

“arm’s length transaction” means a transaction where the parties to the transaction are dealing with each other at arm’s length in relation to the transaction;

“arrangement” means—

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

“assessable income” means assessable income for the purposes of the *Income Tax Assessment Act 1936*;

“assessment” means—

- (a) the ascertainment of the fringe benefits taxable amount of an employer of a year of tax and of the tax payable on that amount; or
- (b) the ascertainment of the additional tax payable under a provision of Part VIII;

“associate” has the same meaning in relation to a person as that expression has in relation to a person in section 26AAB of the *Income Tax Assessment Act 1936*;

“Australia”, when used in a geographical sense, includes the external Territories;

“benchmark interest rate”—

- (a) in relation to a year of tax, means a rate of interest offered anywhere in Australia, immediately before the commencement of the year of tax, in respect of a Commonwealth Bank housing loan; and
- (b) in relation to a time after 2 April 1986 and before 1 July 1986, means a rate of interest offered anywhere in Australia

at that time in respect of a Commonwealth Bank housing loan;

“benefit” includes any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under—

- (a) an arrangement for or in relation to—
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property;
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money;

“Board of Review” means a Board of Review constituted under the *Income Tax Assessment Act 1936*;

“board meal” means a meal provided, in respect of the employment of an employee of an employer, to a person (in this definition referred to as the “recipient”), being the employee or an associate of the employee, where—

- (a) the meal is provided on a meal entitlement day;
- (b) the meal is provided by the employer or, if the employer is a company, by the employer or by a company that is related to the employer;
- (c) either of the following sub-paragraphs applies:
 - (i) the meal is cooked or otherwise prepared on eligible premises of the employer and is provided to the recipient on eligible premises of the employer (not being a dining facility that, at any time, is open to the public);
 - (ii) the following conditions are satisfied:
 - (A) the duties of employment of the employee consist principally of duties to be performed in, or in connection with, an eligible dining facility of the employer or a facility for the provision of accommodation, recreation or travel of which the eligible dining facility forms part;
 - (B) the meal is cooked or otherwise prepared in the cooking facility of the eligible dining facility;
 - (C) the meal is provided to the recipient in the eligible dining facility;

- (d) the facility in which the meal is cooked or otherwise prepared is not for use wholly or principally for the cooking or other preparation of meals solely for the employee or associates of the employee or for the employee and associates of the employee; and
- (e) the meal is not provided at a party, reception or other social function;

“board benefit” means a benefit referred to in section 35;

“board fringe benefit” means a fringe benefit that is a board benefit;

“business journey” means—

- (a) for the purposes of the application of Division 2 of Part III in relation to a car fringe benefit in relation to an employer in relation to a car—a journey undertaken in a car otherwise than in the application of the car to a private use, being an application that results in the provision of a fringe benefit in relation to the employer; or
- (b) for the purposes of the application of Divisions 4, 5, 11 and 12 of Part III in relation to a fringe benefit in relation to an employee in relation to a car—a journey undertaken in the car in the course of producing assessable income of the employee;

“business kilometre”, in relation to a car, means a kilometre travelled by the car in the course of a business journey;

“business operations”, in relation to a government body or a non-profit company, includes any operations or activities carried out by that body or company;

“business premises”, in relation to a person, means premises, or a part of premises, of the person used, in whole or in part, for the purposes of business operations of the person, but does not include premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person;

“car” means a motor vehicle (including a vehicle known as a four wheel drive vehicle), being—

- (a) a motor car, station wagon, panel van, utility truck or similar vehicle; or
- (b) any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers,

but does not include a motor cycle or similar vehicle;

“car benefit” means a benefit referred to in sub-section 7 (1);

“car expense”, in relation to a car, means an expense incurred in respect of—

- (a) the registration of, or insurance in respect of, the car;
- (b) repairs to or maintenance of the car; or
- (c) fuel for the car;

- “car expense payment benefit” means an expense payment fringe benefit where the recipients expenditure is a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*;
- “car fringe benefit” means a fringe benefit that is a car benefit;
- “car property benefit” means a property fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*;
- “car residual benefit” means a residual fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*;
- “child”, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of the person;
- “child care facility” means a facility at which a person receives, or is ready to receive, 2 or more children under the age of 6, not being associates of the person, for the purpose of minding, caring for or educating them for a day or part of a day without provision for residential care but does not include a facility at the place of residence of any of those children;
- “Commissioner” means the Commissioner of Taxation;
- “Commonwealth Bank housing loan” means an arm’s length loan by the Commonwealth Savings Bank of Australia made in the ordinary course of business to a member of the public, being a loan—
- (a) for housing purposes; and
 - (b) the terms of which provide for—
 - (i) interest to be calculated on the daily balance of the loan; and
 - (ii) that interest to be added to the balance of the loan at monthly intervals;
- “company” includes any body or association, corporate or unincorporate, but does not include a partnership;
- “comparison time” means—
- (a) in relation to a residual fringe benefit—
 - (i) where the fringe benefit is constituted by a benefit to which sub-section 46 (2) applies—the commencement of the billing period referred to in that sub-section in relation to the benefit; or
 - (ii) in any other case—
 - (A) where the fringe benefit is a period residual fringe benefit—the time when the recipients overall benefit commenced to be provided; or

(B) in any other case—the time when the benefit is provided; and

(b) in relation to an air transport fringe benefit—the time when the benefit is provided;

“contract of investment insurance” means a contract of life assurance insuring payment of money in the event that the life insured is alive on a specified date, whether or not the contract also insures the payment of money in any other event;

“cost price”—

(a) in relation to a car owned by a person, means—

(i) where the car was manufactured by the person, the sum of—

(A) the amount for which the car could reasonably have been expected to have been sold by the person by wholesale under an arm’s length transaction at or about the time when the car was applied to the person’s own use; and

(B) where a liability to sales tax arises by virtue of the car being applied to the person’s own use—the amount of that liability;

(ii) where neither sub-paragraph (i) nor (iii) applies, an amount equal to the sum of—

(A) the expenditure incurred by the person (other than expenditure in respect of registration or in respect of a tax on, or on a transfer of, registration) that is directly attributable to the acquisition or delivery of the car or, if sub-section 7 (6) applies in relation to the car, the leased car value of the car when the person first took the car on hire; and

(B) the amount of any additional expenditure incurred by the person for or in relation to the fitting of non-business accessories to the car at or about the time when the car was acquired by the person, reduced by the amount of any reimbursement of the whole or a part of that expenditure paid, at or about the time when the expenditure was incurred, by a recipient of a car benefit in relation to the car; or

(iii) where sub-paragraph (i) does not apply and the person was entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the person acquired the car or by which the person arranged for the fitting of non-business accessories to the car at or about the time when the car was acquired by the person, the amount that could

reasonably have been expected to have been applicable under sub-paragraph (ii) if the person had not been entitled to those privileges to exemptions;

- (b) in relation to a non-business accessory fitted to a car, means—
- (i) where the accessory was manufactured by the person (in this paragraph referred to as the “provider”) who held the car at the time of the fitting, the sum of—
 - (A) the amount for which the accessory could reasonably have been expected to have been sold under an arm’s length transaction by the person by wholesale at or about the time when the accessory was applied to the provider’s own use; and
 - (B) where a liability to sales tax arises by virtue of the accessory being applied to the provider’s own use—the amount of that liability;
 - (ii) where neither sub-paragraph (i) nor (iii) applies—the expenditure incurred, by a person other than a recipient of a car benefit in relation to the car, for or in relation to the fitting of the accessory, reduced by the amount of any reimbursement of the whole or a part of that expenditure paid at or about that time by a recipient of a car benefit in relation to the car; and
 - (iii) where sub-paragraph (i) does not apply and a person was entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the person acquired the accessory—the amount that could reasonably have been expected to have been applicable under sub-paragraph (ii) if the person had not been entitled to those privileges or exemptions; and
- (c) in relation to the recipients property in relation to a property fringe benefit—means the expenditure incurred by the provider that is directly attributable to purchasing or obtaining delivery of the property;

“current employee” means an employee within the meaning of Division 2 of Part VI of the *Income Tax Assessment Act 1936* and, whether or not the Governor-General has entered into an arrangement in accordance with section 221B of that Act with the Governor in Council of the State concerned, includes a member of the Parliament of a State and a person employed by a State or by an authority of a State;

“current employer” means an employer within the meaning of Division 2 of Part VI of the *Income Tax Assessment Act 1936* and, whether or not the Governor-General has entered into an arrangement in accordance with section 221B of that Act with the Governor in

- Council of the State concerned, includes a State and an authority of a State;
- “current identical benefit”, in relation to an identical overall benefit in relation to a year of tax, means that identical overall benefit insofar as it was provided during the year of tax;
- “customs duty” means customs duty imposed under a law of the Commonwealth or of a Territory;
- “daily balance”, in relation to a loan, means the balance of the loan at the end of a day;
- “debt waiver benefit” means a benefit referred to in section 14;
- “debt waiver fringe benefit” means a fringe benefit that is a debt waiver benefit;
- “December quarter” means a quarter ending on 31 December;
- “declaration date”, in relation to an employer in relation to a year of tax, means the date of lodgment of the return of the fringe benefits taxable amount of the employer of the year of tax, or such later date as the Commissioner allows;
- “deductible entertainment expenditure” means a loss or outgoing to the extent to which—
- (a) sub-section 51AE (5) of the *Income Tax Assessment Act 1936* applies to the loss or outgoing, or would apply if it were incurred in producing assessable income;
 - (b) sub-section 51AE (5A) of that Act does not apply to the loss or outgoing, or would not apply if it were incurred in producing assessable income; and
 - (c) the loss or outgoing is deductible under section 51 of that Act or would be so deductible if it had been incurred in producing assessable income;
- “deductible expenses”, in relation to an allowance paid to an employee, means expenses incurred by the employee in respect of which a deduction is or, but for section 51AE, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, would be, allowable to the employee under section 51 of that Act;
- “depreciable property” means plant or articles within the meaning of section 54 of the *Income Tax Assessment Act 1936*;
- “Deputy Commissioner” means a Deputy Commissioner of Taxation;
- “documentary evidence”, in relation to an expense incurred by a person, means a document that would constitute documentary evidence of the expense within the meaning of sub-section 82KU (1) of the *Income Tax Assessment Act 1936* (including that sub-section as applied, by sub-sections 82KU (3) and (4) of that Act) or sub-section 82KU (5) of that Act if the person were a taxpayer within the meaning of that Act;
- “domestic route” means a route where the port of embarkation and the port of disembarkation are both within Australia;

“dwelling” means a unit of accommodation constituted by, or contained in a building, being a unit that consists, in whole or in substantial part, of residential accommodation;

“economy air fare”, in relation to an airline transport fringe benefit, in relation to a scheduled passenger air service operated by a carrier over a route, means—

- (a) in a case where paragraph (b) does not apply—the standard air fare (other than a preferential air fare) charged by the carrier in respect of the scheduled air service; or
- (b) in a case where the carrier charges children, students or blind persons a concessional air fare in respect of the air fare to which paragraph (a) applies and the recipient is eligible for such a concessional air fare—the concessional air fare concerned,

being, in either case, an air fare in relation to which no special booking conditions are attached;

“eligible dining facility”, in relation to an employer, means—

- (a) a canteen, dining room or similar facility; or
- (b) a cafe, restaurant or similar facility,

that is located on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer;

“eligible entertainment expenditure” means deductible entertainment expenditure or non-deductible entertainment expenditure;

“eligible family member” means—

- (a) in relation to an employee who is required to live away from his or her usual place of residence during a period in order to perform the duties of his or her employment—

- (i) the employee; or
- (ii) the spouse of the employee, or a child of the employee, being a spouse or child, as the case may be—
 - (A) who lived with the employee during that period; and
 - (B) whose usual place of residence during that period was the same as the usual place of residence of the employee; and

- (b) in relation to a living-away-from-home allowance fringe benefit in relation to an employee, means—

- (i) the employee; or
- (ii) the spouse of the employee, or a child of the employee, being a spouse or child, as the case may be—
 - (A) in respect of whom the recipients allowance is paid;

(B) who lived with the employee during the recipients allowance period; and

(C) whose usual place of residence during that period was the same as the usual place of residence of the employee;

“eligible incidental travel expense payment benefit” means an expense payment fringe benefit where—

(a) the recipients expenditure—

(i) is in respect of travel by the recipient away from the recipient’s usual place of residence undertaken in the course of performing the duties of his or her employment, being expenditure in respect of accommodation, the purchase of food or drink or otherwise incidental to the travel; and

(ii) relates solely to travel by the recipient in Australia; and

(b) the payment or reimbursement, as the case may be, that constitutes the fringe benefit is in the nature of compensation to the recipient for the expenses that the recipient might reasonably be expected to have incurred in respect of the matters specified in sub-paragraph (a) (i);

“eligible overtime meal expense payment benefit” means an expense payment fringe benefit where—

(a) the recipients expenditure is incurred in respect of the purchase of food or drink in connection with overtime worked by the recipient; and

(b) the payment or reimbursement, as the case may be, that constitutes the fringe benefit is in the nature of compensation to the recipient for the expenses that the recipient might reasonably be expected to have incurred in respect of the purchase of food or drink in connection with that overtime;

“eligible premises”, in relation to a meal, or food or drink, provided in respect of the employment of an employee of an employer, means—

(a) if the employer is a company—premises of the employer or of a company that is related to the employer; or

(b) in any other case—premises of the employer,

and includes, in either case, a location at or adjacent to a site at which the employee performs duties of his or her employment;

“employee” means—

(a) a current employee;

(b) a future employee; or

(c) a former employee;

“employer” means—

(a) a current employer;

- (b) a future employer; or
 - (c) a former employer,
- but does not include—
- (d) the Commonwealth; or
 - (e) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth;

“employment”, in relation to a person, includes the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee;

“exclusive employee airline transport benefit” means an airline transport fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients transport, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

“exclusive employee expense payment benefit” means an expense payment fringe benefit where the recipients expenditure is exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates and is not expenditure in respect of interest;

“exclusive employee property benefit” means a property fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

“exclusive employee residual benefit” means a residual fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

“exempt accommodation component”, in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, in relation to a year of tax, means—

- (a) where the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of—
 - (i) the employee’s usual place of residence during the recipients allowance period; and
 - (ii) the place at which the employee actually resided during the recipients allowance period,

so much (if any) of the recipients allowance as it would be concluded is in the nature of compensation to the employee for additional expenses that might reasonably be expected to be incurred by the employee in respect of the subsistence during the recipients allowance period of a lease or licence in respect of a unit of accommodation for the accommodation of eligible family members; or

(b) in any other case—nil;

“exempt food component”, in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, in relation to a year of tax, means—

(a) where the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of—

(i) the employee’s usual place of residence during the recipients allowance period; and

(ii) the place at which the employee actually resided during the recipients allowance period,

whichever of the following is applicable:

(iii) where the food component of the recipients allowance has been determined by allowing for the whole or a part of the amount (which whole or part is in this definition referred to as the “deducted home consumption expenditure”) of the expenditure that might reasonably be expected to have been incurred by the employee, in respect of the recipients allowance period, in respect of food or drink for eligible family members if the eligible family members had resided at their usual place of residence during the recipients allowance period—

(A) if the deducted home consumption expenditure is not less than the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period—the food component of the recipients allowance; or

(B) in any other case—the amount ascertained in accordance with the formula $A - (B - C)$, where—

A is the food component of the recipients allowance;

B is the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period; and

C is the deducted home consumption expenditure;

- (iv) where sub-paragraph (iii) does not apply—the food component of the recipients allowance reduced by the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period; or

- (b) in any other case—nil;

“expense payment benefit” means a benefit referred to in section 20;

“expense payment fringe benefit” means a fringe benefit that is an expense payment benefit;

“extended travel airline transport benefit” means an airline transport fringe benefit where—

- (a) the recipients transport is over an international route; or
- (b) the following conditions are satisfied:

- (i) the recipients transport is in respect of travel by the recipient within Australia that involves the recipient being away from the recipient’s usual place of residence for a continuous period including more than 5 nights;
- (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

“extended travel expense payment benefit” means an expense payment fringe benefit where—

- (a) the recipient’s expenditure is in respect of travel outside Australia; or
- (b) the following conditions are satisfied:

- (i) the recipients expenditure is in respect of travel by the recipient within Australia that involves the recipient being away from the recipient’s usual place of residence for a continuous period including more than 5 nights;
- (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates,

but does not include a car expense payment benefit;

“extended travel property benefit” means a property fringe benefit where—

- (a) the recipients property is in respect of travel outside Australia; or
- (b) the following conditions are satisfied:

- (i) the recipients property is provided in respect of travel by the recipient within Australia that involves the recipient being away from the recipient’s usual place

of residence for a continuous period including more than 5 nights;

- (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates,

but does not include a car property benefit;

“extended travel residual benefit” means a residual fringe benefit where—

- (a) the recipients benefit is in respect of travel outside Australia;
- or

- (b) the following conditions are satisfied:

- (i) the recipients benefit consists of, or is in respect of, travel by the recipient within Australia that involves the recipient being away from the recipient’s usual place of residence for a continuous period including more than 5 nights;

- (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates,

but does not include a car residual benefit;

“external non-period residual fringe benefit” means a non-period residual fringe benefit other than an in-house residual fringe benefit;

“external period residual fringe benefit” means a period residual fringe benefit other than an in-house residual fringe benefit;

“external property fringe benefit”, in relation to an employer, means a property fringe benefit in relation to the employer other than an in-house property fringe benefit;

“fitting”, in relation to a non-business accessory, includes the acquisition of the accessory;

“food component”, in relation to the recipients allowance in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, means so much (if any) of the recipients allowance as it would be concluded is in the nature of compensation for expenses that the employee might reasonably be expected to incur, in respect of the recipients allowance period, in respect of food or drink for eligible family members;

“former employee” means a person who has been a current employee;

“former employer” means a person who has been a current employer;

“fringe benefit”, in relation to an employee, in relation to the employer of the employee, in relation to a year of tax, means a benefit—

- (a) provided at any time during the year of tax; or
- (b) deemed to be provided in respect of the year of tax,

being a benefit provided, or originally provided, as the case may be, to the employee or to an associate of the employee by—

- (c) the employer;

- (d) an associate of the employer; or
- (e) a person (in this paragraph referred to as the “arranger”) other than the employer or an associate of the employer under an arrangement between—
 - (i) the employer or an associate of the employer; and
 - (ii) the arranger or another person,

in respect of the employment of the employee, but does not include—

- (f) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*;
- (g) a benefit that is an exempt benefit in relation to the year of tax;
- (h) a benefit constituted by the acquisition by the employee of a share in a company, or of a right to acquire a share in a company, under a scheme for the acquisition of shares by employees, where section 26AAC of the *Income Tax Assessment Act 1936* applies in relation to the acquisition;
- (j) a benefit constituted by—
 - (i) the making of a payment of money to; or
 - (ii) the setting apart of money as, a superannuation fund;
- (k) a payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* that would be an eligible termination payment within the meaning of that Subdivision if—
 - (i) sub-paragraphs (a) (ii), (iii) and (iv) of the definition of “eligible termination payment” in sub-section 27A (1) of that Act were omitted;
 - (ii) a reference in paragraph (b) of that definition to a superannuation fund included a reference to a fund of the kind referred to in sub-paragraph (a) (iii) of that definition;
 - (iii) sub-paragraphs (b) (i), (ii) and (iii) of that definition were omitted; and
 - (iv) paragraph (k) of that definition were omitted;
- (m) consideration of a capital nature for, or in respect of—
 - (i) a legally enforceable contract in restraint of trade by a person; or
 - (ii) personal injury to a person;
- (n) a payment of an amount that, under any provision of the *Income Tax Assessment Act 1936*, is deemed to be a dividend paid to the recipient; or
- (p) a payment made, or liability incurred, to a person to the extent that the payment or liability is, by virtue of sub-

section 65 (1A) of the *Income Tax Assessment Act 1936*, deemed not be income of the person for the purposes of that Act;

- “fringe benefits tax” or “tax” means tax imposed by the *Fringe Benefits Tax Act 1986*;
- “fringe benefits taxable amount”, in relation to an employer in relation to a year of tax, means the sum of the taxable values, in relation to the year of tax, of all the fringe benefits in relation to the employer in relation to the year of tax;
- “future employee” means a person who will become a current employee;
- “future employer” means a person who will become a current employer;
- “government body” means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory;
- “housing benefit” means a benefit referred to in section 25;
- “housing fringe benefit” means a fringe benefit that is a housing benefit;
- “housing right”, in relation to a person, means a lease or licence granted to the person to occupy or use a unit of accommodation, insofar as that lease or licence subsists at a time when the unit of accommodation is the person’s usual place of residence;
- “identical benefit”, in relation to the recipients benefit in relation to a residual fringe benefit, means another benefit that is the same in all respects, except for differences (if any) that are minimal or insignificant and do not affect the value of the other benefit;
- “identical overall benefit”, in relation to the recipients overall benefit in relation to a period residual fringe benefit, means a benefit that is the same in all respects as the recipients overall benefit (except for any differences that are minimal or insignificant and do not affect the value of the benefit);
- “identical property”, in relation to the recipients property in relation to a property fringe benefit, means other property that is the same in all respects, including physical characteristics, quality and reputation, except for differences (if any) that are minimal or insignificant and do not affect the value of the property;
- “in-house fringe benefit” means an in-house property fringe benefit or an in-house residual fringe benefit;
- “in-house non-period residual fringe benefit” means an in-house residual fringe benefit that is not provided during a period;
- “in-house period residual fringe benefit” means an in-house residual fringe benefit that is provided during a period;
- “in-house property fringe benefit”, in relation to an employer, means a property fringe benefit in relation to the employer in respect of tangible property where the provider is the employer or an associate of the employer and, at or about the provision time, the provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders;

“in-house residual fringe benefit”, in relation to an employer, means a residual fringe benefit in relation to the employer where—

(a) the provider is the employer or an associate of the employer; and

(b) at or about the comparison time, the provider carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders,

but does not include a benefit provided under a contract of investment insurance;

“in respect of”, in relation to the employment of an employee, includes by reason of, by virtue of, or for or in relation directly or indirectly to, that employment;

“incorporated company” means a company being a body corporate;

“industrial instrument” means a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law;

“intangible property” means—

(a) real property;

(b) a chose in action; and

(c) any other kind of property other than tangible property,

but does not include—

(d) a right arising under a contract of insurance; or

(e) a lease or licence in respect of real property or tangible property;

“interest”, in relation to a loan, includes a payment in the nature of interest;

“international route” means a route that is not a domestic route;

“lease” includes sub-lease;

“leased” means let on hire (including a letting on hire that is described in the relevant agreement as a lease) under an agreement other than a hire-purchase agreement;

“leased car value”, in relation to a car held but not owned by a person at a particular time, means—

(a) in a case to which paragraph (b) does not apply—the amount that the person could reasonably be expected to have been required to pay to purchase the car from the owner at that time under an arm’s length transaction; or

(b) if the person commenced to lease the car at that time from a lessor who purchased the car at or about that time—the cost price of the car to the lessor;

“liability to the Commonwealth” means a liability to the Commonwealth arising under, or by virtue of, an Act of which the Commissioner has the general administration;

“liquidator”, in relation to a company, means a person who, whether or not appointed as liquidator, is required by law to carry out the winding up of the company;

“living-away-from-home allowance benefit” means a benefit referred to in section 30;

“living-away-from-home allowance fringe benefit” means a fringe benefit that is living-away-from-home allowance benefit;

“living-away-from-home food fringe benefit” means—

(a) an expense payment fringe benefit in relation to an employee where—

(i) the recipients expenditure was incurred in respect of food or drink;

(ii) paragraph 24 (1) (b) does not apply to the recipients expenditure; and

(iii) the food or drink was for consumption by eligible family members at a time when the employee was required to live away from his or her usual place of residence in order to perform the duties of his or her employment; or

(b) a property fringe benefit in relation to an employee where—

(i) the recipients property is food or drink;

(ii) if the recipient, at the provision time, had incurred expenditure in respect of the provision of the recipients property, paragraph 44 (1) (b) would not apply to that expenditure; and

(iii) the food or drink was for consumption by eligible family members at a time when the employee was required to live away from his or her usual place of residence in order to perform the duties of his or her employment;

“loan” includes—

(a) an advance of money;

(b) the provision of credit or any other form of financial accommodation;

(c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money;

“loan benefit” means a benefit referred to in sub-section 16 (1);

“loan fringe benefit” means a fringe benefit that is a loan benefit;

“meal entitlement day”, in relation to a meal provided in a year of tax, in respect of the employment of an employee, to a person (in this definition referred to as the “recipient”) being the employee or an associate of the employee, means a day in respect of which—

- (a) in respect of the employment of the employee, the recipient was entitled to be provided (whether without charge or otherwise) with residential accommodation; and
- (b) either of the following sub-paragraphs applies:
 - (i) the recipient was entitled, pursuant to the provisions of an industrial instrument in respect of the employment of the employee, to be provided (whether without charge or otherwise) with not fewer than 2 meals on that day;
 - (ii) the following conditions are satisfied:
 - (A) under an arrangement that was in force during the whole or a part of the year of tax (which whole or part is in this sub-paragraph referred to as the “arrangement period”) in respect of the employment of the employee, the recipient was entitled to be provided (whether without charge or otherwise) with not fewer than 2 meals on that day;
 - (B) during the arrangement period, the recipient was also entitled under the arrangement to be provided (whether without charge or otherwise) with not fewer than 2 meals on each day during the arrangement period that was a working day in relation to the employee;
 - (C) pursuant to the arrangement, the recipient was ordinarily provided (whether without charge or otherwise) with not fewer than 2 meals on the days referred to in sub-sub-paragraph (B);

“motor vehicle” means a motor vehicle (including a vehicle known as a four wheel drive vehicle), being—

- (a) a motor car, station wagon, panel van, utility truck or similar vehicle;
- (b) a motor cycle or similar vehicle; or
- (c) any other road vehicle;

“natural person” does not include a natural person in the capacity of trustee;

“non-business accessory”, in relation to a car, means an accessory fitted to the car, whether at the factory where the car was assembled or at some other place, other than an accessory required to meet the special needs of any business operations in relation to which the car is used;

“non-deductible entertainment expenditure” means a loss or outgoing to the extent to which—

- (a) sub-section 51AE (4) of the *Income Tax Assessment Act 1936* applies to the loss or outgoing, or would apply if it were incurred in producing assessable income; and
 - (b) but for that sub-section, the loss or outgoing would be deductible under section 51 of that Act, or would be so deductible if it were incurred in producing assessable income;
- “non-deductible exempt entertainment expenditure” means non-deductible entertainment expenditure to the extent to which it is not incurred in producing assessable income;
- “non-profit company” means a company that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the company’s constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members;
- “notional value”, in relation to the provision of property or another benefit to a person, means the amount that the person could reasonably be expected to have been required to pay to obtain the property or other benefit from the provider under an arm’s length transaction;
- “obligation”, in relation to the payment or repayment of an amount, includes an obligation that is not enforceable by legal proceedings;
- “offence against this Act” includes an offence against—
- (a) the *Crimes Act 1914*; or
 - (b) the *Taxation Administration Act 1953*,
- relating to this Act;
- “officer” means an officer or employee of the Australian Public Service;
- “once-only deduction”, in relation to expenditure, means a deduction in a year of income in respect of a percentage of the expenditure where no deduction is allowable in respect of a percentage of the expenditure in any other year of income;
- “original assessment date” means—
- (a) in relation to an assessment other than an amended assessment—the day on which the assessment was made; and
 - (b) in relation to an assessment being the first or a subsequent amendment of an assessment to which paragraph (a) applies—the day on which the original assessment was made;
- “outsider”, in relation to the employment of an employee of an employer, means a person not being—
- (a) an employee of the employer;
 - (b) an employee of an associate of the employer;
 - (c) an employee of a person (in this definition referred to as the “provider”) other than the employer or an associate of the employer who provides benefits to, or to associates of, employees of the employer or an associate of the employer under an arrangement between—

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- (i) the employer or an associate of the employer; and
 - (ii) the provider or another person; or
- (d) an associate of an employee to whom any of the preceding paragraphs apply;

“period residual fringe benefit” means a residual fringe benefit that is provided during a period;

“person” includes—

- (a) a body politic;
- (b) a body corporate;
- (c) a partnership;
- (d) any other unincorporated association or body of persons; and
- (e) a person in the capacity of trustee;

“place of residence”, in relation to a person, means—

- (a) a place at which the person resides; or
- (b) a place at which the person has sleeping accommodation, whether on a permanent or temporary basis and whether or not on a shared basis;

“preferential air fare” means an air fare charged by a person in respect of travel over a route, being an air fare the payment of which entitles the person travelling to benefits to which some of the other passengers on the same flight are not entitled;

“private use”, in relation to a motor vehicle, in relation to an employee or an associate of an employee, means any use of the motor vehicle by the employee or associate, as the case may be, that is not exclusively in the course of producing assessable income of the employee;

“producing assessable income” includes—

- (a) gaining assessable income; or
- (b) carrying on a business for the purpose of gaining or producing assessable income;

“property” means—

- (a) intangible property; and
- (b) tangible property;

“property benefit” means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III;

“property fringe benefit” means a fringe benefit that is a property benefit;

“provide”—

- (a) in relation to a benefit—includes allow, confer, give, grant or perform; and

(b) in relation to property—means dispose of (whether by sale, gift, declaration of trust or otherwise)—

(i) if the property is a beneficial interest in property but does not include legal ownership—the beneficial interest; or

(ii) in any other case—the legal ownership of the property;

“provider”, in relation to a benefit, means the person who provides the benefit;

“providers published air fare”, in relation to an airline transport fringe benefit provided over a route in a year of tax, means—

(a) where paragraph (b) does not apply—

(i) a qualifying air fare charged by the provider in respect of transport over that route; or

(ii) one half of a qualifying air fare charged by the provider in respect of return transport over that route, during the period of 12 months ending at the end of the year of tax; or

(b) in a case where the provider charges children, students or blind persons a concessional air fare in respect of an air fare to which paragraph (a) applies and the recipient is eligible for such a concessional air fare—the concessional air fare concerned;

“provision time”, in relation to the provision of property, means the time when the property is provided;

“qualifying air fare” means an air fare charged by the provider of an airline transport fringe benefit in respect of transport over a route, being—

(a) where the provider has premises in Australia at which air tickets issued by the provider are sold—an air fare that was—

(i) offered as being available to all members of the public by the provider at those premises; and

(ii) specified in a publication authorised by the provider and available at those premises; or

(b) where the provider does not have premises as mentioned in paragraph (a) but an agent of the provider has premises in Australia at which air tickets issued by the provider are sold—an air fare that was—

(i) offered as being available to all members of the public by the agent at those premises; and

(ii) specified in a tariff manual authorised by the provider and available at those premises,

and being, in either case, an air fare that was not subject to special conditions requiring a booking to be made in respect of more than 1 person;

- “quarter” means a period of 3 calendar months commencing on 1 January, 1 April, 1 July or 1 October;
- “recipient”, in relation to a benefit, means the person to whom the benefit is provided;
- “recipients allowance”, in relation to a living-away-from-home allowance fringe benefit, means the allowance, or the part of the allowance, the payment of which constitutes the fringe benefit;
- “recipients allowance period”, in relation to a living-away-from-home allowance fringe benefit, means the period to which the recipients allowance relates;
- “recipients benefit”, in relation to a residual benefit, means the benefit to which the residual benefit relates;
- “recipients contribution”—
- (a) in relation to an airline transport fringe benefit, a property fringe benefit, a residual fringe benefit or a board fringe benefit, being a fringe benefit provided in respect of the employment of an employee of an employer, means the amount of any consideration paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the recipients transport, the recipients property, the recipients benefit or the recipients meal, as the case may be, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration; and
 - (b) in relation to an expense payment fringe benefit provided in respect of the employment of an employee of an employer, being a fringe benefit to which paragraph 20 (a) applies—the amount paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the fringe benefit;
- “recipients current benefit”, in relation to a period residual fringe benefit in relation to a year of tax, means the benefit to which the fringe benefit relates, insofar as that benefit was provided during the year of tax;
- “recipients current housing right”, in relation to a housing fringe benefit in relation to a year of tax, means the housing right to which the fringe benefit relates, insofar as that housing right subsisted during the year of tax;
- “recipients expenditure”, in relation to an expense payment benefit, means the expenditure incurred by the recipient as mentioned in paragraph 20 (a) or (b), as the case requires;
- “recipients meal”, in relation to a board fringe benefit, means the meal to which the fringe benefit relates;
- “recipients overall benefit”, in relation to a period residual fringe benefit in relation to a year of tax, means the benefit to which the fringe benefit relates, including that benefit as it was or will be provided at any time outside the year of tax;

“recipients overall housing right”, in relation to a housing fringe benefit in relation to a year of tax, means the housing right to which the fringe benefit relates, including that housing right as it subsisted, or will subsist, outside the year of tax;

“recipients property”, in relation to a property benefit, means the property to which the benefit relates;

“recipients rent”, in relation to a housing fringe benefit in relation to an employee of an employer in relation to a year of tax, means the amount of any rent or other consideration paid to the provider or to the employer by the recipient or the employee in respect of the subsistence, during the year of tax, of the recipients housing right reduced by the amount of any reimbursement paid to the recipient in respect of that consideration;

“recipients transport”, in relation to an airline transport fringe benefit, means the transport and incidental services to which the benefit relates;

“recipients unit of accommodation”, in relation to a housing fringe benefit, means the unit of accommodation to which the fringe benefit relates;

“recreation” includes—

- (a) amusement;
- (b) sport or similar leisure-time pursuits; and
- (c) recreation or amusement provided on, or by means of, a vehicle, ship, vessel or aircraft;

“recreational facility” means a facility for recreation, but does not include a facility for accommodation or a facility for drinking or dining;

“reimburse” includes any act having the effect or result, direct or indirect, of a reimbursement;

“relevant car documents”, in relation to a car that was held by a person during a period during a year of tax, means—

- (a) a daily log book or similar document in which, in respect of each business journey undertaken in the car during the period, an entry setting out particulars of—
 - (i) the date on which the journey began and the date on which it ended;
 - (ii) the respective odometer readings of the car at the beginning and end of the journey;
 - (iii) the number of kilometres travelled by the car in the course of the journey;
 - (iv) the purpose or purposes of the journey;
 - (v) the name of the person, or the names of the persons, driving the car on that journey;
 - (vi) the date on which the entry is made; and

(vii) the name of the person by whom the entry is made, is made in the English language at, or as soon as reasonably practicable after, the end of the journey, and that, in relation to each such entry so made, is signed, at the time when the entry is made, by the person who made the entry; and

- (b) a document in which particulars of—
- (i) the odometer reading of the car at the commencement of the period;
 - (ii) the odometer reading of the car at the end of the period;
 - (iii) the respective dates on which the entries are made; and
 - (iv) the name of the person, or the names of the respective persons, by whom the entries are made,
- are entered in the English language, and that is signed by the person or persons referred to in sub-paragraph (iv), at, or as soon as reasonably practicable after, the respective times to which those odometer readings relate;

“remote area housing fringe benefit” means a housing fringe benefit that is a remote area housing fringe benefit for the purposes of section 29;

“rent index number”, in relation to a quarter in relation to a State or Territory, means the index number of the rent sub-group of the Consumer Price Index published by the Australian Statistician in respect of that quarter for the capital city of that State or Territory;

“residential fuel” means any form of fuel (including electricity) for use for domestic purposes;

“residual benefit” means a benefit that is a residual benefit by virtue of section 45;

“residual fringe benefit” means a fringe benefit that is a residual benefit;

“retention period”, in relation to a statutory evidentiary document in relation to an employer in relation to a year of tax, means the period that—

- (a) commences on—
- (i) where the statutory evidentiary document is maintained by or on behalf of the employer—the day on which the document commences to be maintained; or
 - (ii) in any other case—the day on which the statutory evidentiary document is given to the employer; and
- (b) ends—
- (i) in a case to which sub-paragraph (ii) does not apply—at the end of the period of 6 years commencing on the original assessment date in relation to an assessment of the fringe benefits taxable amount of the employer of the year of tax; or

- (ii) if, at the end of that period of 6 years, an objection, or a request for amendment of an assessment (not being an objection) relating to a matter, or matters including a matter, to which the statutory evidentiary document is relevant, or a review or appeal arising out of such an objection, has not been determined or otherwise finally disposed of—on the day on which the objection (and any review or appeal arising out of it), the request, or review or appeal (and any appeal or further appeal arising out of it), as the case may be, is determined or so disposed of;

“salary or wages” means assessable income, being salary or wages within the meaning of section 221A of the *Income Tax Assessment Act 1936*;

“sales tax” means sales tax imposed under a law of the Commonwealth;

“Second Commissioner” means a Second Commissioner of Taxation;

“small expense payment fringe benefit” means an expense payment fringe benefit where the recipients expenditure does not exceed \$10;

“spouse”, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person;

“standard year of tax” means the year of tax commencing on 1 April 1987 or a subsequent year of tax;

“stand-by value”, in relation to the recipients transport, in relation to an airline transport fringe benefit, means—

(a) where the recipients transport is over a domestic route—

- (i) if the recipients transport is on a scheduled passenger air service—37.5% of the economy air fare charged by the provider at or about the comparison time in respect of transport over that route;
- (ii) if sub-paragraph (i) does not apply and the Australian National Airlines Commission operates a scheduled passenger air service over that route at or about the comparison time—37.5% of the economy air fare charged by the Australian National Airlines Commission at or about the comparison time in respect of transport over that route;
- (iii) if neither sub-paragraph (i) nor (ii) applies and a carrier other than the Australian National Airlines Commission operates a scheduled passenger air service over that route at or about the comparison time—37.5% of the lowest economy air fare charged by a carrier other than the Australian National Airlines Commission at or about the comparison time in respect of transport over that route;

- (iv) if none of sub-paragraphs (i), (ii) and (iii) apply and a combination of scheduled passenger air services operated by the Australian National Airlines Commission at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the combination of economy air fares charged by the Australian National Airlines Commission at or about the comparison time in respect of transport between the ports of embarkation and disembarkation;
 - (v) if none of sub-paragraphs (i), (ii), (iii) and (iv) apply and a combination of scheduled passenger air services operated by a carrier or carriers at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the lowest combination of economy air fares charged by carriers at or about the comparison time in respect of transport between the ports of embarkation and disembarkation; and
 - (vi) in any other case—75% of the notional value at the comparison time of the recipients transport; and
- (b) where the recipients transport is over an international route—
- (i) if the recipients transport is on a scheduled passenger air service and there is, at or about the comparison time, a providers published air fare in respect of the route—37.5% of the lowest providers published air fare in respect of that route;
 - (ii) if sub-paragraph (i) does not apply and a carrier operates a scheduled passenger air service over that route at or about the comparison time—37.5% of the lowest economy air fare charged by a carrier at or about the comparison time in respect of transport over that route;
 - (iii) if neither sub-paragraph (i) nor (ii) applies and a combination of scheduled passenger air services operated by a carrier or carriers at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the lowest combination of economy air fares charged by carriers at or about the comparison time in respect of transport between the ports of embarkation and disembarkation; and
 - (iv) in any other case—75% of the notional value at the comparison time of the recipients transport;

“statutory annual rent amount”, in relation to a year of tax, means the amount calculated in accordance with the formula $\frac{52AB}{C}$ where—

C

A is the amount of the average weekly earnings (including overtime) of adult male full-time employees in the mining industry, being that amount as published by the Australian Statistician in respect of a pay period in the November immediately preceding the beginning of the year of tax in a document entitled—

- (a) in the case of the transitional year of tax—“Average Earnings and Hours of Employees, Australia”; and
- (b) in the case of a standard year of tax—“Average Weekly Earnings, States and Australia”;

B is the number of whole dollars in the sum of the amounts of the dwelling rent components of total private final consumption expenditure in respect of the quarters of the calendar year immediately preceding the year of tax, being those amounts, expressed at current prices and without seasonal adjustment, as published by the Australian Statistician in the document published in respect of the December quarter of that calendar year and entitled “Quarterly Estimates of National Income and Expenditure”; and

C is the number of whole dollars in the sum of the amounts of total private final consumption expenditure in respect of the quarters of the calendar year immediately preceding the year of tax, being those amounts, expressed at current prices and without seasonal adjustment, as published by the Australian Statistician in the document published in respect of the December quarter of that calendar year and entitled “Quarterly Estimates of National Income and Expenditure”;

“statutory food amount”, in relation to a person, in relation to a period in relation to a year of tax, means the amount calculated in respect of that period—

- (a) in a case where the person had attained the age of 12 years before the beginning of the year of tax—at the rate of \$42 per week; and
- (b) in any other case—at the rate of \$21 per week;

“statutory evidentiary document”, in relation to an employer in relation to a year of tax, means—

- (a) a declaration or other document that is—
 - (i) given to the employer pursuant to a provision of Part III or of a definition in this sub-section that is relevant to that Part; and
 - (ii) relevant for the purposes of determining—
 - (A) the taxable value of a fringe benefit provided in respect of the employment of an employee of the employer; or

- (B) whether a benefit provided in respect of the employment of an employee of the employer is an exempt benefit; and
 - (b) a document maintained by the employer in relation to the year of tax as mentioned in paragraph 10 (3) (b) or sub-sub-paragraph 24 (1) (c) (i) (B);
- “statutory interest rate”—
- (a) in relation to a year of tax, means—
 - (i) if there is only 1 benchmark interest rate in relation to the year of tax—that rate;
 - (ii) if there are 2 or more benchmark interest rates in relation to the year of tax—the lower or lowest of those rates; or
 - (iii) if there is no benchmark interest rate in relation to the year of tax—such rate as is prescribed; and
 - (b) in relation to a time (in this paragraph referred to as the “loan time”) before 1 July 1986, means—
 - (i) if the loan time occurred after 2 April 1986—
 - (A) if there is only 1 benchmark interest rate in relation to the loan time—that rate;
 - (B) if there are 2 or more benchmark interest rates in relation to the loan time—the lower or lowest of those rates; or
 - (C) if there is no benchmark interest rate in relation to the loan time—such rate as is prescribed;
 - (ii) if the loan time occurred during a period specified in the Schedule—the rate specified in the Schedule in relation to that period; and
 - (iii) if the loan time occurred before 1 January 1946—3.875% per annum;
- “stratum unit”, in relation to a dwelling, means a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles, being a unit that comprises—
- (a) a part of a building containing the dwelling, being a part consisting of a flat or home unit; or
 - (b) a part of a parcel of land, being a part on which the building containing the dwelling is constructed;
- “superannuation fund” means—
- (a) a superannuation fund within the meaning of Division 9B of Part III of the *Income Tax Assessment Act 1936*; or
 - (b) a scheme for the payment of benefits upon retirement or death, being a scheme constituted by or under a law of the Commonwealth or of a State or Territory;

“tangible property” means goods and includes—

- (a) animals, including fish; and
- (b) gas and electricity;

“tax-exempt body entertainment benefit” means a benefit referred to in section 38;

“tax-exempt body entertainment fringe benefit” means a fringe benefit that is a tax-exempt body entertainment benefit;

“taxi” means a motor vehicle that is licensed to operate as a taxi;

“tenancy period”, in relation to a housing fringe benefit in relation to a year of tax, means the period during the year of tax when the housing right to which the fringe benefits relates subsisted;

“this Act” includes the regulations;

“transitional year of tax” means the year of tax commencing on 1 July 1986;

“travel agent”, in relation to transport provided in respect of the employment of an employee, means a person who, at or about the time when that transport commenced to be provided, carried on a business that consisted of or included the sale principally to outsiders of airline tickets issued by airline operators;

“travel diary”, in relation to particular travel undertaken by the recipient of an expense payment fringe benefit, an airline transport fringe benefit, a property fringe benefit or a residual fringe benefit, means a diary or similar document, in the English language, in which, in relation to each activity engaged in by the recipient—

- (a) while undertaking that travel; and
- (b) in the course of producing assessable income of the recipient, the recipient has made, before, at the time of, or as soon as reasonably practicable after, the conclusion of the activity, an entry setting out particulars of—
 - (c) the date on which the entry was made;
 - (d) the place where the activity was undertaken;
 - (e) the date and approximate time when the activity commenced;
 - (f) the duration of the activity; and
 - (g) the nature of the activity,

and includes a copy of such a diary or document;

“trustee” includes—

- (a) a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law;
- (b) an executor, administrator or other personal representative of a deceased person;
- (c) a guardian or committee;
- (d) a receiver or receiver and manager;
- (e) an official manager or liquidator of a company; or

(f) a person—

- (i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust;
- (ii) acting in any fiduciary capacity; or
- (iii) having the possession, control or management of any real or personal property of a person under any legal or other disability;

“unincorporated company” means a company being an unincorporated association or other unincorporated body of persons;

“unit of accommodation” includes—

- (a) a house, flat or home unit;
- (b) accommodation in a hotel, hostel, motel or guesthouse;
- (c) accommodation in a bunkhouse or any living quarters;
- (d) accommodation in a ship, vessel or floating structure; and
- (e) a caravan or other mobile home;

“waive” includes release;

“work-related travel”, in relation to an employee, means—

- (a) travel by the employee between—
 - (i) the place of residence of the employee; and
 - (ii) the place of employment of the employee or any other place from which or at which the employee performs duties of his or her employment; or
- (b) travel by the employee that is incidental to travel in the course of performing the duties of his or her employment;

“year of income” has the same meaning as in the *Income Tax Assessment Act 1936*;

“year of tax” means—

- (a) the period commencing on 1 July 1986 and ending on 31 March 1987;
- (b) the year commencing on 1 April 1987; and
- (c) each subsequent year commencing on 1 April.

(2) In the definition of “business premises” in sub-section (1), “premises” includes a ship, vessel, floating structure, aircraft or train.

Salary or wages

137. (1) For the purpose only of ascertaining whether a person is an employee or an employer within the meaning of this Act, where—

- (a) a benefit is provided by a person (in this sub-section referred to as the “first person”) to, or to an associate of, another person (in this sub-section referred to as the “second person”);

- (b) but for this sub-section, the benefit would not be regarded as having been provided in respect of the employment of the second person; and
- (c) either of the following conditions is satisfied:
 - (i) if the benefit were provided by the first person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the first person to the second person;
 - (ii) all of the following conditions are satisfied:
 - (A) sub-paragraph (i) does not apply in relation to the benefit;
 - (B) the first person is an associate of a third person or the benefit is provided under an arrangement between the first person and a third person;
 - (C) if the benefit were provided by the third person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the third person to the second person,

section 221A of the *Income Tax Assessment Act 1936* applies as if the benefit were salary or wages paid to the second person by—

- (d) in a case to which sub-paragraph (c) (i) applies—the first person; or
- (e) in a case to which sub-paragraph (c) (ii) applies—the third person.

(2) For the purposes of this Act (other than the definition of “current employee” in sub-section 136 (1)), the definition of “salary or wages” in section 221A of the *Income Tax Assessment Act 1936* applies as if the reference in that definition to an employee were a reference to a current employee within the meaning of this Act.

Double counting of fringe benefits

138. (1) Where—

- (a) a person (in this sub-section referred to as the “employee”) is both—
 - (i) an employee of an employer (in this section referred to as the “first employer”); and
 - (ii) an employee of one or more associates of the first employer;
- (b) a benefit is provided to, or to an associate of, the employee by the first employer; and
- (c) the benefit is a fringe benefit in relation to the first employer,

the benefit is not a fringe benefit in relation to an employer who is an associate of the first employer.

(2) For the purposes of this Act, where, in a case to which sub-section (1) does not apply, a benefit provided to, or to an associate of, an employee would, but for this sub-section, be a fringe benefit in relation to 2 or more

employers, the benefit shall be taken to be a fringe benefit in relation to such one of those employers as the Commissioner determines and not in relation to any other of those employers.

(3) For the purposes of this Act, where a benefit in respect of the employment of an employee is provided jointly to the employee and one or more associates of the employee, the benefit shall be deemed to have been provided to the employee only.

(4) For the purposes of this Act, where a benefit in respect of the employment of an employee is provided jointly to 2 or more associates of the employee but not to the employee, the benefit shall be taken to have been provided to such one of those associates as the Commissioner determines and not to any other of those associates.

Date on which return furnished

139. Where an employer furnishes, on different dates, 2 or more returns to the Commissioner under this Act relating to a year of tax, a reference in this Act to the day on which the return relating to that year was furnished is a reference to the earliest of those dates.

Eligible urban areas

140. (1) In this Act—

(a) a reference to an eligible urban area is a reference to—

(i) an area that—

(A) is situated in an area described in Schedule 2 to the *Income Tax Assessment Act 1936*; and

(B) is an urban centre with a census population of not less than 28,000; and

(ii) an area that—

(A) is not situated in an area described in Schedule 2 to the *Income Tax Assessment Act 1936*; and

(B) is an urban centre with a census population of not less than 14,000; and

(b) a reference to a location that is adjacent to an eligible urban area is a reference to a location that, as at the date of commencement of this section—

(i) was situated less than 40 kilometres, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of less than 130,000; or

(ii) was situated less than 100 kilometres, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of not less than 130,000.

(2) For the purposes of this section, the distance, by the shortest practicable surface route, between a location (in this sub-section referred to as the “tested location”) and the centre point of an eligible urban area is—

- (a) where there is only one location within the eligible urban area from which distances between the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and that location; and
- (b) where there are 2 or more locations within the eligible urban area from which distances between parts of the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and the one of those locations that is in the principal one of those parts.

(3) In this section—

“census population”, in relation to an urban centre, means the census count on an actual location basis of the population of that urban centre specified in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled “Persons and Dwellings in Local Government Areas and Urban Centres”;

“surface route” means a route other than an air route;

“urban centre” means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled “Persons and Dwellings in Local Government Areas and Urban Centres”.

(4) If, but for this sub-section, the whole or any part of a provision of this Act or of the *Fringe Benefits Tax Act 1986* would be invalid by reason of the enactment of paragraph (1) (a) of this section, this Act has effect as if that paragraph were omitted and the following paragraph were substituted:

“(a) a reference to an eligible urban area is a reference to an area that is an urban centre with a census population of not less than 14,000; and”.

Housing loans

141. (1) For the purposes of this Act, where—

- (a) a loan is made to, and used by, a person (whether in his or her own right or jointly with his or her spouse) wholly—
 - (i) to enable the person to acquire a prescribed interest in land on which a building constituting or containing a dwelling was subsequently to be constructed or to acquire a prescribed interest in land and construct, or complete the construction of, such a building on the land;
 - (ii) to enable the person to construct, or complete the construction of, a building constituting or containing a dwelling on land in which the taxpayer held a prescribed interest;

- (iii) to enable the person to acquire a prescribed interest in land on which there was a building constituting or containing a dwelling;
 - (iv) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling;
 - (v) to enable the person to extend a building constituting or containing a dwelling, being a building constructed on land in which the taxpayer held a prescribed interest, by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be;
 - (vi) in a case where the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling;
 - (vii) to enable the person to acquire a proprietary right in respect of a dwelling, being a flat or a home unit; or
 - (viii) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in a preceding sub-paragraph of this paragraph; and
- (b) at the time the loan was made, the dwelling was used or proposed to be used as the person's usual place of residence,
the loan shall be taken to be a housing loan relating to the dwelling.

(2) For the purposes of this section—

(a) where—

- (i) a person acquires, holds or held an estate in fee simple in land or in a stratum unit or 2 or more persons acquire, hold or held such an estate in land or in a stratum unit as joint tenants or tenants in common;
- (ii) a person acquires, holds or held an interest in land or in a stratum unit as lessee or licensee, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as lessees or licensees, under a lease or licence, and the Commissioner is satisfied that the lease or licence gives or gave reasonable security of tenure to the lessee or licensee, or to the lessees or licensees, for a period of, or for periods aggregating, not less than 10 years;
- (iii) a person acquires, holds or held an interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit, or 2 or more persons acquired, hold or held an interest in land or in a stratum unit as purchasers of such an estate in the land or in the stratum unit as joint tenants or tenants in common, under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments; or

- (iv) a person acquires, holds or held an interest in land or in a stratum unit as purchaser, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as purchasers, of the right to be granted a lease of the land or of the stratum unit under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, for the lease to be made at a future time or by instalments and the Commissioner is satisfied that the lease will give or gave reasonable security of tenure, to the lessee or lessees for a period of, or for periods aggregating, not less than 10 years,

that person or those persons shall be taken to acquire or hold, or to have held, as the case may be, a prescribed interest in that land or in that stratum unit, as the case requires; and

- (b) where a person acquires, holds or held, or 2 or more persons acquire, hold or held jointly, a right of occupancy of a dwelling, being a flat or a home unit, arising by virtue of the acquiring or holding of shares, or by virtue of a contract to purchase shares, in a company that owns or owned the building that contains the flat or home unit, that person, or those persons, as the case requires, shall be taken to acquire or hold, or to have held, as the case may be, a proprietary right in respect of the dwelling;
- (c) where—
 - (i) a loan that but for this paragraph would be a housing loan relating to a dwelling is made by a person (in this paragraph referred to as “the lender”) to another person (in this paragraph referred to as “the borrower”);
 - (ii) the lender does not maintain an account in relation to the loan that is separate and apart—
 - (A) from any account kept by the lender in relation to any moneys deposited with the lender or applied by the lender on behalf of the borrower otherwise than for the purpose of repaying the loan, in whole or in part, or of paying, in whole or in part, interest that has accrued or will accrue in respect of the loan; and
 - (B) from any account kept by the lender in relation to any other loan made by the lender to the borrower,the loan referred to in sub-paragraph (i) is not a housing loan relating to a dwelling.

(3) For the purposes of this Act, a loan shall not be taken to be a housing loan relating to a dwelling except as provided in this section.

Remote area housing

142. (1) In this Act, a reference, in relation to a year of tax in relation to an employee of an employer, to a remote area housing loan connected with a dwelling is a reference to a housing loan relating to the dwelling where—

- (a) during the whole of the period (in this sub-section referred to as the “occupation period”) in the year of tax when the employee occupied or used the dwelling as his or her usual place of residence—
 - (i) the dwelling was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
- (b) it is customary for employers in the industry in which the employee was employed during the occupation period to provide housing assistance for their employees;
- (c) it would be concluded that it was necessary for the employer, during the year of tax, to provide or arrange for the provision of housing assistance for employees of the employer by reason that—
 - (i) the nature of the employer’s business was such that employees of the employer were liable to be frequently required to change their places of residence;
 - (ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or
 - (iii) it is customary for employers in the industry in which the employee was employed during the occupation period to provide housing assistance for their employees; and
- (d) the loan was not made to the employee pursuant to—
 - (i) an arrangement other than an arm’s length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60.

(2) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to remote area residential property is a reference to property that consists of an estate or interest in land on which is situated a dwelling occupied or used by the employee immediately after the provision time as his or her usual place of residence where—

- (a) at the provision time—
 - (i) the dwelling was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;

- (b) it is customary for employers in the industry in which the employee was employed at the provision time to provide housing assistance for their employees;
 - (c) it would be concluded that it was necessary for the employer, during the year of tax, to provide or arrange for the provision of housing assistance for employees of the employer by reason that—
 - (i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence;
 - (ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or
 - (iii) it is customary for employers in the industry in which the employee was employed at the provision time to provide housing assistance for their employees; and
 - (d) the property was not provided to the employee pursuant to—
 - (i) an arrangement other than an arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60.
- (3) A reference in this section to housing assistance is a reference to—
- (a) the provision of residential accommodation without charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned;
 - (b) the making of a housing loan relating to a dwelling, being a loan in respect of which the rate of interest payable is less than the market rate of interest in respect of the loan concerned;
 - (c) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of interest incurred in respect of a housing loan relating to a dwelling; or
 - (d) the provision of residential property without charge or for consideration that is less than the market value of the property at the provision time.

Remote area holiday transport

143. For the purposes of this Act—

- (a) the recipients expenditure in relation to an expense payment fringe benefit; or
 - (b) the recipients benefit in relation to a residual fringe benefit,
- in relation to an employer in relation to a year of tax shall be taken to be in respect of remote area holiday transport if—

- (c) in the case of an expense payment fringe benefit—the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;
- (d) in the case of a residual fringe benefit—the recipients benefit consists of the provision of transport;
- (e) the recipient of the fringe benefit is, or is the spouse or a child of, a current employee of the employer;
- (f) the transport is provided while the employee is on recreation leave, being recreation leave of not less than 3 working days;
- (g) the transport is between—
 - (i) a place at or near the usual place of employment of the employee; and
 - (ii) a place in a State or internal Territory, being—
 - (A) a place at or near the employee's usual place of residence immediately before the employee began employment in the place referred to in sub-paragraph (i); or
 - (B) the capital city of the State or Territory in which the usual place of employment of the employee is located;
- (h) at the completion of that recreation leave, the employee resumes the duties of his or her employment at his or her usual place of employment;
- (j) the usual place of employment of the employee is in a State or internal Territory but is not at a location in, or adjacent to, an eligible urban area; and
- (k) either of the following conditions is satisfied:
 - (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;
 - (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient.

Deemed payment

144. For the purposes of Part III, any conduct by a person that effects or results in a discharge or extinction of an obligation of another person to pay an amount to a third person shall be taken to constitute the payment of the amount by the first-mentioned person.

Consideration not in cash

145. (1) For the purposes of this Act, where, upon any transaction, any consideration is given by way of the provision of property (other than money), the money value of that consideration shall be deemed to have been paid or given.

(2) Sub-section (1) does not apply for the purpose of determining whether an act or thing constitutes the provision of a benefit to which a particular provision of this Act applies.

Amounts to be expressed in Australian currency

146. For the purposes of this Act, all amounts and values shall be expressed in terms of Australian currency.

Obligation to pay or repay an amount

147. For the purposes of this Act, a person shall be deemed to be under an obligation to pay or repay an amount notwithstanding that the amount is not due for payment or repayment.

Provision of benefits

148. (1) A reference in this Act to the provision of a benefit to a person in respect of the employment of an employee is a reference to the provision of such a benefit—

- (a) whether or not the benefit is also provided in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, any other matter or thing;
- (b) whether the employment will occur, is occurring, or has occurred;
- (c) whether or not the benefit is surplus to the needs or wants of the recipient;
- (d) whether or not the benefit is also provided to another person;
- (e) whether or not the benefit is, to any extent, offset by any inconvenience or disadvantage;
- (f) whether or not the benefit is provided or used, or required to be provided or used, in connection with that employment;
- (g) whether or not the provision of the benefit is, or is in the nature of, income; and
- (h) whether or not the benefit is provided as a reward for services rendered, or to be rendered, by the employee.

(2) Where, in respect of the employment of an employee, a benefit is provided by a person (in this sub-section referred to as the “provider”) to a person other than—

- (a) the employee; or
- (b) a person who, but for this sub-section, is an associate of the employee,

under an arrangement between—

- (c) the provider, the employer or an associate of the employer; and
- (d) the employee or a person who, but for this sub-section, is an associate of the employee,

the recipient of the benefit shall be deemed to be an associate of the employee for the purposes of the application of this Act in relation to the provision of that benefit.

(3) Where—

(a) but for the prohibition on the doing of an act or thing, the doing of the act or thing would result in the provision of a benefit in respect of the employment of a person by another person (in this sub-section referred to as the “provider”); and

(b) the prohibition is not consistently enforced,

the provider shall be deemed, for the purposes of this Act, to have provided that benefit in respect of that employment.

(4) For the purposes of this Act, a benefit that is received or obtained by an employee, or by an associate of an employee, in respect of the employment of the employee shall be deemed to have been provided by the provider in respect of that employment.

(5) A provision of this Act that deems a benefit to have been provided in particular circumstances shall not, by implication, limit the meaning of the expression “provide” when used in relation to the provision of a benefit in other circumstances.

Provision of benefit during a period

149. (1) For the purposes of this Act, a benefit shall be taken to be provided during a period if, and only if, the benefit—

(a) is provided, or subsists, during a period of more than 1 day; and

(b) is not deemed by a provision of this Act to be provided at a particular time or on a particular day.

(2) For the purposes of sub-section (1), but without limiting the generality of that sub-section, a benefit constituted by the subsistence of a lease or licence in respect of property, or a benefit in respect of a loan, shall be taken to be provided during the period when the lease or licence subsists or while a person is under an obligation to repay the whole or any part of the loan, as the case may be.

Credit cards

150. For the purposes of this Act, where, in respect of the employment of an employee of an employer, the employee or an associate of the employee uses a credit card issued by a third person to, or to an associate of, the employer to obtain the provision of a benefit on credit from a fourth person, the following provisions have effect:

(a) the fourth person shall be taken to have provided the benefit, in respect of that employment, under an arrangement between—

(i) the employer or the associate of the employer, as the case requires; and

(ii) the fourth person;

(b) where the employer or the associate of the employer, as the case may be, incurred expenditure to the third person under an arm's length transaction in respect of the provision of the benefit—the

employer or the associate of the employer, as the case requires, shall be taken to have incurred that expenditure to the fourth person under an arm's length transaction.

Employee performing services for person other than employer

151. Where the employer of an employee contracts with another person (in this section referred to as the "purchaser") for the employee to perform services for the purchaser, the following provisions have effect for the purposes of the application of section 54 and the definition of "board meal" in sub-section 136 (1) in relation to the provision of a meal, or food or drink, to the employee in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, the performance of those services:

- (a) premises of the purchaser shall be taken to be eligible premises of the employer;
- (b) a meal, or food or drink, provided by the purchaser to the employee shall be taken to have been provided by the employer.

Provision of entertainment

152. A reference in this Act to the provision of entertainment is a reference to the provision of entertainment within the meaning of section 51AE of the *Income Tax Assessment Act 1936*.

Residual benefits to include provision of property in certain circumstances

153. For the purposes of this Act, where—

- (a) a person carries on a business that consists of, or includes, the entering into of contracts for the provision of property together with the provision of residual benefits;
- (b) the person provides property and residual benefits to another person;
- (c) but for this section, the provision would constitute a property benefit and a residual benefit; and
- (d) the provision is made in the same, or substantially the same, circumstances as a provision of the kind mentioned in paragraph (a),

the provision of the residual benefit shall be taken to include the provision of the property and the provision of the property shall not be taken to constitute a property benefit.

Creation of property

154. For the purposes of this Act, where a person does anything that results in the creation of property in another person, the first-mentioned person shall be deemed to have provided that property to the other person at the time when the property comes into existence.

Use of property before title passes

155. (1) Subject to sub-section (2), where, under a transaction, the use of property is obtained by a person for a period at the end of which the title to the property will or may pass to the person, the property shall be

deemed, for the purposes of this Act, to have been provided to the person at the time when the use of the property was obtained by the person.

(2) Property shall not be taken to have been provided to a person by virtue of sub-section (1) if the period for which the person has the use of the property terminates without the title to the property passing to the person, and nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this sub-section.

Supply of electricity or gas through reticulation system

156. For the purposes of this Act, the supply of electricity or gas through a reticulation system shall be deemed not to constitute the provision of property.

Christmas Island

157. (1) A reference in this Act to an internal Territory includes a reference to the Territory of Christmas Island.

(2) For the purposes of this Act, a location in the Territory of Christmas Island shall be taken not to be situated in, or adjacent to, an eligible urban area.

Related companies

158. (1) For the purposes of this Act, a company shall be taken to be related to another company if—

- (a) one of the companies is a subsidiary of the other company; or
- (b) each of the companies is a subsidiary of the same company.

(2) For the purposes of this section, a company (in this sub-section referred to as the “subsidiary company”) shall be taken to be the subsidiary of another company (in this sub-section referred to as the “holding company”) if—

- (a) all the shares in the subsidiary company are beneficially owned by—
 - (i) the holding company;
 - (ii) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or
 - (iii) the holding company and a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; and
- (b) there is no agreement in force by virtue of which any person is in a position to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

(3) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this sub-section), every company that is a subsidiary of the first-mentioned company shall be taken to be a subsidiary of that other company.

(4) For the purposes of sub-section (2), a person shall be taken to be in a position to affect any rights of a company in relation to another company if that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies or by virtue of any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

Associates

159. (1) For the purpose only of determining whether a person is an associate of another person within the meaning of this Act, the *Income Tax Assessment Act 1936* applies as if a reference in that Act to the spouse of a person included a reference to a person who is a spouse of the person for the purposes of this Act.

(2) For the purposes of this Act, but without limiting the generality of the expression “associate”—

- (a) a company that is related to another company shall be deemed to be an associate of that other company;
- (b) the Commonwealth shall be deemed to be an associate of each authority of the Commonwealth;
- (c) an authority of the Commonwealth shall be deemed an associate of each other authority of the Commonwealth;
- (d) a State shall be deemed to be an associate of each authority of the State;
- (e) an authority of a State shall be deemed to be an associate of each other authority of the State;
- (f) a Territory shall be deemed to be an associate of each authority of the Territory; and
- (g) an authority of a Territory shall be deemed to be an associate of each other authority of the Territory.

(3) Where a person is an associate of another person by virtue of paragraph (2) (b), (c), (d), (e), (f) or (g), Part III has effect as if those persons were companies and were related to each other.

(4) For the purposes of this Act, the definition of “associate” in section 26AAB of the *Income Tax Assessment Act 1936* has effect as if—

- (a) sub-paragraph (a) (ii) of that definition were omitted and the following sub-paragraph were substituted:

“(ii) a partner of the taxpayer or a partnership in which the taxpayer is or was a partner (whether or not the partnership still exists);”;

- (b) sub-paragraph (b) (i) of that definition were omitted and the following sub-paragraph were substituted:

- “(i) a partner of the taxpayer or a partnership in which the taxpayer is or was a partner (whether or not the partnership still exists);”.

Continuity of employment where business disposed of, &c.

160. (1) Where—

- (a) a person (in this sub-section referred to as the “former employer”) disposes of the whole or a part of a business or undertaking to another person (in this sub-section referred to as the “new employer”); and
- (b) an arrangement relating to the disposal provides for the new employer or an associate of the new employer to provide or to continue to provide, or to arrange for the provision or continued provision of, benefits in respect of the employment of a person (in this sub-section referred to as the “former employee”) by the former employer,

the following provisions have effect:

- (c) this Act applies, in relation to any benefit so provided or continued to be provided, as if the employment of the former employee by the former employer were, instead, employment by the new employer;
- (d) where the arrangement provides for the new employer or an associate of the new employer to assume, or arrange for the assumption of, the rights of—
 - (i) a lender under a loan;
 - (ii) a lessor under a lease; or
 - (iii) a licensor under a licence,

being a loan, lease or licence, as the case may be, granted in respect of the employment of the former employee by the former employer, this Act has effect, after the assumption of those rights, as if the employment of the former employee by the former employer were, instead, employment by the new employer and the loan, lease or licence had been granted in respect of that employment by the person who assumed the rights.

(2) Where, for any reason, including—

- (a) the formation or dissolution of a partnership; or
- (b) a variation in the constitution of a partnership, or in the interests of the partners,

a change has occurred in the ownership of, or in the interests of persons in, property constituting the whole or a part of the assets of a business and the person, or one or more of the persons, who owned the property before the change has or have an interest in the property after the change, this Act has effect as if the persons who owned the property before the change had, on the day on which the change occurred—

- (c) disposed of the whole of that business to the person, or all of the persons, by whom the property is owned after the change; and

- (d) disposed of the whole of the property to the person, or all of the persons, by whom the property is owned after the change for an amount equal to the notional value of the property.

(3) For the purposes of this Act, the trustee or trustees from time to time of a trust, being an employer or employers, shall be deemed to be one employer.

Business journeys in car

161. (1) For the purposes of this Act, where—

- (a) during a particular period during a day, 2 or more journeys are undertaken in a car; and
- (b) each of the journeys in the car during that period is, or but for sub-sections (2) and (3) would be, a business journey,

the journeys referred to in paragraph (b) shall be deemed to constitute a single journey.

(2) For the purposes of the application of Division 2 of Part III, where a journey of the kind referred to in paragraph (a) of the definition of “business journey” in sub-section 136 (1) is undertaken in a car and—

- (a) an entry relating to the journey, being an entry of the kind referred to in paragraph (a) of the definition of “relevant car documents” in that sub-section is not made as mentioned in that paragraph in a daily log book or similar document relating to such journeys; or
- (b) such an entry is so made but the daily log book or similar document is not signed in relation to the entry as mentioned in that paragraph of that definition,

the journey shall not be taken to be a business journey.

(3) For the purposes of the application of Division 4, 5, 11 or 12 of Part III, where a journey of the kind referred to in paragraph (b) of the definition of “business journey” in sub-section 136 (1) is undertaken in a car and—

- (a) an entry relating to the journey, being an entry of the kind referred to in paragraph (a) of the definition of “relevant car documents” in that sub-section is not made as mentioned in that paragraph in a daily log book or similar document relating to such journeys; or
- (b) such an entry is so made but the daily log book or similar document is not signed in relation to the entry as mentioned in that paragraph of that definition,

the journey shall not be taken to be a business journey of that kind.

References to holding of car

162. In this Act, unless the contrary intention appears, a reference to a car held by a person is a reference to—

- (a) a car owned by the person;
- (b) a car leased to the person; or

- (c) a car otherwise made available to the person by another person.

Application of Act

163. (1) This Act extends to every external Territory and, except so far as the contrary intention appears, to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

(2) Except where otherwise expressly provided, this Act extends to matters and things whether occurring before or after the commencement of this Act.

(3) This Act binds the Crown in right of each of the States, of the Northern Territory and of Norfolk Island.

(4) In sub-section (1), a reference to this Act includes a reference to the *Taxation Administration Act 1953* to the extent to which that Act relates to this Act.

Residence

164. (1) For the purposes of this Act, a person shall be taken to have been a non-resident at a particular time if the person was not a resident of Australia at that time.

(2) For the purposes of this Act, a person shall be taken to have been a resident of Australia at a particular time if—

(a) in the case of a natural person—

(i) the person resided in Australia at that time; or

(ii) except in the case where the Commissioner is satisfied that that person's permanent place of residence at that time was outside Australia—the person was domiciled in Australia at that time;

(b) in the case of an incorporated company—

(i) the company was incorporated in Australia at that time; or

(ii) at that time the company carried on business in Australia and—

(A) had its central management and control in Australia;
or

(B) had its voting power controlled by shareholders who were residents of Australia; or

(c) in the case of a partnership or an unincorporated company—any member of the partnership or company was a resident of Australia at that time by virtue of paragraph (a) or (b).

Partnerships

165. (1) Subject to this section, this Act applies to a partnership as if the partnership were a person.

(2) Where, but for this sub-section, an obligation would be imposed on a partnership by virtue of the operation of sub-section (1), the obligation is imposed on each partner, but may be discharged by any of the partners.

(3) Where, by virtue of the operation of sub-section (1), an amount is payable under this Act by a partnership, the partners are jointly and severally liable to pay that amount.

(4) Where, by virtue of the operation of sub-section (1), an offence against this Act is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

(5) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person—

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.

(6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

Unincorporated companies

166. (1) Subject to this section, this Act applies to an unincorporated company as if the company were a person.

(2) Where, but for this sub-section, an obligation would be imposed on an unincorporated company by virtue of the operation of sub-section (1), the obligation is imposed on each member of the committee of management of the company, but may be discharged by any of those members.

(3) Where, by virtue of the operation of sub-section (1), an offence against this Act is deemed to have been committed by an unincorporated company, that offence shall be deemed to have been committed by each member of the committee of management of the association.

(4) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person—

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.

(5) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

Offences by government bodies

167. Notwithstanding anything in this Act or any other Act, a government body shall not be taken to be guilty of an offence against this Act.

SCHEDULE

Sub-section 136 (1)

**STATUTORY INTEREST RATES FOR PERIODS BETWEEN
1 JANUARY 1946 AND 2 APRIL 1986**

Period		Interest rate (% per annum)
Date on which period commenced	Date on which period ended	
1 January 1946	1 August 1952	3.875
2 August 1952	31 March 1956	4.5
1 April 1956	28 February 1961	5.0
1 March 1961	10 April 1963	5.25
11 April 1963	31 March 1965	4.75
1 April 1965	31 July 1968	5.0
1 August 1968	31 March 1970	5.5
1 April 1970	30 September 1973	6.25
1 October 1973	13 September 1974	7.25
14 September 1974	28 February 1978	9.25
1 March 1978	31 March 1980	8.75
1 April 1980	31 July 1980	9.25
1 August 1980	31 December 1980	9.75
1 January 1981	31 August 1981	10.75
1 September 1981	31 March 1982	11.75
1 April 1982	31 January 1983	12.75
1 February 1983	30 September 1983	12.50
1 October 1983	30 November 1983	12.00
1 December 1983	15 April 1985	11.50
16 April 1985	14 July 1985	12.00
15 July 1985	30 September 1985	12.50
1 October 1985	2 April 1986	13.50

*[Minister's second reading speech made in—
House of Representatives on 2 May 1986
Senate on 27 May 1986]*