



Taxation Laws Amendment Act (No. 4) 1987

No. 138 of 1987

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SCHEDULE 1

AMENDMENT OF SCHEDULES TO THE INCOME TAX RATES ACT 1986

SCHEDULE 2

REPEAL OF CERTAIN ACTS



Taxation Laws Amendment Act (No. 4) 1987

No. 138 of 1987

An Act to amend the law relating to taxation

[Assented to 18 December 1987]

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 *Taxation Laws Amendment Act (No. 4) 1987*.

Commencement

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

(2) Section 6 and Parts IV and V shall come into operation immediately after the commencement of the *Occupational Superannuation Standards Act 1987*.

**PART II—AMENDMENT OF THE INCOME TAX ASSESSMENT
ACT 1936**

Principal Act

3. In this Part, “Principal Act” means the *Income Tax Assessment Act 1936*¹.

Interpretation

4. Section 6 of the Principal Act is amended by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“‘proclaimed superannuation standards day’ means the day fixed by Proclamation for the purposes of section 5 of the *Occupational Superannuation Standards Act 1987*;

‘superannuation fund’ includes:

- (a) a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987*; and
- (b) a fund to which section 23FC applies in relation to the year of income concerned;”.

5. After section 6D of the Principal Act the following section is inserted:

Effect of issue, revocation etc. of notices under the *Occupational Superannuation Standards Act 1987*

“6E. (1) In this section:

‘Standards Act notice’ means a notice under section 12, 13, 14 or 15 of the *Occupational Superannuation Standards Act 1987*.

“(2) For the purposes of this Act, where a Standards Act notice is given in relation to a fund in relation to a year of income:

- (a) the notice shall be deemed to have been given at the beginning of the year of income; and
- (b) if:
 - (i) the notice is revoked; or
 - (ii) the decision to give the notice is set aside;the notice shall be deemed never to have been given.

“(3) Nothing in section 170 prevents the amendment of an assessment at any time for the purposes of giving effect to this section.”.

Officers to observe secrecy

6. Section 16 of the Principal Act is amended by omitting paragraph (4) (hc) and substituting the following paragraph:

“(hc) the Insurance and Superannuation Commissioner, for the purpose of the administration of the *Occupational Superannuation Standards Act 1987* or of the prosecution provisions within the meaning of that Act;”.

Exemptions

7. Section 23 of the Principal Act is amended by omitting paragraph (ja).

8. Sections 23F, 23FA and 23FB of the Principal Act are repealed and the following sections are substituted:

Exemption of income of certain superannuation funds

“23FC. (1) Subject to this section, the income derived during a year of income by a fund is exempt from income tax if:

- (a) the Insurance and Superannuation Commissioner has given a notice in relation to the fund under section 12 of the *Occupational Superannuation Standards Act 1987* stating that the Insurance and Superannuation Commissioner is satisfied that the fund satisfied the superannuation fund conditions in relation to the year of income; or
- (b) the Insurance and Superannuation Commissioner has given a notice in relation to the fund under section 13 of the *Occupational Superannuation Standards Act 1987* stating that the Insurance and Superannuation Commissioner is satisfied that the fund should be treated as if it had satisfied the superannuation fund conditions in relation to the year of income.

“(2) A dividend paid to a fund:

- (a) if the fund is a former paragraph 23 (ja) fund in relation to the year of income of the fund in which the dividend was paid—in a year of income of the fund and after 29 October 1987; or
- (b) in any other case—in a year of income of the fund;

by a company that is a private company in relation to the year of income of the company in which the dividend was paid is not exempt from tax by virtue of subsection (1) unless the Commissioner is of the opinion that it would be reasonable to exempt the dividend from tax, having regard to:

- (c) the paid-up value of the shares in that company that are assets of the fund;
- (d) the cost to the fund of the shares on which the dividend was paid by the company;
- (e) the rate of the dividend paid to the fund by the company on the shares in the company that are assets of the fund;
- (f) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend;
- (g) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (h) any other matters that the Commissioner considers relevant.

“(3) For the purposes of subsection (2), income that, in the opinion of the Commissioner, was derived by a fund:

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(a) if the fund is a former paragraph 23 (ja) fund in relation to the year of income of the fund in which the income was derived—in a year of income of the fund and after 29 October 1987; or

(b) in any other case—in a year of income of the fund;

indirectly from a dividend paid by a company, being a private company in relation to the year of income of the company in which the dividend was paid, shall be deemed to have been a dividend paid to the fund:

(c) if paragraph (a) applies—in the year of income of the fund and after 29 October 1987; or

(d) if paragraph (b) applies—in the year of income of the fund;

by the company.

“(4) Income (other than a dividend to which subsection (2) applies) derived by a fund:

(a) if the fund is a former paragraph 23 (ja) fund in relation to the year of income of the fund in which the income was derived—in a year of income of the fund and after 29 October 1987; or

(b) in any other case—in a year of income of the fund;

from a transaction is not exempt from tax by virtue of subsection (1) if the parties to the transaction were not dealing with each other at arm's length in relation to the transaction and that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm's length in relation to the transaction.

“(5) A reference in subsection (4) to a transaction includes a reference to a series of transactions.

“(6) In determining, for the purposes of subsection (3) or (4), whether income was derived by a fund after 29 October 1987, income that:

(a) is included in the assessable income of the fund under subsection 92 (1) or Division 6; or

(b) is derived by the fund during, but not at a particular time during, a year of income;

shall be taken to have been derived by the fund at such time, or at such times and in such proportions, as the Commissioner considers reasonable having regard to:

(c) where paragraph (a) applies in respect of a partnership or a trust estate—the time, or the times, when income was derived by the partnership or by the trustee of the trust estate, as the case may be; and

(d) in any case—any relevant matters.

“(7) For the purposes of this section, a fund is a former paragraph 23 (ja) fund in relation to a year of income if, and only if:

(a) the year of income ended before the proclaimed superannuation standards day and the income of the fund of the year of income

would, but for the amendments made by the *Taxation Laws Amendment Act (No. 4) 1987*, have been exempt from tax under paragraph 23 (ja) of this Act as in force immediately before the commencement of section 1 of that Act; or

- (b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, the income of the fund of the year of income would have been exempt from tax under paragraph 23 (ja) of this Act as in force immediately before the commencement of section 1 of that Act.

Exemption of income of certain approved deposit funds

“23FD. (1) Subject to this section, the income derived during a year of income by a fund is exempt from income tax if:

- (a) the Insurance and Superannuation Commissioner has given a notice in relation to the fund under section 14 of the *Occupational Superannuation Standards Act 1987* stating that the Insurance and Superannuation Commissioner is satisfied that the fund satisfied the approved deposit fund conditions in relation to the year of income; or
- (b) the Insurance and Superannuation Commissioner has given a notice in relation to the fund under section 15 of the *Occupational Superannuation Standards Act 1987* stating that the Insurance and Superannuation Commissioner is satisfied that the fund should be treated as if it had satisfied the approved deposit fund conditions in relation to the year of income.

“(2) A dividend paid after 12 January 1987 to a fund by a company that is a private company in relation to the year of income of the company in which the dividend was paid is not exempt from tax by virtue of subsection (1) unless the Commissioner is of the opinion that it would be reasonable to exempt the dividend from tax, having regard to:

- (a) the paid-up value of the shares in that company that are assets of the fund;
- (b) the cost to the fund of the shares on which the dividend was paid by the company;
- (c) the rate of the dividend paid to the fund by the company on the shares in the company that are assets of the fund;
- (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend;
- (e) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (f) any other matters that the Commissioner considers relevant.

“(3) For the purposes of subsection (2), income that, in the opinion of the Commissioner, was derived after 12 January 1987 by a fund indirectly

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from a dividend paid by a company, being a private company in relation to the year of income of the company in which the dividend was paid, shall be deemed to have been a dividend paid after that date to the fund by the company.

“(4) Income (other than a dividend to which subsection (2) applies) derived after 12 January 1987 by a fund from a transaction is not exempt from tax by virtue of subsection (1) if the parties to the transaction were not dealing with each other at arm’s length in relation to the transaction and that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm’s length in relation to the transaction.

“(5) A reference in subsection (4) to a transaction includes a reference to a series of transactions.

“(6) In determining, for the purposes of subsection (3) or (4), whether income was derived by a fund after 12 January 1987, income that:

- (a) is included in the assessable income of the fund under subsection 92 (1) or Division 6; or
- (b) is derived by the fund during, but not at a particular time during, a year of income;

shall be taken to have been derived by the fund at such time, or at such times and in such proportions, as the Commissioner considers reasonable having regard to:

- (c) where paragraph (a) applies in respect of a partnership or a trust estate—the time, or the times, when income was derived by the partnership or by the trustee of the trust estate, as the case may be; and
- (d) in any case—any relevant matters.”.

Assessable income to include value of benefits received from or in connection with former paragraph 23 (ja) funds or former section 23FB funds

9. Section 26AF of the Principal Act is amended:

- (a) by inserting after paragraph (1) (a) the following paragraph:
 - “(aa) if the fund is an exempt fund within the meaning of section 26AFB—the benefit was received or obtained by the taxpayer before the proclaimed superannuation standards day;”;
- (b) by omitting from subsection (2) “paragraph 23 (ja) fund or a section 23FB fund,” and substituting “fund, being a paragraph 23 (ja) fund or a section 23FB fund and not being an exempt fund within the meaning of section 26AFB;”;
- (c) by inserting “as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*” after “23 (ja) (ii)” in paragraph (a) of the definition of “approved terms and conditions” in subsection (3);

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- (d) by inserting “as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*” after “23FB (2)” in paragraph (b) of the definition of “approved terms and conditions” in subsection (3);
- (e) by inserting “as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*” after “23 (ja)” (last occurring) in the definition of “paragraph 23 (ja) fund” in subsection (3);
- (f) by inserting “as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*” after “23FB” in paragraph (a) of the definition of “section 23FB fund” in subsection (3); and
- (g) by adding at the end the following subsection:

“(4) For the purposes of this section, where either of the following paragraphs applies in relation to an exempt fund within the meaning of section 26AFB of this Act in relation to the year of income of the fund commencing on 1 July 1986 or a subsequent year of income:

- (a) the year of income ended before the proclaimed superannuation standards day and the income of the fund of the year of income would, but for the amendments made by the *Taxation Laws Amendment Act (No. 4) 1987*, have been exempt from tax under paragraph 23 (ja) or section 23FB of this Act, as in force at any time before the commencement of section 1 of that Act;
- (b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, the income of the fund of the year of income would have been exempt from tax under paragraph 23 (ja) or section 23FB of this Act, as in force at any time before the commencement of section 1 of that Act;

paragraph 23 (ja) or section 23FB of this Act, as in force immediately before the commencement of section 1 of that Act, shall be taken to have continued to apply in relation to the fund in relation to the year of income of the fund.”.

Assessable income to include value of certain benefits received from or in connection with former section 23F funds

10. Section 26AFA of the Principal Act is amended:

- (a) by inserting after paragraph (1) (a) the following paragraph:

“(aa) if the fund is an exempt fund within the meaning of section 26AFB—the benefit was received or obtained by the taxpayer before the proclaimed superannuation standards day;”;

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- (b) by omitting from subsection (3) “section 23F fund,” and substituting “fund, being a section 23F fund and not being an exempt fund within the meaning of section 26AFB,”;
- (c) by inserting “as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*” after “(iv)” in the definition of “excessive benefit” in subsection (4);
- (d) by inserting “(as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*)” after “23F” (last occurring) in the definition of “section 23F fund” in subsection (4); and
- (e) by adding at the end the following subsection:

“(5) For the purposes of this section, where either of the following paragraphs applies in relation to an exempt fund within the meaning of section 26AFB of this Act in relation to the year of income of the fund commencing on 1 July 1986 or a subsequent year of income:

- (a) the year of income ended before the proclaimed superannuation standards day and section 23F of this Act, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*, would, but for the amendments made by that Act, have applied in relation to the fund in relation to the year of income;
- (b) the proclaimed superannuation standards day occurred during the year of income and, if the year of income had ended on the proclaimed superannuation standards day, section 23F of this Act, as in force immediately before the commencement of section 1 of that Act, would, but for the amendments made by that Act, have applied in relation to the fund in relation to the year of income;

section 23F of this Act, as in force immediately before the commencement of section 1 of that Act, shall be taken to have continued to apply in relation to the fund in relation to the year of income of the fund.”.

11. After section 26AFA of the Principal Act the following section is inserted:

Assessable income to include value of benefits received from or in connection with funds that have obtained tax benefits under section 23FC

“26AFB. (1) In this section:

‘exempt fund’ means a fund to which section 23FC applies, or has applied, in relation to any year of income.

“(2) Where:

- (a) in a year of income and on or after the proclaimed superannuation standards day, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, an exempt fund;

- (b) at the time when the benefit was provided, there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing standards applicable to the fund; and
- (c) the provision of the benefit resulted in a failure of the fund to comply with such of those standards as are prescribed for the purposes of this section by regulations made under this Act;

the assessable income of the taxpayer of the year of income shall include the amount or value of that benefit.

“(3) Where:

- (a) in a year of income and on or after the proclaimed superannuation standards day, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, an exempt fund; and
- (b) at the time when the benefit was provided, the fund was not a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987*;

the assessable income of the taxpayer of the year of income shall include the amount or value of that benefit.

“(4) Where:

- (a) subsection (2) or (3) would, but for this subsection, apply to the amount or value of a benefit received or obtained by a taxpayer out of, or attributable to assets of, an exempt fund; and
- (b) the Commissioner, having regard to:
 - (i) the nature of the fund; and
 - (ii) such other matters relating to the receiving or obtaining of the benefit by the taxpayer as the Commissioner considers relevant;

is satisfied that it would be unreasonable for subsection (2) or (3) to apply to the whole or a part of the benefit;

that subsection does not apply to the benefit, or to that part of the benefit, as the case may be.

“(5) Where, in a year of income, a taxpayer receives valuable consideration in respect of the transfer by the taxpayer to another person (whether by assignment, by declaration of trust or by any other means) of a right (whether vested or contingent) to receive a benefit from an exempt fund, the assessable income of the taxpayer of the year of income shall include the amount or value of that consideration.”.

Interpretation

12. Section 27A of the Principal Act is amended:

- (a) by omitting “or 26AFA (1)” from subparagraph (b) (iii) of the definition of “eligible termination payment” in subsection (1) and substituting “, 26AFA (1) or 26AFB (2) or (3)”;

- (b) by omitting “or 26AFA (3)” from paragraph (b) of the definition of “eligible termination payment” in subsection (1) and substituting “, 26AFA (3) or 26AFB (5)”;
- (c) by omitting paragraph (a) of the definition of “superannuation fund” in subsection (1) and substituting the following paragraph:
 - “(a) a provident, benefit, superannuation or retirement fund, being:
 - (i) a fund to which paragraph 23 (jaa) or (jb) or section 23FC, 121CC or 121DAB applies, or has applied, in relation to any year of income;
 - (ii) a fund to which paragraph 23 (ja) or section 23F or 23FB, as in force at any time before the commencement of this paragraph, has applied in relation to the year of income that commenced on 1 July 1985 or a preceding year of income; or
 - (iii) a fund to which section 79, as in force at any time before 25 June 1984, has applied in relation to the year of income that commenced on 1 July 1983 or a preceding year of income; and”.

Assessable income to include certain annuities and superannuation pensions

13. Section 27H of the Principal Act is amended by adding at the end of the definition of “annuity” in subsection (4) “, but does not include an annuity that is a qualifying security for the purposes of Division 16E;”.

Notional income where assessable income includes consideration receivable on disposal, loss or destruction of depreciated property

14. Section 59AB of the Principal Act is amended:

- (a) by omitting from subsection (7) “or section 158D, or both of those sections, applies or apply” and substituting “applies”;
- (b) by omitting from subsection (7) “or those sections” (wherever occurring).

Gifts, pensions etc.

15. Section 78 of the Principal Act is amended:

- (a) by inserting after subparagraph (1) (a) (lxxxix) the following subparagraphs:
 - “(xc) the Ninth Australian Division Memorial of Participation (Alamein) Fund;
 - (xci) the Korean and South East Asian and Vietnam War Memorials Anzac Square Trust Fund;”;
- (b) by inserting after subsection (6AG) the following subsection:
 - “(6AH) A gift to the fund specified in subparagraph (1) (a) (xc) or (xci) is not an allowable deduction under this section unless the gift was or is made after 14 June 1987 and before 1 July 1989.”.

Transfer of loss within company group

16. Section 80G of the Principal Act is amended:

- (a) by omitting from subsection (5) “For” and substituting “Subject to subsection (5A), for”; and
- (b) by inserting after subsection (5) the following subsection:

“(5A) For the purposes of subsection (1), where:

- (a) at a time (in this subsection called the ‘acquisition time’) in the year of income commencing on 1 July 1986 or in a subsequent year of income, one or more companies acquired all the shares in another company (in this subsection called the ‘shelf company’) from the shareholders in the shelf company; and
- (b) the shelf company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout the period (in this subsection called the ‘dormant period’) commencing on the day on which the shelf company was incorporated and ending at the acquisition time;

the shelf company shall be taken not to have been in existence during the dormant period.”.

Interpretation

17. Section 82AAA of the Principal Act is amended by omitting from subsection (1) the definition of “dependant” and substituting the following definition:

“‘dependant’ has the same meaning as in the *Occupational Superannuation Standards Act 1987*.”.

Interpretation

18. Section 82AAS of the Principal Act is amended:

- (a) by omitting from subsection (1) the definitions of “dependant” and “eligible superannuation fund” and substituting the following definitions:

“‘dependant’ has the same meaning as in the *Occupational Superannuation Standards Act 1987*;

‘eligible superannuation fund’ means a fund to which paragraph 23 (jaa) or section 23FC applies in relation to the year of income;”;

- (b) by omitting from subsection (1) the definition of “qualifying superannuation fund”.

Deductions for superannuation contributions by eligible persons

19. Section 82AAT of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this section, where:

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- (a) an eligible person makes a contribution to a fund to obtain superannuation benefits for the eligible person or, in the event of the death of the eligible person, for dependants of the eligible person; and
- (b) section 23FC applies in relation to the fund in relation to the year of income of the fund in which the contribution is made;

the amount of the contribution is an allowable deduction in respect of the year of income of the eligible person in which the contribution is made.”; and

- (b) by omitting subsection (3).

Deduction in respect of new plant installed on or after 1 January 1976

20. Section 82AB of the Principal Act is amended by omitting from paragraphs (1) (d) and (1A) (d) “1 July 1987” and substituting “1 January 1988”.

Limitation on deductions for rental property loan interest

21. Section 82KZD of the Principal Act is amended by inserting before subsection (1) the following subsection:

“(1A) This section does not apply to the year of income commencing on 1 July 1987 or any later year of income.”.

Interpretation

22. Section 102M of the Principal Act is amended by omitting “paragraph 23 (j), (jaa) or (ja) or section 23F, 23FA or 23FB” from paragraph (b) of the definition of “exempt entity” and substituting “paragraph 23 (j) or (jaa) or section 23FC or 23FD”.

Interpretation

23. Section 110 of the Principal Act is amended by omitting the definition of “exempt superannuation fund” and substituting the following definition:

“‘exempt superannuation fund’ means a fund to which paragraph 23 (jaa) or section 23FC applies in relation to the year of income;”.

Interpretation

24. Section 121B of the Principal Act is amended:

- (a) by omitting “superannuation” from the definition of “losses and outgoings” in subsection (1);
- (b) by omitting the definitions of “ineligible approved deposit fund” and “investment income” and substituting the following definitions:

“‘ineligible approved deposit fund’, in relation to a year of income, means a fund in relation to which all of the following conditions are satisfied:

- (a) section 23FD does not apply in relation to the fund in relation to the year of income;

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- (b) if part of the year of income occurred before 1 July 1986 and the fund was in existence at a time during that part of the year of income:
 - (i) the fund is an approved deposit fund within the meaning of Subdivision AA of Division 2;
 - (ii) on 30 June 1986, the fund was maintained by an approved trustee or approved trustees within the meaning of that Subdivision; and
 - (iii) the fund was an approved deposit fund within the meaning of the *Occupational Superannuation Standards Act 1987* at all times during so much of the year of income as occurred on or after 1 July 1986 when the fund was in existence;
 - (c) if no part of the year of income occurred before 1 July 1986—the fund was an approved deposit fund within the meaning of the *Occupational Superannuation Standards Act 1987* at all times during the year of income when the fund was in existence;
- ‘investment income’, in relation to a fund to which section 121CC, 121DA or 121DAB applies in relation to a year of income, means the assessable income of the fund of the year of income (not including:
- (a) if the fund is a fund to which section 121CC applies in relation to the year of income—ineligible income of the fund; and
 - (b) in all cases—contributions to the fund);
- calculated as if the trustee of the fund were a taxpayer in respect of that income, being a resident, less all amounts allowable as deductions (other than concessional deductions and deductions in respect of benefits) from that assessable income;”;
- (c) by inserting the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):
 - “‘approved deposit fund’, in relation to a year of income, means:
 - (a) a fund to which section 23FD applies in relation to the year of income; or
 - (b) a fund that is an ineligible approved deposit fund in relation to the year of income;
 - ‘ineligible income’, in relation to a fund to which section 121CC applies, has the meaning given by section 121BA;
 - ‘ineligible superannuation fund’, in relation to a year of income, means a fund in relation to which all of the following conditions are satisfied:

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- (a) section 23FC does not apply in relation to the fund in relation to the year of income;
- (b) if part of the year of income occurred before 1 July 1986:
 - (i) the fund was a superannuation fund within the meaning of this Division at all times during so much of the year of income as occurred before 1 July 1986 when the fund was in existence; and
 - (ii) the fund was a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987* at all times during so much of the year of income as occurred on or after 1 July 1986 when the fund was in existence;
- (c) if no part of the year of income occurred before 1 July 1986—the fund was a superannuation fund within the meaning of the *Occupational Superannuation Standards Act 1987* at all times during the year of income when the fund was in existence;”.

25. After section 121B of the Principal Act the following section is inserted:

Ineligible income of section 121CC funds

“121BA. (1) This section applies to income derived in a year of income by a fund to which section 121CC applies in relation to the year of income.

“(2) A dividend paid to a fund by a company that is a private company in relation to the year of income of the company in which the dividend was paid is ineligible income of the fund unless the Commissioner is of the opinion that it would be reasonable not to treat the dividend as ineligible income of the fund, having regard to:

- (a) the paid-up value of the shares in that company that are assets of the fund;
- (b) the cost to the fund of the shares on which the dividend was paid by the company;
- (c) the rate of the dividend paid to the fund by the company on the shares in the company and, if so, the rate of that dividend;
- (d) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (f) any other matters that the Commissioner considers relevant.

“(3) For the purposes of subsection (2), income that, in the opinion of the Commissioner, was derived by a fund indirectly from a dividend paid

by a company, being a private company in relation to the year of income of the company and in which the dividend was paid, shall be deemed to have been a dividend paid to the fund by the company.

“(4) Income (other than a dividend to which subsection (2) applies) derived by a fund from a transaction is ineligible income of the fund if the parties to the transaction were not dealing with each other at arm’s length in relation to the transaction and that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm’s length in relation to the transaction.

“(5) A reference in subsection (4) to a transaction includes a reference to a series of transactions.”

26. Sections 121C, 121CA, 121CB and 121CC of the Principal Act are repealed and the following sections are substituted:

Assessment of investment income of certain ineligible superannuation funds

“121CC. (1) This section applies in relation to a fund that is an ineligible superannuation fund in relation to a year of income if:

- (a) if the proclaimed superannuation standards day occurred before the year of income:
 - (i) at a time during the year of income when the fund was in existence, there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing relevant investment standards applicable to the fund;
 - (ii) the Commissioner is not satisfied that, at all times during the year of income when the fund was in existence and there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing relevant investment standards applicable to the fund, the fund complied with those standards; and
 - (iii) the Commissioner is satisfied that, at all times during the year of income when the fund was in existence and there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing standards applicable to the fund, the fund complied with all of those standards other than the relevant investment standards;
- (b) if the proclaimed superannuation standards day occurred during the year of income:
 - (i) at a time during so much of the year of income as occurred after that day when the fund was in existence, there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing relevant investment standards applicable to the fund;

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- (ii) the Commissioner is not satisfied that, at all times during so much of the year of income as occurred after that day when the fund was in existence and there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing relevant investment standards applicable to the fund, the fund complied with those standards; and
- (iii) the Commissioner is satisfied that:
 - (A) at all times during so much of the year of income as occurred after that day when the fund was in existence and there were in force regulations for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards Act 1987* prescribing standards applicable to the fund, the fund complied with all of those standards other than the relevant investment standards; and
 - (B) if the year of income had ended on that day and sections 23F, 23FB, 121C and 121CC, as in force immediately before the commencement of this section, had not been repealed by the *Taxation Laws Amendment Act (No. 4) 1987*, section 121CC, as so in force, would have applied in relation to the fund in relation to the year of income; or
- (c) if the proclaimed superannuation standards day occurred after the year of income—the Commissioner is satisfied that if sections 23F, 23FB, 121C and 121CC, as in force immediately before the commencement of this section, had not been repealed by the *Taxation Laws Amendment Act (No. 4) 1987*, section 121CC, as so in force, would have applied in relation to the fund in relation to the year of income.

“(2) The trustee of a fund to which this section applies in relation to a year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this subsection, on the investment income of the fund of the year of income.

“(3) The trustee of a fund to which this section applies in relation to a year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this subsection, upon so much of the ineligible income derived by the fund in the year of income as remains after deducting from the ineligible income any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature.

“(4) A reference in this section to relevant investment standards is a reference to such of the standards prescribed by regulations in force for the purposes of subsection 7 (1) of the *Occupational Superannuation Standards*

Act 1987 as are prescribed for the purposes of this section by regulations made under this Act.

Assessment of private company dividend income and non-arm's length income of superannuation funds to which section 23FC applies

"121D. The trustee of a fund to which section 23FC applies in relation to a year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon so much of the income derived by the fund in the year of income (other than income that is exempt from tax by virtue of section 23FC) as remains after deducting from the first-mentioned income any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature."

Assessment of income of other superannuation funds

27. Section 121DA of the Principal Act is amended:

- (a) by omitting "121CA, 121CB, 121CC" and substituting "121CC, 121D"; and
- (b) by omitting all the words after "upon" and substituting "the investment income of the fund of the year of income".

Assessment of income of ineligible approved deposit funds

28. Section 121DAA of the Principal Act is amended by omitting "an ineligible approved deposit fund" and substituting "a fund that is an ineligible approved deposit fund in relation to a year of income".

29. After section 121DAA of the Principal Act the following section is inserted:

Assessment of private company dividend income and non-arm's length income of approved deposit funds to which section 23FD applies

"121DAAA. The trustee of a fund to which section 23FD applies in relation to a year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon so much of the income derived by the fund in the year of income (other than income that is exempt from income tax by virtue of section 23FD) as remains after deducting from the first-mentioned income any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature."

30. Section 121DAB of the Principal Act is repealed and the following section is substituted:

Assessment of income of certain other ineligible superannuation funds

"121DAB. The trustee of a fund that is an ineligible superannuation fund in relation to a year of income shall, in relation to the year of income, be assessed and is liable to pay tax, at the rate declared by Parliament for

the purposes of this section, upon the investment income of the fund for the year of income if:

- (a) if part of the year of income occurred before 1 July 1986—at all times during so much of the year of income as occurred before that date when the fund was in existence, the fund was a fund to which paragraph 121DAB (a), as in force immediately before the commencement of this section, applied; and
- (b) in all cases—section 121CC does not apply in relation to the fund in relation to the year of income.”.

Income of superannuation funds and approved deposit funds to be taxed exclusively under this Division

31. Section 121DB of the Principal Act is amended by omitting “ineligible”.

32. Section 121DC of the Principal Act is repealed and the following section is substituted:

Taxable income

“121DC. The amount upon which the trustee of a superannuation fund or approved deposit fund is assessed and liable to pay tax as provided by subsection 121CC (3) or section 121D, 121DA, 121DAA, 121DAAA or 121DAB shall, for the purposes of this Act, be deemed to be taxable income of the fund.”.

Rebates and provisional tax

33. Section 121DD of the Principal Act is amended by omitting “ineligible”.

Interpretation

34. Section 121F of the Principal Act is amended:

- (a) by omitting “(ja),” from paragraph (a) of the definition of “relevant exempting provision” in subsection (1); and
- (b) by omitting paragraph (b) of the definition of “relevant exempting provision” in subsection (1) and substituting the following paragraphs:
 - “(b) paragraph 23 (ja) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;
 - (ba) section 23F, 23FA or 23FB, as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;
 - (bb) section 23FC or 23FD;”.

Interpretation

35. Section 124ZA of the Principal Act is amended:

- (a) by omitting “, (jaa) or (ja)” from paragraph (a) of the definition of “exempt body” in subsection (1) and substituting “or (jaa)”; and

- (b) by omitting “23F, 23FA or 23FB” from paragraph (b) of the definition of “exempt body” in subsection (1) and substituting “23FC or 23FD”.

Deductions in respect of qualifying expenditure

36. Section 124ZH of the Principal Act is amended:

- (a) by omitting subparagraphs (1) (c) (i) and (ii) and substituting the following subparagraphs:

- “(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying expenditure was incurred:

- (A) commenced to be constructed after 21 August 1984 and on or before 15 September 1987; or

- (B) commenced to be constructed after 15 September 1987 under a qualifying previous commitment;

- 4% of the qualifying expenditure; and

- (ii) in any other case—2½% of the qualifying expenditure; and”;

- (b) by omitting subparagraphs (2) (c) (i) and (ii) and substituting the following subparagraphs:

- “(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying expenditure was incurred:

- (A) commenced to be constructed after 21 August 1984 and on or before 15 September 1987; or

- (B) commenced to be constructed after 15 September 1987 under a qualifying previous commitment;

- 4%; and

- (ii) in any other case—2½%”;

- (c) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:

- “(a) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying expenditure was incurred:

- (i) commenced to be constructed after 21 August 1984 and on or before 15 September 1987; or

- (ii) commenced to be constructed after 15 September 1987 under a qualifying previous commitment;

- 25 years; and

- (b) in any other case—40 years;”;

- (d) by adding at the end the following subsections:

- “(4) For the purposes of this section, the construction of a building, or of an extension, alteration or improvement to a building, shall be taken to be under a qualifying previous commitment if:

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- (a) the construction was under a contract that was entered into on or before 15 September 1987 or was under 2 or more contracts any of which was entered into on or before 15 September 1987; or
- (b) the following conditions are satisfied:
 - (i) money was borrowed and used to finance the construction;
 - (ii) all the money that was borrowed and used to finance the construction was borrowed under a contract that was entered into, or under contracts each of which was entered into:
 - (A) on or before 15 September 1987; and
 - (B) for the purpose, or for purposes that included the purpose, of financing the construction;
 - (iii) each person who borrowed and used money to finance the construction is a qualifying investor in relation to the construction.

“(5) For the purposes of subsection (4), a person is a qualifying investor in relation to the construction of a building, or the construction of an extension, alteration or improvement to a building, if:

- (a) in the case of the construction of a building:
 - (i) at the end of 15 September 1987, the person was the owner or lessee of the land on which the building was constructed; or
 - (ii) after 15 September 1987, the person became the owner or lessee of that land under a contract entered into on or before 15 September 1987; or
 - (b) in the case of the construction of an extension, alteration or improvement to a building:
 - (i) at the end of 15 September 1987, the person was the owner or lessee of:
 - (A) if the extension, alteration or improvement was made to only part of the building—that part; or
 - (B) in any other case—the building; or
 - (ii) after 15 September 1987, the person became the owner or lessee of:
 - (A) if the extension, alteration or improvement was made to only part of the building—that part; or
 - (B) in any other case—the building;
- under a contract entered into on or before 15 September 1987.”.

Capital gains and abnormal income to be disregarded

37. Section 149A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) For the purposes of this Division (including the purpose of determining whether this Division applies to the income of a taxpayer):

- (a) references in this Division to the assessable income of a taxpayer shall be read as references to the amount that would have been the assessable income if the assessable income did not include any net capital gain within the meaning of Part IIIA; and
- (b) references in this Division to the taxable income of a taxpayer shall be read as references to the amount that would have been the taxable income if:
 - (i) the assessable income did not include any net capital gain within the meaning of Part IIIA; and
 - (ii) the taxable income were reduced by so much of the taxable income as consists of an abnormal income amount as specified in section 158L.”.

38. Division 16A of Part III of the Principal Act is repealed and the following Division is substituted:

“Division 16A—Abnormal Income of Artists, Composers, Inventors, Performers, Production Associates, Sportspersons and Writers

Interpretation

“158B. (1) In this Division, unless the contrary intention appears:

‘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;

‘artist’ means the author of an artistic work;

‘associate’ has the same meaning as in section 26AAB;

‘composer’ means the author of a musical work;

‘eligible person’ means:

- (a) an artist;
- (b) a composer;
- (c) an inventor;
- (d) a performer;
- (e) a production associate;
- (f) a sportsperson; or
- (g) a writer;

'inventor' means the inventor of an invention;

'performer' means a person who:

(a) performs or presents any of the following activities:

- (i) music;
- (ii) a play;
- (iii) dance;
- (iv) an entertainment;
- (v) an address;
- (vi) a display;
- (vii) a promotional activity;
- (viii) an exhibition;
- (ix) any similar activity;

being an activity that involves the exercise by the person of intellectual, artistic, musical, physical or other personal skills in the presence of an audience; or

(b) performs or appears in or on a film, tape or disc or in a television or radio broadcast;

'production associate' means a person who:

(a) performs recognised associated services in connection with an activity to which paragraph (a) of the definition of **'performer'** applies; or

(b) performs recognised associated services in connection with the making of a film, tape or disc or of a television or radio broadcast;

'recognised associated services' means any of the following services:

(a) services as:

- (i) an art director;
- (ii) a choreographer;
- (iii) a costume designer;
- (iv) a director;
- (v) a director of photography;
- (vi) a film editor;
- (vii) a lighting designer;
- (viii) a musical director;
- (ix) a producer;
- (x) a production designer; or
- (xi) a set designer;

(b) services similar to services referred to in paragraph (a);

'sport' means so much of a sporting activity as satisfies the following conditions:

(a) the sporting activity is one in which:

- (i) human beings compete by riding, or by exercising other skills in relation to, animals;
 - (ii) human beings compete by driving, piloting or crewing motor vehicles, boats, aircraft or other modes of transport;
 - (iii) human beings compete with, or compete by overcoming, natural obstacles or natural forces; or
 - (iv) where none of the preceding subparagraphs applies to the sporting activity—human beings are the sole competitors;
- (b) the participation in the sporting activity by each such human competitor other than:
- (i) a navigator in the activity of car rallying;
 - (ii) a coxswain in the activity of rowing; or
 - (iii) a similar competitor;

involves primarily the exercise of physical prowess, physical strength or physical stamina;

‘sportsperson’ means a person who participates in sport as a competitor as mentioned in paragraph (a) of the definition of ‘sport’;

‘taxpayer’ means a taxpayer who is a natural person other than a taxpayer in the capacity of a trustee;

‘writer’ means the author of a literary or dramatic work.

“(2) For the purpose of determining whether a person is an associate of another person within the meaning of this Division, the definition of ‘relative’ in subsection 6 (1) and the definition of ‘associate’ in subsection 26AAB (14) apply as if a reference in the definition concerned to the spouse of the person included a reference to 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.

Joint authors and joint inventors

“158C. A reference in this Division to the author of a literary, dramatic, musical or artistic work or to the inventor of an invention includes a reference to one of 2 or more joint authors of such a work or to one of 2 or more joint inventors of an invention, as the case may be.

‘Year of income’ includes a pre-commencement year of income

“158D. A reference in this Division to a year of income includes a reference to a year of income that commenced before the commencement of this Division.

Qualifying resident taxpayer

“158E. For the purposes of this Division, a taxpayer is a qualifying resident taxpayer in relation to a year of income if, and only if, the taxpayer is a resident at any time during the year of income.

Activities that do not result in taxpayers being treated as eligible persons

“158F. Without limiting the generality of an expression used in this Division, the following activities engaged in by a person do not result in the person being treated as an eligible person for the purposes of paragraphs 158H (1) (a), (b) and (c):

- (a) coaching or training competitors in sport;
- (b) umpiring or refereeing sport;
- (c) administering sport;
- (d) being a member of the pit crew in motor sport;
- (e) being a theatrical or sports entrepreneur;
- (f) owning or training animals.

Artists, composers, inventors and writers rendering services to others not to be treated as eligible persons unless engaged to produce specified works etc.

“158G. For the purposes of paragraphs 158H (1) (a), (b) and (c), a taxpayer shall not be taken to be an eligible person by reason of engaging in activities as:

- (a) an artist;
- (b) a composer;
- (c) an inventor; or
- (d) a writer;

in fulfilment of the taxpayer's obligations under an arrangement for the rendering of services by the taxpayer to another person unless:

- (e) the arrangement was entered into solely for the purpose of requiring the taxpayer to render services by way of:
 - (i) the authorship of one or more specified artistic works, literary works, dramatic works or musical works; or
 - (ii) the invention of one or more specified inventions; and
- (f) the taxpayer has neither been, nor may reasonably be expected to be, rendering such services to the other person, or associates of the other person, under successive arrangements of a kind that result in substantial continuity in the rendering of services by the taxpayer.

Eligible assessable income

“158H. (1) Subject to this section, for the purposes of this Division, the eligible assessable income of a year of income of a taxpayer is so much of the assessable income of the taxpayer of the year of income as consists of:

- (a) assessable income derived by the taxpayer in relation to services rendered by the taxpayer to the extent to which the assessable income is derived as a reward in respect of the taxpayer's activities as an eligible person (whether or not the assessable income is derived by way of consideration for entering into an arrangement for the rendering of services);

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- (b) assessable income derived by the taxpayer by way of a prize in respect of the taxpayer's activities as an eligible person;
- (c) assessable income derived by the taxpayer in relation to any of the following services rendered by the taxpayer:
 - (i) endorsing or promoting goods or services;
 - (ii) appearing or participating in an advertisement;
 - (iii) appearing or participating in an interview;
 - (iv) services as a commentator;
 - (v) any similar services;

to the extent to which the income is attributable to the taxpayer being, or having been, an eligible person (whether or not the assessable income is derived by way of consideration for entering into an arrangement for the rendering of services); or

- (d) assessable income derived by the taxpayer:
 - (i) as consideration:
 - (A) for the assignment, in whole or in part, of, or for the grant of an interest by licence in, the copyright in a literary, dramatic, musical or artistic work of which the taxpayer is the author or the patent for an invention of which the taxpayer is the inventor; or
 - (B) for an assignment by virtue of which the assignee has the right to make an application for a patent for an invention of which the taxpayer is the inventor;
 - (ii) as an advance on account of royalties in respect of such a copyright or patent;
 - (iii) as a prize in respect of such a work or invention; or
 - (iv) as an amount (other than an amount to which subparagraph (i), (ii) or (iii) applies or remuneration for services rendered by the taxpayer) received by the taxpayer, by way of royalties or otherwise, in respect of, or in respect of the copyright in, a literary, dramatic, musical or artistic work of which the taxpayer is the author or in respect of, or in respect of the patent for, an invention of which the taxpayer is the inventor.

“(2) For the purposes of this Division, where:

- (a) a taxpayer derives, or has derived, assessable income (in this subsection called the ‘arrangement income’) directly or indirectly under or as a result of an arrangement;
- (b) the arrangement income consists of the following components:
 - (i) a component of eligible assessable income;
 - (ii) a component of other assessable income; and
- (c) the Commissioner is of the opinion that:
 - (i) one of those components (in this subsection called the ‘large component’) is unreasonably large;

- (ii) the other component (in this subsection called the 'small component') is unreasonably small; and
- (iii) the reason, or any of the reasons, why the large component is unreasonably large is related directly or indirectly to the reason, or any of the reasons, why the small component is unreasonably small;

the Commissioner may treat so much of the large component as exceeds an amount which, in the opinion of the Commissioner, is reasonable, as having been part of the small component instead of part of the large component.

“(3) A reference in this section to assessable income does not include a reference to:

- (a) an eligible termination payment within the meaning of Subdivision AA of Division 2;
- (b) an amount to which section 26AC or 26AD applies; or
- (c) a net capital gain within the meaning of Part IIIA.

Eligible taxable income

“158J. The eligible taxable income of a year of income of a taxpayer is the amount (if any) remaining after deducting from the eligible assessable income of the taxpayer of the year of income:

- (a) any deductions allowable to the taxpayer in relation to the year of income that relate exclusively to that eligible assessable income;
- (b) so much of any other deductions (other than apportionable deductions) allowable to the taxpayer in relation to the year of income as, in the opinion of the Commissioner, may appropriately be related to that eligible assessable income; and
- (c) the amount calculated in accordance with the formula:

$$\frac{AD \times ETI}{AD + TI}$$

where:

AD is the number of dollars in the apportionable deductions allowable to the taxpayer in relation to the year of income;

ETI is the amount that, but for this paragraph, would be the eligible taxable income of the taxpayer of the year of income; and

TI is the number of dollars in the taxable income of the taxpayer of the year of income.

Average eligible taxable income

“158K. (1) A reference in this section to the first year of income in relation to a taxpayer is a reference to the first year of income in which:

- (a) the taxpayer was, or is, a qualifying resident taxpayer; and
- (b) the eligible taxable income of the taxpayer exceeded \$2,500.

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“(2) For the purposes of this section, where a taxpayer was not a resident at any time during the year of income immediately before the first year of income, the taxpayer shall be taken to be an original non-resident taxpayer.

“(3) A reference in this Division to the average eligible taxable income of a year of income of a taxpayer other than an original non-resident taxpayer is a reference to:

- (a) for the first year of income—nil;
- (b) for the year of income (in this subsection called the ‘second year of income’) next succeeding the first year of income—one-third of the amount of the eligible taxable income of the taxpayer of the first year of income;
- (c) for the year of income (in this subsection called the ‘third year of income’) next succeeding the second year of income—one-quarter of the sum of the amounts of the eligible taxable income of the taxpayer of the first and second years of income;
- (d) for the year of income next succeeding the third year of income—one-quarter of the sum of the amounts of the eligible taxable income of the taxpayer of the first, second and third years of income; and
- (e) for any subsequent year of income (in this paragraph called the ‘subsequent year of income’)—one-quarter of the sum of the amounts of the eligible taxable income of the taxpayer of each of the 4 years of income preceding the subsequent year of income.

“(4) A reference in this Division to the average eligible taxable income of a year of income of a taxpayer who is an original non-resident taxpayer is a reference to:

- (a) for the first year of income—the eligible taxable income of the taxpayer of the first year of income;
- (b) for the year of income (in this subsection called the ‘second year of income’) next succeeding the first year of income—the eligible taxable income of the taxpayer of the first year of income;
- (c) for the year of income (in this subsection called the ‘third year of income’) next succeeding the second year of income—one-half of the sum of the amounts of the eligible taxable income of the taxpayer of the first and second years of income;
- (d) for the year of income next succeeding the third year of income—one-third of the sum of the amounts of the eligible taxable income of the taxpayer of the first, second and third years of income; and
- (e) for any subsequent year of income (in this paragraph called the ‘subsequent year of income’)—one-quarter of the sum of the amounts of the eligible taxable income of the taxpayer of each of the 4 years of income preceding the subsequent year of income.

Abnormal income

“158L. Where:

- (a) a taxpayer is a qualifying resident taxpayer in relation to a year of income (in this section called the ‘current year of income’);
- (b) either of the following subparagraphs applies:
 - (i) the eligible taxable income of the taxpayer of the current year of income exceeds \$2,500;
 - (ii) both of the following conditions are satisfied in relation to a preceding year of income:
 - (A) the taxpayer was a qualifying resident taxpayer;
 - (B) the eligible taxable income of the taxpayer exceeded \$2,500; and
- (c) the eligible taxable income of the taxpayer of the current year of income exceeds the average eligible taxable income of the taxpayer of the current year of income;

the taxable income of the taxpayer of the current year of income shall be taken to include an abnormal income amount equal to the amount of the excess.”.

Interpretation

39. Section 159GP of the Principal Act is amended:

- (a) by omitting paragraph (b) of the definition of component **B** in the definition of “notional accrual amount” in subsection (1) and substituting:

“(b) in any other case—the sum of:

- (i) the issue price or transfer price, as the case requires, of the security; and
- (ii) the notional accrual amounts in relation to all preceding eligible notional accrual periods in the term or the adjusted term, as the case requires, of the security;

reduced by the amounts of all payments (other than payments of periodic interest) made or liable to be made under the security during those periods; and”;

- (b) by omitting the definition of component **C** in the definition of “notional accrual amount” in subsection (1) and substituting:

“**C** is the sum of:

- (a) all periodic interest payments made or liable to be made under the security during the eligible notional accrual period, properly adjusted in the case of any payment made otherwise than at the end of the period; and
- (b) where any payments (other than payments of periodic interest) made or liable to be made under the security during the eligible notional accrual period are made

or liable to be made otherwise than at the end of the period—an amount to adjust properly for the making of the payments otherwise than at the end of the period;”;

- (c) by omitting paragraph (e) of the definition of “qualifying security” in subsection (1) and substituting the following:

“(e) where the precise amount of the eligible return is able to be ascertained at the time of issue of the security—in relation to which the amount of the eligible return is greater than 1½% of the amount ascertained by multiplying the amount of the payment or the sum of the payments (excluding any periodic interest) liable to be made under the security by the number (including any fraction) of years in the term of the security;

but does not, except as provided by subsection (10), include an annuity;”;

- (d) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“‘agreement’ has the same meaning as in Subdivision D of Division 3;

‘associate’ has the same meaning as in Subdivision D of Division 3;

‘ineligible annuity’ means an annuity issued by a life assurance company, within the meaning of Subdivision AA of Division 2, or by a registered organization, within the meaning of that Subdivision, to or for the benefit of a natural person other than in the capacity of trustee of a trust estate;”;

- (e) by adding at the end the following subsection:

“(10) Where:

(a) an annuity is issued on or after 29 October 1987;

(b) the requirements of paragraphs (b) to (e) (inclusive) of the definition of ‘qualifying security’ in subsection (1) are satisfied in relation to the annuity; and

(c) the annuity is not an ineligible annuity;

the annuity is a qualifying security for the purposes of this Division.”.

Deductions allowable to issuer of qualifying security etc.

40. Section 159GT of the Principal Act is amended:

- (a) by omitting from subsection (5) “This” and substituting “Subject to subsection (6), this”; and

- (b) by adding at the end the following subsection:

“(6) This section does not apply to a qualifying security issued by a taxpayer after 5 o’clock in the evening, by standard time in the Australian Capital Territory, on 23 April 1987:

- (a) to, on behalf of or otherwise for the benefit of, a non-resident associate of the taxpayer; or
- (b) subject to an agreement between the taxpayer and an associate of the taxpayer under which the security is or was to be transferred to a non-resident associate of the taxpayer.”.

41. After Division 16E of Part III of the Principal Act the following Division is inserted:

“Division 16F—Thin capitalisation by non-residents

“Subdivision A—General interpretative provisions

Interpretation

“159GZA. In this Division, unless the contrary intention appears:

‘arm’s length transaction’ means a transaction the parties to which are independent parties dealing at arm’s length with each other in relation to the transaction;

‘arm’s length value’, in relation to an asset at a particular time, means the amount that might reasonably be expected to be paid in respect of a transfer of the asset at that time if the transfer were an arm’s length transaction;

‘assessable (non-resident beneficiary) income’, in relation to a trust estate, has the meaning given by subsection 159GZB (2);

‘assessable (non-resident partner) income’, in relation to a partnership, has the meaning given by subsection 159GZB (1);

‘associate’ has the meaning given by section 159GZC;

‘Australian-owned non-resident company’ has the meaning given by section 159GZD;

‘financial institution’ means:

(a) a bank within the meaning of the *Banking Act 1959*; or

(b) a corporation to which the *Financial Corporations Act 1974* applies by virtue of paragraph 8 (1) (a) or (b) of that Act or would apply by virtue of that paragraph if paragraphs 8 (2) (j), (k) and (l) of that Act were omitted and the following word and paragraph substituted:

‘or (j) the sole or principal purpose for which the corporation borrows money is to lend money to an associate, within the meaning of Division 16F of Part III of the *Income Tax Assessment Act 1936*, of the corporation or of a foreign controller, within the meaning of that Division, of the corporation.’;

‘foreign controller’ has the meaning given by section 159GZE;

‘foreign debt’ has the meaning given by section 159GZF;

‘foreign debt interest’ means interest payable on foreign debt;

'foreign equity' has the meaning given by section 159GZG;

'foreign equity product' means:

- (a) in relation to a person being a resident company or a foreign investor, in relation to a year of income—the amount ascertained by multiplying the foreign equity of the person of the year of income by:
 - (i) if the person is a financial institution—6; or
 - (ii) in any other case—3; or
- (b) in relation to a partnership or a trust estate, in relation to a year of income—the amount ascertained by multiplying the foreign equity of the partnership or trust estate of the year of income by 3;

'foreign investor' means a non-resident who derives assessable income of any year of income from sources in Australia other than solely in any one or more of the following capacities:

- (a) as partner in a partnership;
- (b) as trustee of a trust estate;
- (c) as beneficiary of a trust estate;

'interest' means interest within the meaning of subsection 128A (1), and includes:

- (a) any amount that, under subsection 159GZK (1), is adjusted section 128AC interest; and
- (b) any amount that, under subsection 159GZK (3), is section 128AD interest;

'paid-up value', in relation to an interest in a share, means the proportion of the paid-up value of the share equal to the proportion of the total interests in the share represented by the interest concerned;

'scheme' 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 there are 2 or more parties or only one party involved;

'votes in a company' means the maximum number of votes that might be cast at a general meeting of the company.

Assessable (non-resident partner) income and assessable (non-resident beneficiary) income

"159GZB. (1) Where the whole or a part (which whole or part is in this subsection called the 'non-resident amount') of the individual interest of a partner in the net income or partnership loss of a partnership of a year of income is attributable to a period when the partner was not a resident and is also attributable to sources in Australia, the amount of assessable income

of the partnership of the year of income to which the non-resident amount is attributable is, for the purposes of this Division, assessable (non-resident partner) income of the partnership of the year of income in relation to the partner.

“(2) Where the whole or a part (which whole or part is in this subsection called the ‘non-resident amount’) of the share of a beneficiary of a trust estate in the net income of the trust estate of a year of income is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia, the amount of assessable income of the trust estate of the year of income to which the non-resident amount is attributable is, for the purposes of this Division, assessable (non-resident beneficiary) income of the trust estate of the year of income in relation to the beneficiary.

Associates

“159GZC. (1) A reference in this Division to an associate of a person (in this subsection called the ‘primary person’) is a reference to:

- (a) where the primary person is a natural person, other than in the capacity of a trustee:
 - (i) a relative of the primary person;
 - (ii) a partner of the primary person;
 - (iii) if a person who is an associate of the primary person by virtue of subparagraph (ii) is a natural person—the spouse or a child of that natural person;
 - (iv) a trustee of a trust estate where the primary person or another person who is an associate of the primary person by virtue of another subparagraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or
 - (v) a company where:
 - (A) the company is, or its directors are, accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the primary person, of another person who is an associate of the primary person by virtue of another subparagraph of this paragraph, of a company that is an associate of the primary person by virtue of another application of this subparagraph or of any 2 or more such persons; or
 - (B) the primary person is, the persons who are associates of the primary person by virtue of sub-subparagraph (A) of this subparagraph and the preceding subparagraphs of this paragraph are, or the primary person and the persons who are associates of the

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primary person by virtue of that sub-subparagraph and those subparagraphs are, in a position to cast, or control the casting of, more than 15% of the votes in the company or beneficially entitled to receive, directly or indirectly, at least 15% of any dividends that are or might be paid, or of any distribution of capital that is or might be made, by the company;

- (b) where the primary person is a company, other than a company in the capacity of a trustee:
 - (i) a partner of the primary person;
 - (ii) if a person who is an associate of the primary person by virtue of subparagraph (i) is a natural person—the spouse or a child of that natural person;
 - (iii) a trustee of a trust estate where the primary person or another person who is an associate of the primary person by virtue of another subparagraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts;
 - (iv) another person where:
 - (A) the primary person company is, or its directors are, accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of that other person, or of that other person and another person or other persons, whether those directions, instructions or wishes are communicated directly to the primary person company or its directors, or through any interposed companies, partnerships or trusts; or
 - (B) that person is, or that person and the persons who, if that person were the primary person, would be associates of that person by virtue of paragraph (a), by virtue of sub-subparagraph (A) of this subparagraph, by virtue of another subparagraph of this paragraph or by virtue of paragraph (c) are, in a position to cast, or control the casting of, more than 15% of the votes in the company or beneficially entitled to receive, directly or indirectly, at least 15% of any dividends that are or might be paid, or of any distribution of capital that is or might be made, by the company;
 - (v) another company where:
 - (A) the other company is, or its directors are, accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance

with the directions, instructions or wishes of the primary person, of a person who is an associate of the primary person by virtue of another subparagraph of this paragraph, of a company that is an associate of the primary person by virtue of another application of this subparagraph or of any 2 or more such persons; or

- (B) the primary person is, the persons who are associates of the primary person by virtue of sub-subparagraph (A) of this subparagraph and the other subparagraphs of this paragraph are, or the primary person and the persons who are associates of the primary person by virtue of that sub-subparagraph and those subparagraphs are, in a position to cast, or control the casting of, more than 15% of the votes in the other company or beneficially entitled to receive, directly or indirectly, at least 15% of any dividends that are or might be paid, or of any distribution of capital that is or might be made, by the other company; or
- (vi) any other person who, if a third person who is an associate of the primary person by virtue of subparagraph (iv) were the primary person would be an associate of that third person by virtue of paragraph (a), by virtue of another subparagraph of this paragraph or by virtue of paragraph (c);
- (c) where the primary person is a trustee of a trust estate:
 - (i) any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust estate, either directly or through any interposed companies, partnerships or trusts;
 - (ii) where a person who is an associate of the primary person by virtue of subparagraph (i) is a natural person—any person who, if that natural person were the primary person would be an associate of that natural person by virtue of paragraph (a) or this paragraph; or
 - (iii) where a person who is an associate of the primary person by virtue of subparagraph (i) or (ii) is a company—any person who, if that company were the primary person would be an associate of that company by virtue of paragraph (b) or this paragraph; or
- (d) where the primary person is a partnership:
 - (i) a partner in the partnership;
 - (ii) where any partner in the partnership is a natural person—any person who, if that natural person were the primary person, would be an associate of that natural person by virtue of paragraph (a) or (c); or

- (iii) where any partner in the partnership is a company—any person who, if the company were the primary person, would be an associate of the company by virtue of paragraph (b) or (c).

“(2) In subsection (1) or in any other provision of this Act in so far as that provision has effect for the purposes of subsection (1):

- (a) a reference to the spouse of a person (in this paragraph called the ‘relevant person’):
 - (i) includes a reference to a de facto spouse of the relevant person; but
 - (ii) does not include a reference to a person who is legally married to the relevant person but is living separately and apart from the relevant person on a permanent basis; and
- (b) a reference to the de facto spouse of a person (in this paragraph called the ‘relevant person’) is a reference to a person who is living with the relevant person as the husband or wife of the relevant person on a *bona fide* domestic basis although not legally married to the relevant person.

“(3) For the purposes of subsection 159GZE (2), 159GZF (2) or 159GZG (3), any reference in that subsection to an associate of a person does not include a reference to a person who is an associate of the person only because of being a partner in the partnership referred to in that subsection.

Australian-owned non-resident company

“159GZD. Where a resident:

- (a) controls or is capable of controlling, either directly or through one or more interposed companies, trusts or partnerships, not less than 85% of the votes in a non-resident company; or
- (b) is beneficially entitled to receive, directly or indirectly, not less than 85% of any dividends that are or might be paid, or of any distribution of capital that is or might be made, by a non-resident company;

the non-resident company is, for the purposes of this Division, an Australian-owned non-resident company.

Foreign controller

“159GZE. (1) For the purposes of this Division, where:

- (a) a non-resident (other than an Australian-owned non-resident company), either alone or together with an associate or associates:
 - (i) has substantial control of the voting power in a resident company;
 - (ii) is beneficially entitled to receive, directly or indirectly, at least 15% of any dividends that are or might be paid, or of any distribution of capital that is or may be made, by a resident company; or

- (iii) is capable, under a scheme, of gaining such control or such an entitlement; or
 - (b) a resident company, or the directors of a resident company, is or are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a non-resident (other than an Australian-owned non-resident company), either alone or together with an associate or associates;
- the non-resident is a foreign controller in relation to the resident company.

“(2) For the purposes of this Division, where:

- (a) a non-resident, either alone or together with an associate or associates:
 - (i) has substantial control of the voting power in a partnership;
 - (ii) has a direct or indirect beneficial interest in at least 15% of the capital or profits of a partnership; or
 - (iii) is capable, under a scheme, of gaining such control or such an interest; or
- (b) the partners, or the other partners, in a partnership are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a non-resident, either alone or together with an associate or associates;

the non-resident is a foreign controller in relation to the partnership.

“(3) For the purposes of this Division, where:

- (a) a non-resident is the trustee of a trust estate;
- (b) a non-resident, either alone or together with an associate or associates:
 - (i) has substantial control of the voting power in a trust estate;
 - (ii) has a direct or indirect beneficial interest in at least 15% of the corpus or income of a trust estate; or
 - (iii) is capable, under a scheme, of gaining such control or such an interest; or
- (c) the trustee of a trust estate is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a non-resident, either alone or together with an associate or associates;

the non-resident is a foreign controller in relation to the trust estate.

Foreign debt

“159GZF. (1) In this Division, ‘foreign debt’, in relation to a resident company, means the balance outstanding on any amount owing by the company, where:

- (a) interest is or may become payable to a foreign controller, or to a non-resident associate of a foreign controller, of the company in respect of the amount owed;

- (b) the interest is or will be, apart from this Division, allowable as a deduction from the assessable income of the company of any year of income; and
- (c) except in the case of interest that is taken to be payable to a foreign controller or non-resident associate under section 159GZL, 159GZN or 159GZO—the interest is not, or would not be, assessable income of any year of income of the foreign controller or non-resident associate to whom it is or becomes payable.

“(2) In this Division, ‘foreign debt’, in relation to a partnership, means the balance outstanding on any amount owing by the partnership, where:

- (a) interest is or may become payable to a foreign controller, or to a non-resident associate of a foreign controller, of the partnership in respect of the amount owing;
- (b) the interest is or will be, apart from this Division, allowable as a deduction in respect of the assessable (non-resident partner) income of the partnership of any year of income in relation to any foreign controller, or non-resident associate of a foreign controller, of the partnership; and
- (c) except in the case of interest that is taken to be payable to a foreign controller or non-resident associate under section 159GZN or 159GZO—the interest is not, or would not be, assessable income of any year of income of the foreign controller or non-resident associate to whom it is or becomes payable.

“(3) In this Division, ‘foreign debt’, in relation to a trust estate, means the balance outstanding on any amount owing by the trustee of the trust estate, where:

- (a) interest is or may become payable to a foreign controller, or to a non-resident associate of a foreign controller, of the trust estate in respect of the amount owing;
- (b) the interest is or will be, apart from this Division, allowable as a deduction in respect of the assessable (non-resident beneficiary) income of the trust estate of any year of income in relation to any foreign controller, or non-resident associate of a foreign controller, of the trust estate; and
- (c) except in the case of interest that is taken to be payable to a foreign controller or non-resident associate under section 159GZN or 159GZO—the interest is not, or would not be, assessable income of any year of income of the foreign controller or non-resident associate to whom it is or becomes payable.

“(4) In this Division, ‘foreign debt’, in relation to a foreign investor, means the balance outstanding on any amount owing by the foreign investor, where:

- (a) interest is or may become payable to a non-resident associate of the foreign investor in respect of the amount owing;

- (b) the interest is or will be, apart from this Division, allowable as a deduction from the assessable income derived by the foreign investor in any year of income (other than as a partner in a partnership or a trustee or beneficiary of a trust estate); and
- (c) except in the case of interest that is taken to be payable to the non-resident associate under section 159GZL or 159GZO—the interest is not, or would not be, assessable income of the non-resident associate of any year of income.

Foreign equity

“159GZG. (1) In this Division, ‘foreign equity’, in relation to a resident company in relation to a year of income, means the sum of the following amounts:

- (a) the paid-up value of all shares, and interests in shares, in the company beneficially owned at the end of the year of income by foreign controllers, or non-resident associates of foreign controllers, of the company;
- (b) so much of the amount standing to the credit of any share premium account of the company at the end of the year of income as foreign controllers, or non-resident associates of foreign controllers, of the company would be beneficially entitled to receive by way of distribution if:
 - (i) the company were wound up at that time; and
 - (ii) the value at that time of the assets of the company, reduced by the amount of its liabilities, exceeded the paid-up share capital of the company by not less than the amount standing to the credit of the share premium account; and
- (c) the lesser of the following amounts (if any):
 - (i) so much of the accumulated profits and, if applicable, asset revaluation reserves of the company at the beginning of the year of income as foreign controllers, or non-resident associates of foreign controllers, of the company would be beneficially entitled to receive if the whole of those profits and reserves were able to be distributed by way of dividends at that time;
 - (ii) so much of the accumulated profits and, if applicable, asset revaluation reserves of the company at the beginning of the year of income as foreign controllers, or non-resident associates of foreign controllers, of the company would be beneficially entitled to receive by way of distribution if:
 - (A) the company were wound up at that time; and
 - (B) the value at that time of the assets of the company, reduced by the amount of its liabilities, exceeded the paid-up share capital of the company by not less than the amount of the accumulated profits and asset revaluation reserves;

reduced by the sum of:

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(d) the balance outstanding at the end of the year of income on all amounts owing to the company by foreign controllers, or non-resident associates of foreign controllers, of the company;

(e) where:

(i) during the year of income, any of the accumulated profits or asset revaluation reserves of the company were applied towards the paid-up value of any shares issued by the company; and

(ii) on the issue of the shares, foreign controllers, or non-resident associates of foreign controllers, of the company became the beneficial owners of the shares or of interests in the shares;

so much of the accumulated profits and asset revaluation reserves as were so applied; and

(f) in a case where there are accumulated losses of the company at the beginning of the year of income—the amount by which, if the company had been wound up at that time and the accumulated losses represented a deficiency of capital, the amount that foreign controllers, or non-resident associates of foreign controllers, of the company would be beneficially entitled to receive by way of distribution of capital would be reduced by virtue of the accumulated losses.

“(2) For the purposes of subsection (1):

(a) an asset revaluation reserve of the company shall be taken to be applicable only if the company provides for asset revaluation reserves in its accounting records;

(b) where, if regard were had only to changes in the arm's length value of assets, the amount of an asset revaluation reserve would be less than the amount of that reserve as shown in the accounting records of the company—that lesser amount shall be taken to be the amount of the asset revaluation reserve; and

(c) where:

(i) according to the accounting records of the company, any of its asset revaluation reserves were applied towards the paid-up value of any shares; and

(ii) because of paragraph (b), the amount of the reserves is, for the purposes of subsection (1), taken to be proportionally less than the amount of those reserves shown in those records;

the amount so applied shall be taken to be reduced by that proportion.

“(3) In this Division, ‘foreign equity’, in relation to a partnership in relation to a year of income, means the amount that, if:

(a) regard were had only to the activities of the partnership in producing assessable (non-resident partner) income in relation to foreign controllers, or non-resident associates of foreign controllers, of the partnership; and

- (b) a partnership balance sheet were prepared at the end of the year of income or, where the partnership ceased (other than temporarily) to derive assessable income of the kind referred to in paragraph (a) at a time before the end of the year of income, at that time;

would be shown in the balance sheet as partners' equity, reduced by the balance outstanding on amounts owing to the partnership by foreign controllers, or non-resident associates of foreign controllers, of the partnership.

“(4) In this Division, ‘foreign equity’, in relation to a trust estate in relation to a year of income, means the amount that, if:

- (a) regard were had only to the use of the trust property in producing assessable (non-resident beneficiary) income in relation to foreign controllers, or non-resident associates of foreign controllers, of the trust estate; and
- (b) a trust estate balance sheet were prepared at the end of the year of income or, where the trustee of the trust estate ceased (other than temporarily) to derive assessable income of the kind referred to in paragraph (a) at a time before the end of the year of income, at that time;

would be shown in the balance sheet as beneficiaries' equity, reduced by the balance outstanding on amounts owing to the trustee of the trust estate by foreign controllers, or non-resident associates of foreign controllers, of the trust estate.

“(5) In this Division, ‘foreign equity’, in relation to a foreign investor in relation to a year of income, means the amount that, if:

- (a) regard were had only to the activities of the foreign investor in producing assessable income from sources in Australia (other than as a partner in a partnership or a trustee or beneficiary of a trust estate); and
- (b) a balance sheet were prepared at the end of the year of income or, where the foreign investor ceased (other than temporarily) to be a foreign investor at a time before the end of the year of income, at that time;

would be shown in the balance sheet as the foreign investor's equity, reduced by the balance outstanding on amounts owing to the foreign investor by non-resident associates.

“(6) If:

- (a) the references in paragraphs (1) (a), (b) and (d) or the reference in subsection (3), (4) or (5) to the end of the year of income were references or a reference to any time during the shorter of the following periods:
 - (i) the period of 2 years beginning at the end of the year of income;

- (ii) the period from the end of the year of income until there cease to be any foreign controllers in relation to the resident company, the partnership or the trust estate concerned; and
- (b) the application of those paragraphs or that subsection with such substituted references or such a substituted reference would result in a lower amount of foreign equity being ascertained under subsection (1), (3), (4) or (5) than the amount that would otherwise be ascertained;

then, for the purposes of this Division, the lower amount shall be substituted for the amount that would otherwise be ascertained.

Indirect beneficial entitlements or interests

“159GZH. (1) For the purposes of this Division:

- (a) a person shall be deemed to be a person who is beneficially entitled to receive indirectly the whole or a particular fraction of a dividend that is, or might be, paid by a company or of a distribution of capital of a company; or
- (b) 2 or more persons shall be deemed to be persons who are together beneficially entitled to receive indirectly the whole or a particular fraction of such a dividend or distribution of capital;

if, in the event of a payment of a dividend by the company, or of a distribution of capital of the company, the person or persons would, otherwise than as a shareholder or shareholders of the company or as a trustee or trustees, receive or have received the whole or that fraction, as the case may be, of that dividend, or of that distribution of capital, on the assumption that there had been successive distributions of the relative parts of that dividend, or of that distribution of capital, to and by each of any companies, partnerships or trustees interposed between the company paying the dividend, or making the distribution of capital, and that person or those persons.

“(2) For the purposes of this Division:

- (a) a person shall be deemed to be a person who has an indirect beneficial interest in the whole or a particular fraction of the capital or profits of a partnership; or
- (b) 2 or more persons shall be deemed to be persons who together have an indirect beneficial interest in the whole or a particular fraction of the capital or profits of a partnership;

if, in the event of a distribution of the capital or profits of the partnership, the person or persons would, otherwise than as a partner or partners in the partnership or as a trustee or trustees, receive or have received the whole or that fraction, as the case may be, of that distribution, on the assumption that there had been successive distributions of the relative parts of that distribution to and by each of any companies, partnerships or trustees interposed between the partnership concerned and that person or those persons.

“(3) For the purposes of this Division:

- (a) a person shall be deemed to be a person who has an indirect beneficial interest in the whole or a particular fraction of the corpus or income of a trust estate; or
- (b) 2 or more persons shall be deemed to be persons who together have an indirect beneficial interest in the whole or a particular fraction of the corpus or income of a trust estate;

if, in the event of a distribution of the corpus or income of the trust estate, the person or persons would, otherwise than as a beneficiary or beneficiaries in the trust estate or as a trustee or trustees of another trust estate, receive or have received the whole or that fraction, as the case may be, of that distribution, on the assumption that there had been successive distributions of the relative parts of that distribution to and by each of any companies, partnerships or trustees interposed between the trust estate concerned and that person or those persons.

Resident company group

“159GZI. Where, if in applying section 80G only resident companies were taken into account, 2 or more companies would be group companies in relation to each other in relation to a year of income, the companies shall, for the purposes of this Division, be taken to be members of a resident company group in relation to the year of income.

Substantial control of voting power

“159GZJ. (1) For the purposes of this Division, a person has substantial control of the voting power in a company if the person controls or is capable of controlling, either directly or through one or more interposed companies, partnerships or trusts, at least 15% of the votes in the company.

“(2) For the purposes of this Division, a person has substantial control of the voting power in a partnership if, either directly or through one or more interposed companies, partnerships or trusts:

- (a) the person is able:
 - (i) to control or conduct the management or affairs of the partnership; or
 - (ii) to admit or expel, or to veto the admission or expulsion of, a partner to or from the partnership; or
- (b) the person controls or is capable of controlling at least 15% of any votes that might be cast at a meeting:
 - (i) for the purpose of controlling or conducting the management or affairs of the partnership; or
 - (ii) to admit or expel, or to veto the admission or expulsion of, a partner to or from the partnership.

“(3) For the purposes of this Division, a person has substantial control of the voting power in a trust estate if, either directly or through one or more interposed companies, partnerships or trusts:

- (a) the person is able to appoint or remove, or to veto the appointment or removal of, a trustee of the trust estate; or
- (b) the person controls or is capable of controlling at least 15% of any votes that might be cast at a meeting to appoint or remove, or to veto the appointment or removal of, a trustee of the trust estate.

“Subdivision B—Deeming and other special interpretative provisions

Effect of deemed section 128AC and 128AD interest payments

“159GZK. (1) Where:

- (a) under section 128AC, the whole or a part (which whole or part is in this subsection called the ‘section 128AC interest’) of any attributable agreement payment made or liable to be made by a person (in this subsection called the ‘interest payer’) to another person (in this subsection called the ‘interest payee’) under a relevant agreement is deemed to be income that consists of interest;
- (b) the whole or a part of the attributable agreement payment is allowable as a deduction in relation to the assessable income, the assessable (non-resident partner) income or assessable (non-resident beneficiary) income of the interest payer; and
- (c) the section 128AC interest is not assessable income of the interest payee;

then, for the purpose of this Division, the following provisions have effect:

- (d) so much of the attributable agreement payment as is deductible as mentioned in paragraph (b) and does not exceed the section 128AC interest shall be taken to be adjusted section 128AC interest;
- (e) there shall be taken at any time during the term of the relevant agreement to be an amount owing by the interest payer, in respect of which the adjusted section 128AC interest is payable, equal to the eligible value of the relevant agreement property, reduced by so much of the sum of all of the attributable agreement payments made or liable to be made under the relevant agreement before that time as does not consist of adjusted section 128AC interest;
- (f) the adjusted section 128AC interest shall be taken not to be assessable income of the interest payee.

“(2) Expressions used in subsection (1) that are also used in section 128AC have the same respective meanings in that subsection as in that section.

“(3) Where the whole or a part of the indemnification amount referred to in subsection 128AD (1) or (2) is deemed by that subsection to be income that consists of interest, then, for the purposes of this Division, the following provisions have effect:

- (a) the amount deemed to be income that consists of interest shall be taken to be section 128AD interest;

- (b) the section 128AD interest shall be taken to be payable in respect of so much of the indemnification amount as is not deemed to be income that consists of interest.

Deemed recipient of certain subsection 128F (6) interest

“159GZL. Where:

- (a) because subsection 128F (6) applies, the preceding provisions of section 128F have effect as if interest payable by a resident company in respect of a loan to it by a non-resident company were interest in respect of debentures issued by the non-resident company for the purposes of raising a loan outside Australia; and
 - (b) when paid, the interest is interest to which section 128F applies;
- then, for the purposes of this Division, interest payable by the resident company in respect of the loan to it shall be taken to be payable to the holder from time to time of the debentures issued by the non-resident company instead of to the non-resident company.

Adjustment of foreign equity product in certain cases involving financial institutions

“159GZM. Where:

- (a) a resident company, a partnership or a trust estate (which company, partnership or trust estate is in this section called the ‘foreign equity entity’) has foreign equity of a year of income in relation to foreign controllers or non-resident associates of foreign controllers;
- (b) the foreign equity entity:
 - (i) is beneficially entitled to receive directly or indirectly the whole or a particular fraction of a dividend that is, or might be, paid by a company or of a distribution of the capital of a company;
 - (ii) has a direct or indirect beneficial interest in the whole or a particular fraction of the capital or profits of a partnership; or
 - (iii) has a direct or indirect beneficial interest in the whole or a particular fraction of the corpus or income of a trust estate; (which company, partnership or trust estate is in this section called a ‘subordinate entity’);
- (c) at least one, but not each, of the group consisting of the foreign equity entity and all subordinate entities is a financial institution; and
- (d) the Commissioner determines that:
 - (i) where the foreign equity entity is a financial institution—the number 6 that, in the application of the definition of ‘foreign equity product’ in section 159GZA, would, apart from this section, be applicable to the foreign equity entity because it is a financial institution, should, having regard to the extent to which the foreign equity of that entity is, through the

interests or entitlements referred to in paragraph (b), attributable to subordinate entities that are not financial institutions, be decreased towards the number 3; or

- (ii) if the foreign equity entity is not a financial institution—the number 3 that, in the application of the definition of ‘foreign equity product’ in section 159GZA would, apart from this section, be applicable to the foreign equity entity because it is not a financial institution, should, having regard to the extent to which the foreign equity of that entity is, through the interests or entitlements referred to in paragraph (b), attributable to subordinate entities that are financial institutions, be increased towards the number 6;

then, for the purposes of this Division, that number shall be decreased or increased in accordance with the determination of the Commissioner.

Debt and equity where interposed partnerships and trusts

“159GZN. For the purposes of this Division, where the following conditions are satisfied in relation to a person (in this section called the ‘head person’):

- (a) the head person, or a non-resident associate of the head person:
 - (i) is beneficially entitled to receive indirectly, through interposed partnerships and trusts but not companies, the whole or a particular fraction (which whole or fraction, expressed as a percentage, is in this section called the ‘head person percentage’) of any dividend that is, or might be, paid by a company;
 - (ii) has an indirect beneficial interest, through interposed partnerships and trusts but not companies, in the whole or a particular fraction (which whole or fraction, expressed as a percentage, is in this section also called the ‘head person percentage’) of the profits of a partnership; or
 - (iii) has an indirect beneficial interest, through interposed partnerships and trusts but not companies, in the whole or a particular fraction (which whole or fraction, expressed as a percentage, is in this section also called the ‘head person percentage’) of the income of a trust estate;

(which company, partnership or trust estate, and each of which interposed partnerships and trusts is in this section called a ‘subsidiary entity’);

- (b) the head person is a foreign controller of at least one of the subsidiary entities;

the following provisions have effect in relation to each subsidiary entity:

- (c) the head person percentage of any interest that is or becomes payable by the subsidiary entity or its trustee to any other subsidiary entity or its trustee that is interposed between the subsidiary entity and the head person shall be taken to be payable:

- (i) to a foreign controller of the first-mentioned subsidiary entity (whether or not there is actually any foreign controller of the entity) instead of to the other subsidiary entity or its trustee; and
 - (ii) in respect of the head person percentage of the amount in respect of which the interest is actually payable;
- (d) if the conditions in paragraphs (a) and (b) are satisfied at the end of a year of income—the head person percentage of the amount that, if all of the shareholders, partners or beneficiaries, as the case requires, in the subsidiary entity were foreign controllers of the entity, would be the foreign equity of the entity of the year of income, shall be taken to be foreign equity of the subsidiary entity of the year of income and shall be added to any other foreign equity of the entity of the year of income.

Schemes involving debt owing to foreign controllers etc. through intermediaries

“159GZO. (1) Where:

- (a) either or both of the following subparagraphs apply:
 - (i) under a scheme, an amount becomes owing by a person (in this subsection called an ‘intermediary’) to a foreign controller, or to a non-resident associate of a foreign controller, of a resident company, a partnership or a trust estate;
 - (ii) under the scheme, an amount becomes owing by a person (in this subsection also called an ‘intermediary’) to another person who is an intermediary because of the application of subparagraph (i) or another application of this subparagraph in relation to the resident company, partnership or trust estate; and
- (b) under the scheme, an amount or amounts become owing by the resident company, partnership or trustee of the trust estate to an intermediary or intermediaries (whether before or after any amount referred to in paragraph (a) becomes or became owing);

then, for the purposes of this Division, if any interest is or becomes payable by the resident company, partnership or trustee to an intermediary or intermediaries in respect of any amount or amounts referred to in paragraph (b):

- (c) where paragraph (d) does not apply—the interest shall be taken to be payable to the foreign controller or to the non-resident associate instead of to the intermediary or intermediaries; and
- (d) where the amount referred to in subparagraph (a) (i) that is payable to the foreign controller or non-resident associate is only a proportion of the amount, or of the sum of the amounts, in respect of which the interest is or becomes payable—that proportion of the interest shall be taken to be payable to the foreign controller or non-resident associate instead of to the intermediary or intermediaries and to be

so payable in respect of that proportion only of the amount or of each of the amounts in respect of which the interest is actually payable.

“(2) Where:

- (a) either or both of the following subparagraphs apply:
 - (i) under a scheme, an amount becomes owing by a person (in this subsection called an ‘intermediary’) to a non-resident associate of a foreign investor;
 - (ii) under the scheme, an amount becomes owing by a person (in this subsection also called an ‘intermediary’) to another person who is an intermediary because of the application of subparagraph (i) or another application of this subparagraph in relation to the foreign investor; and
- (b) under the scheme, an amount or amounts become owing by the foreign investor to an intermediary or intermediaries (whether before or after any amount referred to in paragraph (a) becomes or became owing);

then, for the purposes of this Division, if any interest is or becomes payable by the foreign investor to an intermediary or intermediaries in respect of any amount or amounts referred to in paragraph (b):

- (c) where paragraph (d) does not apply—the interest shall be taken to be payable to the non-resident associate instead of to the intermediary or intermediaries; and
- (d) where the amount referred to in subparagraph (a) (i) that is payable to the non-resident associate is only a proportion of the amount, or of the sum of the amounts, in respect of which the interest is or becomes payable—that proportion of the interest shall be taken to be payable to the non-resident associate instead of to the intermediary or intermediaries and to be so payable in respect of that proportion only of the amount or of each of the amounts in respect of which the interest is actually payable.

Schemes involving debt owing by foreign controllers etc. through intermediaries

“159GZP. (1) Where:

- (a) either or both of the following subparagraphs apply:
 - (i) under a scheme, an amount becomes owing by a person (in this subsection called an ‘intermediary’) to a resident company, a partnership or the trustee of a trust estate;
 - (ii) under the scheme, an amount becomes owing by a person (in this subsection also called an ‘intermediary’) to another person who is an intermediary because of the application of subparagraph (i) or another application of this subparagraph in relation to the resident company, partnership or trust estate; and

- (b) under the scheme, an amount or amounts become owing by a foreign controller, or a non-resident associate of a foreign controller, of the resident company, partnership or trust estate to an intermediary or intermediaries (whether before or after any amount referred to in paragraph (a) becomes or became owing);

then, for the purposes of this Division, so much of the amount, or of the sum of the amounts, owing by the foreign controller or by the non-resident associate as does not exceed the amount owing to the resident company, partnership or trustee of the trust estate shall be taken to be owing to the resident company, partnership or trustee instead of to the intermediary or intermediaries.

“(2) Where:

- (a) either or both of the following subparagraphs apply:

- (i) under a scheme, an amount becomes owing by a person (in this subsection called an ‘intermediary’) to a foreign investor;
- (ii) under the scheme, an amount becomes owing by a person (in this subsection also called an ‘intermediary’) to another person who is an intermediary because of the application of subparagraph (i) or another application of this subparagraph in relation to the foreign investor; and

- (b) under the scheme, an amount or amounts become owing by a non-resident associate of the foreign investor to an intermediary or intermediaries (whether before or after any amount referred to in paragraph (a) becomes or became owing);

then, for the purposes of this Division, so much of the amount, or of the sum of the amounts, owing by the non-resident associate as does not exceed the amount owing to the foreign investor shall be taken to be owing to the foreign investor instead of to the intermediary or intermediaries.

Equity borrowed from non-resident associates to be treated as debt in certain cases

“159GZQ. Where:

- (a) a person (in this section called the ‘borrower’) being a foreign controller, or a non-resident associate of a foreign controller, of a partnership or a trust estate borrows an amount from a non-resident associate of the borrower to enable the borrower to contribute an amount to the capital of the partnership or to the corpus of the trust estate;
- (b) the borrower contributes such an amount to the capital or corpus; and
- (c) interest is or will be payable by the borrower in respect of the amount borrowed and is or will be allowable as a deduction from the assessable income of the borrower of any year of income;

the amount contributed shall, for the purposes of this Division, be taken not to have been contributed but instead to be an amount owing by the partnership or trustee of the trust estate to the borrower in relation to

which the requirements of paragraphs 159GZF (2) (a) to (c) (inclusive) or (3) (a) to (c) (inclusive), as the case requires, are satisfied.

Part year application of Division in certain circumstances

“159GZR. (1) Where either or both of the following conditions is satisfied in relation to a resident company, a partnership or a trust estate:

- (a) there is a foreign controller or there are foreign controllers during only a part or parts of a year of income;
- (b) there is a different foreign controller or there are different foreign controllers during any 2 or more parts of a year of income;

this Division applies, subject to subsection (2), in relation to the resident company, partnership or trust estate in relation to the part, or separately in relation to each of the parts, of the year of income as if it were the whole of the year of income.

“(2) In the application of this Division in relation to a part of a year of income in accordance with subsection (1), subsection 159GZG (6) shall be disregarded except where the part ends at the end of the year of income.

“Subdivision C—Reduction of interest deductions

Resident companies

“159GZS. Where:

- (a) an amount of foreign debt interest is, apart from this Division, allowable as a deduction from the assessable income of a year of income of a taxpayer being a resident company; and
- (b) the greatest total foreign debt of the taxpayer at any time in the year of income exceeds the foreign equity product of the taxpayer of the year of income;

a proportion of the amount of the foreign debt interest ascertained in accordance with the formula $\frac{E}{D}$, where:

E is the amount of the excess referred to in paragraph (b); and

D is the amount of foreign debt referred to in that paragraph;
is not so allowable as a deduction.

Resident company groups

“159GZT. (1) Where:

- (a) an amount of foreign debt interest is, apart from this Division, allowable as a deduction from the assessable income of a year of income of a taxpayer, being a member of a resident company group in relation to the year of income; and
- (b) the greatest total foreign debt at any time in the year of income of all of the members of the resident company group exceeds the foreign equity product of the year of income of the member of the resident company group that has foreign equity in relation to the year of income;

a proportion of the amount of the foreign debt interest ascertained in accordance with the formula $\frac{E}{D}$, where:

E is the amount of the excess referred to in paragraph (b); and

D is the amount of foreign debt referred to in that paragraph; is not so allowable as a deduction.

“(2) Where:

- (a) the foreign equity of the member referred to in paragraph (1) (b) is attributable in part to profits arising from any transaction or transactions involving the member and any other member or members of the resident company group, being a transaction or transactions that were not arm’s length transactions; and
- (b) if the transaction or transactions had been arm’s length transactions, the foreign equity of the member would have been less;

subsection (1) applies as if the lesser amount were substituted for the amount of the foreign equity.

Partnerships

“159GZU. Where:

- (a) an amount of foreign debt interest is, apart from this Division, allowable as a deduction in calculating under section 90 the net income or partnership loss of a partnership of a year of income; and
- (b) the greatest total foreign debt of the partnership at any time in the year of income exceeds the foreign equity product of the partnership of the year;

a proportion of the amount of the foreign debt interest ascertained in accordance with the formula $\frac{E}{D}$, where:

E is the amount of the excess referred to in paragraph (b); and

D is the amount of foreign debt referred to in that paragraph; is not so allowable as a deduction.

Trust estates

“159GZV. Where:

- (a) an amount of foreign debt interest is, apart from this Division, allowable as a deduction in calculating under section 95 the net income of a trust estate of a year of income; and
- (b) the greatest total foreign debt of the trust estate at any time in the year of income exceeds the foreign equity product of the trust estate of the year;

a proportion of the amount of the foreign debt interest ascertained in accordance with the formula $\frac{E}{D}$, where:

E is the amount of the excess referred to in paragraph (b); and

D is the amount of foreign debt referred to in that paragraph; is not so allowable as a deduction.

Foreign investors

“159GZW. Where:

- (a) an amount of foreign debt interest is, apart from this Division, allowable as a deduction from the assessable income of a year of income of a taxpayer being a foreign investor; and
- (b) the greatest total foreign debt of the taxpayer at any time in the year of income exceeds the foreign equity product of the taxpayer of the year;

a proportion of the amount of the foreign debt interest ascertained in accordance with the formula $\frac{E}{D}$, where:

E is the amount of the excess referred to in paragraph (b); and

D is the amount of foreign debt referred to in that paragraph; is not so allowable as a deduction.

Effect of subsection 159GT (6) interest payments

“159GZX. (1) For the purposes of this section:

- (a) ‘159GT (6) interest payment’ means an interest payment in respect of which, apart from this Division, deductions would, but for subsection 159GT (6), be allowable to the payer under section 159GT;
- (b) ‘notional 159GT deduction’, in relation to a 159GT (6) interest payment in relation to a year of income, means the deduction that, apart from this Division, would, but for subsection 159GT (6), be allowable under section 159GT to the payer in respect of the interest payment in relation to the year of income;
- (c) a year of income is called a ‘foreign controller year’ in relation to a 159GT (6) interest payment if:
 - (i) the year is the year in which the interest payment is actually made or liable to be made and the payment is made to a foreign controller, or to a non-resident associate of a foreign controller, of the payer; or
 - (ii) the year is not the year in which the interest payment is actually made or liable to be made, but if the payment had been made or liable to be made during the year, it would have been made or liable to be made to a foreign controller, or to a non-resident associate of a foreign controller, of the payer; and
- (d) where, if this Subdivision applied in relation to a foreign controller year in relation to a 159GT (6) interest payment on the assumption that a notional 159GT deduction was allowable for that year to the payer in respect of:

- (i) the 159GT (6) interest payment; and
- (ii) every other 159GT (6) interest payment made or liable to be made by the payer in relation to which that year is a foreign controller year;

there would be a reduction in the amount of the notional 159GT deduction in relation to the first-mentioned 159GT (6) interest payment, the amount of that reduction is called a 'notional reduction amount' in relation to that year in respect of that 159GT (6) interest payment.

“(2) Where at least one of the years of income before that in which a 159GT (6) interest payment is made or liable to be made is a foreign controller year in relation to the interest payment, the following provisions have effect:

- (a) for each foreign controller year in relation to the interest payment, this Subdivision applies in relation to each interest payment (other than the 159GT (6) interest payment itself or any other 159GT (6) interest payment) made or liable to be made by the payer as if, for the purposes of the references in this Subdivision to foreign debt of the payer, notional 159GT deductions were allowable for that year in respect of all 159GT (6) interest payments;
- (b) the amount of the deduction that, apart from this Division, would be allowable to the payer otherwise than under section 159GT in respect of the 159GT (6) interest payment for the year in which the payment is made or liable to be made shall be reduced by the sum of the notional reduction amounts for all foreign controller years in respect of the interest payment.”.

Transfer of excess credit within company group

42. Section 160AFE of the Principal Act is amended:

- (a) by omitting from subsection (6) “For” and substituting “Subject to subsection (6A), for”; and
- (b) by inserting after subsection (6) the following subsection:

“(6A) For the purposes of subsection (2), where:

- (a) at a time (in this subsection called the ‘acquisition time’) in the year of income commencing on 1 July 1986 or in a subsequent year of income, one or more companies acquired all the shares in another company (in this subsection called the ‘shelf company’) from the shareholders in the shelf company; and
- (b) the shelf company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout the period (in this subsection called the ‘dormant period’) commencing on the day on which the shelf company was incorporated and ending at the acquisition time;

the shelf company shall be taken not to have been in existence during the dormant period.”.

Other interpretative provisions

43. Section 160K of the Principal Act is amended:

- (a) by omitting “, (ja)” from paragraph (a) of the definition of “relevant exempting provision” in subsection (1); and
- (b) by omitting paragraph (b) of the definition of “relevant exempting provision” in subsection (1) and substituting the following paragraphs:
 - “(b) paragraph 23 (ja) as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;
 - (ba) section 23F, 23FA or 23FB, as in force at any time before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;
 - (bb) section 23FC or 23FD;”.

Transfer of net capital loss within company group

44. Section 160ZP of the Principal Act is amended:

- (a) by omitting from subsection (6) “For” and substituting “Subject to subsection (6A), for”; and
 - (b) by inserting after subsection (6) the following subsection:
 - “(6A) For the purposes of subsection (1), where:
 - (a) at a time (in this subsection called the ‘acquisition time’) in the year of income commencing on 1 July 1986 or in a subsequent year of income, one or more companies acquired all the shares in another company (in this subsection called the ‘shelf company’) from the shareholders in the shelf company; and
 - (b) the shelf company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout the period (in this subsection called the ‘dormant period’) commencing on the day on which the shelf company was incorporated and ending at the acquisition time;
- the shelf company shall be taken not to have been in existence during the dormant period.”.

Transfer of asset between companies in the same group

45. Section 160ZZO of the Principal Act is amended:

- (a) by omitting from subsection (8) “For” and substituting “Subject to subsection (8A), for”; and
- (b) by inserting after subsection (8) the following subsection:
 - “(8A) For the purposes of subsection (3), where:
 - (a) at a time (in this subsection called the ‘acquisition time’) in the year of income commencing on 1 July 1986 or in a

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subsequent year of income, one or more companies acquired all the shares in another company (in this subsection called the 'shelf company') from the shareholders in the shelf company; and

- (b) the shelf company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout the period (in this subsection called the 'dormant period') commencing on the day on which the shelf company was incorporated and ending at the acquisition time;

the shelf company shall be taken not to have been in existence during the dormant period.”.

Liability to pay instalments of provisional tax

46. Section 221YBA of the Principal Act is amended by omitting paragraph (2) (b) and substituting the following paragraph:

- “(b) the abnormal income amount included in the taxable income of the taxpayer of the year of income as specified in section 158L.”.

Provisional tax on estimated income

47. Section 221YDA of the Principal Act is amended:

- (a) by inserting after paragraph (1) (daa) the following subparagraph:
 - “(dab) the eligible taxable income, and average eligible taxable income, of the taxpayer of the year of income for the purposes of Division 16A of Part III;”;
- (b) by omitting from the end of subparagraph (2) (a) (ii) “and”; and
- (c) by adding at the end of paragraph (2) (a) the following subparagraph:
 - “(iii) the eligible taxable income, and average eligible taxable income, of the taxpayer of the year of income for the purposes of Division 16A of Part III were those amounts as shown in the statement; and”.

Application of amendments etc.

48. (1) In this section, “amended Act” means the Principal Act as amended by this Part.

(2) The amendments made by sections 5, 7, 8 and 24 to 33 (inclusive) apply to assessments in respect of income of the year of income commencing on 1 July 1986 and of all subsequent years of income.

(3) Subject to section 49, the amendments made by:

- (a) section 13;
- (b) paragraphs 39 (c) and (e); and
- (c) paragraph 39 (d), insofar as it inserts the definition of “ineligible annuity” in subsection 159GP (1) of the Principal Act;

apply as if they had come into operation on 29 October 1987.

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(4) Subject to subsection (5), the amendments made by sections 14, 37 and 38 apply to assessments in respect of income of the year of income that commenced on 1 July 1986 and of all subsequent years of income.

(5) Notwithstanding the amendments made by sections 14, 37 and 38, a taxpayer may make an application under subsection 158D (1) of the Principal Act in respect of the year of income that commenced on 1 July 1986 as if those amendments had not been made and, if the taxpayer does so, that Act applies to the assessment in respect of income of the taxpayer of that year of income as if those amendments had not been made.

(6) The amendment made by section 17 applies in relation to amounts set apart or paid as or to a fund on or after 1 July 1986 and during the year of income of the fund commencing on 1 July 1986 or a subsequent year of income.

(7) The amendments made by sections 18 and 19 apply in relation to contributions made to a fund on or after 1 July 1986 and during the year of income of the fund commencing on 1 July 1986 or a subsequent year of income.

(8) The amendments made by sections 22, 23 and 35 apply in relation to a fund in relation to the year of income of the fund commencing on 1 July 1986 and in relation to all subsequent years of income.

(9) The amendments made by paragraphs 39 (a) and (b) apply as if they had come into operation on 17 December 1984.

(10) The amendments made by:

(a) paragraph 39 (d), insofar as it inserts definitions of “agreement” and “associate” in subsection 159GP (1) of the Principal Act; and

(b) section 40;

apply as if they had come into operation on 23 April 1987.

(11) Subject to section 51, the amendment made by section 41 applies to assessments in respect of income of the year of income commencing on 1 July 1987 and of all subsequent years of income.

(12) The amendment made by section 46 applies in respect of income of the year of income commencing on 1 July 1987 and of all subsequent years of income.

(13) The amendments made by section 47 apply in relation to the ascertainment of provisional tax payable in respect of income of the year of income commencing on 1 July 1987 and of all subsequent years of income.

Transitional—sections 27H and 159GP

49. The Principal Act as amended by this Part applies in relation to annuities issued after 8 o'clock in the evening by standard time in the Australian Capital Territory on 19 September 1986 and before the end of 28 October 1987 as if:

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- (a) the reference in subsection 48 (3) of this Act to 29 October 1987 were a reference to 19 September 1986;
- (b) section 13 of this Act were omitted and the following section substituted:

“13. Section 27H of the Principal Act is amended by adding at the end of the definition of ‘annuity’ in subsection (4) ‘, but does not include an annuity that, under subsection 159GP (10), is a qualifying security for the purposes of Division 16E;’”;

- (c) paragraph 39 (c) of this Act were omitted; and
- (d) paragraph 39 (e) of this Act were omitted and the following paragraph substituted:

“(e) by adding at the end the following subsection:

‘(10) Where:

- (a) a deferred annuity, within the meaning of Subdivision AA of Division 2, is issued after 8 o’clock in the evening, by standard time in the Australian Capital Territory, on 19 September 1986 and before the end of 28 October 1987;
- (b) the requirements of paragraphs (b) to (e) (inclusive) of the definition of “qualifying security” in subsection (1) are satisfied in relation to the annuity; and
- (c) the annuity is not an ineligible annuity;

the annuity is a qualifying security for the purpose of this Division.’”.

Transitional—Subdivision AB of Division 3 of Part III

50. Subdivision AB of Division 3 of Part III of the Principal Act, insofar as it continues to apply in relation to contributions made to a fund before 1 July 1986 and in the year of income of the fund commencing on 1 July 1986, has effect as if the definitions of “eligible superannuation fund” and “qualifying superannuation fund” in subsection 82AAS (1) of the Principal Act were omitted and the following definitions were substituted:

“ ‘eligible superannuation fund’ means a fund to which paragraph 23 (ja) or (jaa), or section 23F or 23FB, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*, would, but for the amendments made by that Act, have applied in relation to the year of income;

‘qualifying superannuation fund’ means a fund to which paragraph 23 (ja) or section 23FB, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*, would, but for the amendments made by that Act, have applied in relation to the year of income.”.

Transitional—Division 16F of Part III

51. (1) In this section:

“eligible entity” means a resident company, a partnership or a trust estate;

“new debt” means:

- (a) in relation to an eligible entity—foreign debt of the entity other than old debt in relation to any transitional controller of the entity; or
- (b) in relation to a foreign investor—foreign debt of the investor other than old debt of the investor;

“new equity” means:

- (a) in relation to an eligible entity in relation to a year of income—so much (if any) of the foreign equity of the entity in relation to the year of income as exceeds the total old equity of the entity in relation to all persons who are transitional controllers of the entity during the year of income; or
- (b) in relation to a foreign investor in relation to a year of income—so much (if any) of the foreign equity of the investor in relation to the year of income as exceeds the old equity of the investor;

“old debt” means:

- (a) in relation to an eligible entity in relation to a foreign controller of the entity—foreign debt of the entity that consists of the balance outstanding on amounts owing to the foreign controller and his or her non-resident associates under contracts entered into before 1 July 1987; or
- (b) in relation to a foreign investor—foreign debt of the investor that consists of the balance outstanding on amounts owing to non-resident associates of the foreign investor under contracts entered into before 1 July 1987;

“old equity” means:

- (a) in relation to an eligible entity in relation to a foreign controller of the entity:
 - (i) except where subparagraph (ii) applies—so much of the foreign equity of the entity of the 1987 year of income (disregarding any application of subsection 159GZG (6) of the Principal Act as amended by this Part) as is attributable to the foreign controller and his or her non-resident associates; or
 - (ii) where section 159GZR of that Act as so amended applies in relation to any part of the 1987 year of income—so much of the foreign equity of the entity of the 1987 year of income (disregarding any application of subsection 159GZG (6) of that Act as

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so amended), as ascertained under that section by reference to the last or latter part of that year of income, as is attributable to the foreign controller and his or her non-resident associates; or

- (b) in relation to a foreign investor—the foreign equity of the investor of the 1987 year of income (disregarding any application of subsection 159GZG (6) of the Principal Act as amended by this Part);

“old equity product” means:

- (a) in relation to an eligible entity in relation to a foreign controller—the amount that would be the foreign equity product of the 1987 year of income of the entity if only the old equity of the entity in relation to the foreign controller were taken into account; or
- (b) in relation to a foreign investor—the foreign equity product of the investor of the 1987 year of income;

“transitional period” means:

- (a) in relation to an eligible entity in relation to a transitional controller:
 - (i) except where subparagraph (ii) or (iii) applies—the period beginning on 1 July 1987 and ending at the earlier of:
 - (A) the end of 30 June 1988; or
 - (B) the time at which the old debt of the entity in relation to the transitional controller ceases to exceed the old equity product of the entity in relation to the transitional controller;
 - (ii) where the sole or principal business activity of the entity at the end of June 1987 was that of mineral exploration—the period beginning on 1 July 1987 and ending at the earlier of:
 - (A) the end of 30 June 1988;
 - (B) the time at which the entity commences to engage in mining operations;
 - (C) the time at which the entity commences to derive assessable income; or
 - (D) the time at which the old debt of the entity in relation to the transitional controller ceases to exceed the old equity product of the entity in relation to the transitional controller; or
 - (iii) where:
 - (A) the transitional controller is a transitional controller to whom subparagraph (3) (a) (ii) applies; or

(B) the transitional controller was given official approval to make the investment in the entity that resulted in the old debt or old equity of the entity in relation to the transitional controller in return for an undertaking having the effect that a relationship between the amount of foreign debt of the entity attributable to the transitional controller and his or her non-resident associates and the amount of its foreign equity attributable to those persons was to be maintained;

the period beginning on 1 July 1987 and ending at the time at which the old debt of the entity in relation to the transitional controller ceases to exceed the old equity product of the entity in relation to the transitional controller; or

- (b) in relation to a transitional investor:
- (i) except where subparagraph (ii) or (iii) applies—the period beginning on 1 July 1987 and ending at the earlier of:
 - (A) the end of 30 June 1988; or
 - (B) the time at which the old debt of the investor ceases to exceed the old equity product of the investor;
 - (ii) where the sole or principal business activity of the investor in Australia at the end of June 1987 was that of mineral exploration—the period beginning on 1 July 1987 and ending at the earlier of:
 - (A) the end of 30 June 1988;
 - (B) the time at which the investor commences to engage in mining operations in Australia;
 - (C) the time at which the investor commences to derive assessable income from sources in Australia; or
 - (D) the time at which the old debt of the investor ceases to exceed the old equity product of the investor; or
 - (iii) where:
 - (A) subparagraph (3) (b) (ii) applies in respect of the investor; or
 - (B) the investor was given official approval to make the investment that resulted in the old debt or old equity of the investor in return for an undertaking having the effect that a relationship between the amount of foreign debt of the

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investor and the amount of his or her foreign equity was to be maintained;

the period beginning on 1 July 1987 and ending at the time at which the old debt of the investor ceases to exceed the old equity product of the investor;

“1987 year of income” means the year that, disregarding the adoption or deemed adoption of any substituted accounting period, is the year of income commencing on 1 July 1986.

(2) For the purposes of the definition of “old debt” in subsection (1), where an amount is payable under a contract (in this subsection called the “original contract”):

- (a) if the original contract requires that at some time the parties to the original contract enter into a new contract or contracts relating to an amount payable—the new contract or contracts shall, subject to paragraph (b), be taken to be the same contract as the original contract; and
- (b) the original contract (including that contract after any application of paragraph (a)) shall be taken to cease to be that contract if the terms of that contract are varied or any right or option under that contract to extend the term, or otherwise vary the effect, of that contract is exercised.

(3) For the purposes of this section:

- (a) where:
 - (i) the old debt of an eligible entity in relation to a foreign controller at the end of 30 June 1987 exceeds the old equity product of the entity in relation to the foreign controller; and
 - (ii) if the foreign controller was given official approval to make the investment in the eligible entity that resulted in the old debt or old equity of the foreign controller in return for an undertaking having the effect that the amount of the foreign debt of the entity attributable to the foreign controller and his or her non-resident associates would not be greater than the amount of its foreign equity attributable to those persons by more than a specified multiple—the multiple was greater than 3 or, where the entity was a financial institution, greater than 6;

the foreign controller is a transitional controller in relation to the eligible entity; and

- (b) where:
 - (i) the old debt of a foreign investor at the end of 30 June 1987 exceeds the old equity product of the investor; and
 - (ii) if the foreign investor was given official approval to make the investment that resulted in the old debt or old equity of the investor in return for an undertaking having the effect

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that the amount of the foreign debt of the investor would not be greater than the amount of his or her foreign equity by more than a specified multiple—the multiple was greater than 3 or, where the investor was a financial institution, greater than 6;

the foreign investor is a transitional investor.

(4) For the purposes only of the application of this section, it shall be assumed that Division 16F of Part III of the Principal Act as amended by this Part was in force at all times before that Division actually came into operation.

(5) Where, in respect of one or more transitional controllers of an eligible entity, the whole or a part (which whole or part is in this subsection called an “eligible period”) of the transitional period in relation to the transitional controller occurs in the year of income commencing on 1 July 1987 or in any subsequent year of income, Division 16F of Part III of the Principal Act as amended by this Part applies:

- (a) if any eligible period ends part of the way through the year of income—as if there had been a change in foreign controllers in relation to the entity at the end of the eligible period;
- (b) in relation to any part of the year of income in which any eligible period occurs—as if only new equity and new debt of the entity were taken into account respectively as foreign equity and foreign debt of the entity in relation to that part of the year;
- (c) where any transitional controller is a transitional controller to whom subparagraph (3) (a) (ii) applies—in addition to any application of paragraph (b) or any other application of this paragraph, as if:
 - (i) only old equity and old debt of the entity in relation to the transitional controller were taken into account respectively as foreign equity and foreign debt of the entity in relation to the eligible period; and
 - (ii) there were substituted for the figure of 3 or 6, as the case requires, in the definition of “foreign equity product” in section 159GZA of the Principal Act as amended by this Part the multiple referred to in subparagraph (3) (a) (ii) of this section; and
- (d) subject to subsections (7) and (8).

(6) Where, in respect of a transitional investor, the whole or a part (which whole or part is in this subsection called the “eligible period”) of the transitional period occurs in the year of income commencing on 1 July 1987 or in any subsequent year of income, Division 16F of Part III of the Principal Act as amended by this Part applies:

- (a) if the eligible period ends part of the way through the year of income—in relation to the eligible period and the remainder of the year of income separately as if each were the whole of the year of income;

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- (b) in relation to any part of the year of income in which the eligible period occurs—as if only new equity and new debt of the transitional investor were taken into account respectively as foreign equity and foreign debt of the investor in relation to that part of the year;
- (c) where subparagraph (3) (b) (ii) applies in relation to the investor—in addition to any application of paragraph (b), as if:
 - (i) only old equity and old debt of the investor were taken into account respectively as foreign equity and foreign debt of the investor in relation to the eligible period; and
 - (ii) there were substituted for the figure of 3 or 6, as the case requires, in the definition of “foreign equity product” in section 159GZA of the Principal Act as amended by this Part the multiple referred to in subparagraph (3) (b) (ii) of this section; and
- (d) subject to subsections (7) and (8).

(7) In the case of any eligible entity or foreign investor (whether or not any other provision of this section applies in relation to the entity or investor) that has adopted, or is deemed to have adopted, under the *Income Tax Assessment Act 1936*, an accounting period in lieu of the year of income commencing on 1 July 1987, Division 16F of Part III of the Principal Act as amended by this Part applies as if the accounting period so adopted, or so deemed to have been adopted, had commenced on 1 July 1987 and had ended when it would, apart from this subsection, have ended.

(8) For the purposes of the application of Division 16F of Part III of the Principal Act as amended by this Part in relation to the year of income commencing on 1 July 1987 (whether or not any other provision of this section also applies in relation to that year):

- (a) in relation to a resident company, where section 159GZR of that Act as so amended does not apply in relation to the company in relation to the year of income or that section applies in relation to a part of the year of income that includes 28 October 1987:
 - (i) the references in paragraph 159GZG (1) (c) of that Act as so amended to the asset revaluation reserves of the company at the beginning of the year of income shall be taken to be references to the asset revaluation reserves of the company at the end of 28 October 1987; and
 - (ii) the reference in subparagraph 159GZG (1) (e) (i) of that Act as so amended to the application of any of the asset revaluation reserves of the company during the year of income shall be taken to be a reference to the application of those reserves during the year of income, or part of the year of income, after 28 October 1987; and
- (b) in relation to an eligible entity or foreign investor, where section 159GZR of that Act as so amended or paragraph (6) (a) of this section, respectively, does not apply in relation to the entity or

foreign investor in relation to the year of income or that section or paragraph applies in relation to a part of the year of income that includes 1 December 1987—the references in paragraphs 159GZS (b), 159GZT (1) (b), 159GZU (b), 159GZV (b) and 159GZW (b) of the Principal Act as amended by this Part to the greatest total foreign debt at any time in the year of income shall be taken to be references to the greatest total foreign debt at any time in the year of income, or the part of the year of income, after 30 November 1987.

Amendment of assessments

52. Nothing in section 170 of the Principal Act prevents the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Part.

PART III—AMENDMENT OF THE INCOME TAX RATES ACT 1986

Principal Act

53. In this Part, “Principal Act” means the *Income Tax Rates Act 1986*².

Interpretation

54. Section 3 of the Principal Act is amended:

(a) by omitting paragraph (a) of the definition of “eligible part” in subsection (1) and substituting the following paragraph:

“(a) in relation to the special income component of the taxable income of a taxpayer—so much of the special income component as is eligible taxable income for the purposes of Division 6AA of Part III of the Assessment Act; and”;

(b) by omitting “, 86 or 158D” from the definition of “reduced notional income” in subsection (1) and substituting “or 86”;

(c) by omitting from subsection (1) the definitions of “capital gains component” and “reduced taxable income” and substituting the following definitions:

“‘capital gains component’, in relation to the net income, or a share or part of the net income, of a trust estate of a year of income in relation to which there is a capital gains amount (which net income, share or part, as the case may be, is in this definition called the ‘eligible net income’), means:

(a) if the eligible net income is equal to or less than so much of the capital gains amount as relates to the eligible net income—the whole of the eligible net income; or

(b) in any other case—so much of the capital gains amount as relates to the eligible net income;

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'reduced taxable income' means the part (if any) of the taxable income other than the special income component;"; and

- (d) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

'abnormal income amount', in relation to the taxable income of a taxpayer of a year of income, means the abnormal income amount (if any) included in the taxable income of the taxpayer of the year of income as specified in section 158L of the Assessment Act;

'approved deposit fund' means an approved deposit fund within the meaning of Division 9B of Part III of the Assessment Act;

'capital gains amount' means:

- (a) in relation to the taxable income of a taxpayer of a year of income—the amount (if any) included in the assessable income of the taxpayer of the year of income under section 160ZO of the Assessment Act; and
- (b) in relation to the net income, or a share or part of the net income, of a trust estate of a year of income—the amount (if any) included in the assessable income of the trust estate of the year of income under section 160ZO of the Assessment Act;

'special income component', in relation to the taxable income of a taxpayer of a year of income in relation to which there is a capital gains amount, an abnormal income amount, or both, means:

- (a) if there is a capital gains amount but no abnormal income amount:
 - (i) if the taxable income is equal to or less than the capital gains amount—the whole of the taxable income; or
 - (ii) in any other case—so much of the taxable income as equals the capital gains amount;
- (b) if there is an abnormal income amount but no capital gains amount:
 - (i) if the taxable income is equal to or less than the abnormal income amount—the whole of the taxable income; or
 - (ii) in any other case—so much of the taxable income as equals the abnormal income amount; and
- (c) if there is both a capital gains amount and an abnormal income amount:

- (i) if the taxable income is equal to or less than the sum of the capital gains amount and the abnormal income amount—the whole of the taxable income; or
- (ii) in any other case—so much of the taxable income as equals the sum of the capital gains amount and the abnormal income amount;”.

Interpretation

55. Section 5 of the Principal Act is amended by omitting from subparagraphs (a) (iii) and (b) (iii) “ineligible”.

Rates of tax and notional rates

56. Section 7 of the Principal Act is amended by omitting from subsection (5) “, 86 or 158D” and substituting “or 86”.

Rates of tax and notional rates

57. Section 12 of the Principal Act is amended by omitting from subsection (5) “, 86 or 158D” and substituting “or 86”.

Rates of tax payable by trustees of superannuation funds

58. Section 26 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) The rate of tax payable by a trustee of a superannuation fund in respect of investment income of the fund in respect of which the trustee is liable, under subsection 121CC (2) of the Assessment Act, to be assessed and to pay tax is 24%.

“(2) The rate of tax payable by a trustee of a superannuation fund in respect of the taxable income of the fund in respect of which the trustee is liable, under subsection 121CC (3) of the Assessment Act, to be assessed and pay tax is 49%.

“(2A) The rate of tax payable by a trustee of a superannuation fund in respect of the taxable income of the fund in respect of which the trustee is liable, under section 121D of the Assessment Act, to be assessed and pay tax is 49%.”.

Rates of tax payable by trustees of approved deposit funds

59. Section 27 of the Principal Act is amended by adding at the end the following subsection:

“(2) The rate of tax payable by a trustee of an approved deposit fund in respect of the taxable income of the fund in respect of which the trustee is liable, under section 121DAAA of the Assessment Act, to be assessed and pay tax is 49%.”.

Amendment of Schedules

60. The Schedules to the Principal Act are amended as set out in Schedule 1.

Application of amendments

61. (1) Subject to subsection (2), the amendments made by this Part apply to assessments in respect of income of the year of income that commenced on 1 July 1986 and of all subsequent years of income.

(2) Where a taxpayer makes an application under subsection 158D (1) of the *Income Tax Assessment Act 1936* in respect of the year of income that commenced on 1 July 1986, the Principal Act applies to the assessment in respect of income of the taxpayer of that year of income as if the amendments made by sections 54, 56 and 60 had not been made.

(3) In the application of subsection 26 (1) of the Principal Act as amended by this Act to the year of income commencing on 1 July 1986, a reference to 24% shall be read as a reference to 24.42%.

(4) In the application of subsection 26 (2) or (2A) or 27 (2) of the Principal Act as amended by this Act to the year of income commencing on 1 July 1986, a reference to 49% shall be read as a reference to 50%.

Amendment of assessments

62. Nothing in section 170 of the *Income Tax Assessment Act 1936* prevents the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Part.

**PART IV—AMENDMENT OF THE OCCUPATIONAL
SUPERANNUATION STANDARDS ACT 1987**

Principal Act

63. In this Part, “Principal Act” means the *Occupational Superannuation Standards Act 1987*³.

Interpretation

64. Section 3 of the Principal Act is amended:

- (a) by inserting “or the prosecution provisions, being a document” after “this Act” in the definition of “protected document” in subsection (1);
- (b) by inserting “or the prosecution provisions, being information” after “this Act” in the definition of “protected information” in subsection (1);
- (c) by adding “in writing” at the end of the definition of “superannuation fund” in subsection (1);
- (d) by omitting from subsection (1) the definitions of “dependant” and “year of income” and substituting the following definitions:

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“‘dependant’, in relation to a person, includes the spouse and any child of the person;

‘year of income’, in relation to a fund, means a period that is, for the purposes of the Tax Act, the year of income of the fund that commenced on 1 July 1986 or a subsequent year of income;”;

- (e) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“‘document certification provision’ means section 15A of the *Taxation Administration Act 1953* insofar as that section applies in relation to this Act;

‘prosecution provisions’ means Part III of the *Taxation Administration Act 1953* insofar as that Part applies in relation to this Act;

‘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;

‘State taxation officer disclosure provision’ means section 13J of the *Taxation Administration Act 1953* insofar as that section applies in relation to this Act;”;

- (f) by adding at the end the following subsection:

“(3) An approval given by the Commissioner for the purposes of the definition of ‘superannuation fund’ in subsection (1) may be expressed to relate to:

- (a) a specified fund; or
(b) a specified class of funds.”.

Application of Act in relation to periods before commencement etc.

65. Section 4 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) For the purposes of the application of this Act in relation to a year of income of a fund the whole or a part of which occurred before the commencement of this Act, this Act as in force immediately after the commencement of the amendments made by the *Taxation Laws Amendment Act (No. 4) 1987* shall be taken to have come into operation on 1 July 1986.”; and

- (b) by inserting after subsection (2) the following subsection:

“(2A) The first approval given by the Commissioner in relation to a fund or a class of funds for the purposes of the definition of ‘superannuation fund’ in subsection 3 (1) may be expressed to have come into operation on a day (not being a day before 1 July 1986) earlier than the day on which the approval was given.”.

Satisfaction of superannuation fund conditions

66. Section 5 of the Principal Act is amended:

(a) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) the fund was a superannuation fund:

(i) if part of the year of income occurred before 1 July 1986—at all times during so much of the year of income as occurred on or after 1 July 1986 when the fund was in existence; or

(ii) in any other case—at all times during the year of income when the fund was in existence;”;

(b) by omitting from paragraphs (2) (d) and (e) “this Act” (wherever occurring) and substituting “section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*”.

Satisfaction of approved deposit fund conditions

67. Section 6 of the Principal Act is amended:

(a) by omitting paragraph (a) and substituting the following paragraph:

“(a) the fund was an approved deposit fund:

(i) if part of the year of income occurred before 1 July 1986—at all times during so much of the year of income as occurred on or after 1 July 1986 when the fund was in existence; or

(ii) in any other case—at all times during the year of income when the fund was in existence;”;

(b) by adding at the end the following paragraph:

“(d) if part of the year of income occurred before 1 July 1986— if the year of income had ended on 30 June 1986, the income of the fund of the year of income would have been exempt from income tax under section 23FA of the Tax Act as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*.”.

Operating standards for superannuation funds

68. Section 7 of the Principal Act is amended:

(a) by inserting after paragraph (2) (j) the following paragraph:

“(ja) the keeping and retention of records in relation to superannuation funds;”;

(b) by adding at the end the following subsection:

“(3) Nothing in section 23FC, 121CC or 121D of the Tax Act limits the standards that may be prescribed.”.

Operating standards for approved deposit funds

69. Section 8 of the Principal Act is amended:

- (a) by inserting after paragraph (2) (e) the following paragraph:

“(ea) the keeping and retention of records in relation to approved deposit funds;”;
- (b) by adding at the end the following subsection:

“(3) Nothing in section 23FD or 121DAAA of the Tax Act limits the standards that may be prescribed.”.

Information to be given to Commissioner

70. Section 10 of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection:

“(1A) Section 8C of the *Taxation Administration Act 1953* does not apply in relation to a contravention of subsection (1).”;
- (b) by omitting from subsection (2) “The Commissioner” and substituting “For the purposes of this Act, the Commissioner”.

Commissioner may require production of documents

71. Section 11 of the Principal Act is amended by omitting from subsection (2) “The Commissioner may” and substituting “For the purposes of this Act, the Commissioner may”.

Notices as to satisfaction of the superannuation fund conditions

72. Section 12 of the Principal Act is amended:

- (a) by inserting in subparagraph (1) (a) (i) “, in writing,” after “Commissioner”; and
- (b) by inserting in paragraph (4) (a) “or section 13” after “this section”.

Notices as to satisfaction of the approved deposit fund conditions

73. Section 14 of the Principal Act is amended:

- (a) by inserting in subparagraph (1) (a) (i) “, in writing,” after “Commissioner”; and
- (b) by inserting in paragraph (4) (a) “or section 15” after “this section”.

74. After section 15 of the Principal Act the following section is inserted in Part III:

Application of Tax Act

“15A. In determining whether a fund satisfied a condition of a kind referred to in paragraph 5 (2) (d) or (e) or 6 (d), the Commissioner:

- (a) shall assume that paragraph 23 (ja) and sections 23F, 23FA, 23FB and 121C of the Tax Act, as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*, had not been repealed by that Act; and

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- (b) may make such assumptions as appear to the Commissioner to be reasonable about:
- (i) the exercise by the Commissioner of Taxation of any power conferred by section 6A, paragraph 23 (ja) or section 23F, 23FA, 23FB or 121C of the Tax Act as in force immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1987*;
 - (ii) the attainment by the Commissioner of Taxation of any state of mind relevant to the application of those sections of that Act as so in force in relation to the fund; and
 - (iii) the doing of any thing by the trustees of the fund for the purposes of those sections of that Act as then in force.”.

Secrecy

75. Section 18 of the Principal Act is amended by adding at the end of subsection (1) “and the prosecution provisions”.

Delegation

76. Section 20 of the Principal Act is amended:

- (a) by omitting from subsection (1) all the words after “powers” (first occurring) and substituting the following word and paragraphs:
“under:
- (a) this Act (other than this section and section 21);
 - (b) the document certification provision;
 - (c) the State taxation officer disclosure provision; or
 - (d) the prosecution provisions.”; and
- (b) by inserting in subsection (2) “, the document certification provision, the State taxation officer disclosure provision or the prosecution provisions” after “this Act”.

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77. Section 21 of the Principal Act is amended by adding at the end of subsection (1) “, the document certification provision, the State taxation officer disclosure provision and the prosecution provisions”.

PART V—AMENDMENT OF THE TAXATION ADMINISTRATION ACT 1953

Principal Act

78. In this Part, “Principal Act” means the *Taxation Administration Act 1953*⁴.

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79. Section 3B of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Subsection (1) does not apply in relation to Part III and sections 13J, 15 and 15A insofar as that Part and those sections apply in relation to the *Occupational Superannuation Standards Act 1987*.”.

Secrecy

80. Section 3C of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1AA) This section does not apply in relation to information disclosed or obtained under or for the purposes of Part III insofar as that Part applies in relation to the *Occupational Superannuation Standards Act 1987*.”.

Interpretation

81. Section 8A of the Principal Act is amended by inserting in subsection (1) the following definition in its appropriate alphabetical position (determined on a letter-by-letter basis):

“‘produce’, in relation to a book, paper, record or other document, includes permit access to;”.

82. After section 8A of the Principal Act the following section is inserted in Division 1 of Part III:

Application of Part to the *Occupational Superannuation Standards Act 1987*

“8AA. This Part applies in relation to the *Occupational Superannuation Standards Act 1987* as if:

- (a) that Act were a taxation law; and
- (b) references in this Part to the Commissioner were references to the Insurance and Superannuation Commissioner.”.

Interpretation

83. Section 8J of the Principal Act is amended by inserting after paragraph (2) (k) the following paragraph:

“(ka) subsection 11 (2) or (3) of the *Occupational Superannuation Standards Act 1987*;”.

Court may order payment of amount in addition to penalty

84. Section 8W of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) For the purposes of paragraph (1) (b), a decision made by the Insurance and Superannuation Commissioner under section 12, 13, 14 or 15 of the *Occupational Superannuation Standards Act 1987* shall be treated as forming part of the process of making of assessments of income tax.”.

Provision of Commonwealth taxation information to State taxation authorities

85. Section 13J of the Principal Act is amended by adding at the end the following subsection:

“(7) This section applies in relation to the *Occupational Superannuation Standards Act 1987* as if:

- (a) that Act were a taxation law; and
- (b) references in this section to the Commissioner were references to the Insurance and Superannuation Commissioner.”.

Certification by State taxation officer of copies of, and extracts from, documents

86. Section 13K of the Principal Act is amended by adding at the end the following subsection:

“(10) This section applies in relation to the *Occupational Superannuation Standards Act 1987* as if that Act were a taxation law.”.

Appearance by Commissioner etc.

87. Section 15 of the Principal Act is amended by adding at the end the following subsection:

“(3) This section applies in relation to the *Occupational Superannuation Standards Act 1987* as if:

- (a) that Act were a taxation law;
- (b) references in this section to the Commissioner were references to the Insurance and Superannuation Commissioner; and
- (c) references in this section to a Second Commissioner or to a Deputy Commissioner were omitted.”.

Certification by Commissioner of copies of, and extracts from, documents

88. Section 15A of the Principal Act is amended by adding at the end the following subsection:

“(10) This section applies in relation to the *Occupational Superannuation Standards Act 1987* as if:

- (a) that Act were a taxation law; and
- (b) references in this section to the Commissioner were references to the Insurance and Superannuation Commissioner.”.

**PART VI—AMENDMENT OF THE TAXATION LAWS
AMENDMENT ACT (NO. 3) 1987**

Principal Act

89. In this Part, “Principal Act” means the *Taxation Laws Amendment Act (No. 3) 1987*.

Provisional tax for 1987-88 year

90. Section 37 of the Principal Act is amended:

- (a) by omitting from subparagraph (1) (a) (i) “, 86 or 158D” and substituting “or 86”;
- (b) by inserting after subparagraph (1) (a) (ii) the following subparagraph:
 - “(iia) for the purposes of Division 16A of Part III of the Assessment Act (other than the purpose of calculating the average eligible taxable income of the taxpayer of the current year of income), the eligible taxable income of the taxpayer of the preceding year of income had been increased by 11%.”;
- (c) by omitting from the end of sub-subparagraph (1) (b) (iv) (B) “and”; and
- (d) by adding at the end of subparagraph (1) (b) (iv) the following word and sub-subparagraph:
 - “and (D) for the purposes of Division 16A of Part III of the Assessment Act, the amount of the eligible taxable income of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines.”.

Application of amendments

91. Where a taxpayer makes an application under subsection 158D (1) of the *Income Tax Assessment Act 1936* in relation to the year of income commencing on 1 July 1986, the amendments made by this Part do not apply for the purpose of calculating the provisional tax payable by the taxpayer in respect of the year of income commencing on 1 July 1987.

PART VII—REPEAL OF ACTS

Repeal of Acts

92. (1) Subject to this section, the Acts specified in Schedule 2 are repealed.

(2) The repeal of an Act by this section does not operate so as to repeal an Act incorporated with the repealed Act.

(3) The *Income Tax Assessment Act 1936* applies in relation to the tax or levy that was imposed, or the rates of which were declared, by a repealed Act as if the repealed Act was still in force.

SCHEDULE 1

Section 60

AMENDMENT OF SCHEDULES TO THE INCOME TAX RATES ACT 1986

1. Schedules 1, 3, 5, 7, 9 and 11 to the *Income Tax Rates Act 1986* are amended by omitting "capital gains component" (wherever occurring) and substituting "special income component".
2. Schedules 3 and 9 to the *Income Tax Rates Act 1986* are amended by omitting ", 86 or 158D" (wherever occurring) and substituting "or 86".

SCHEDULE 2

Section 92

REPEAL OF CERTAIN ACTS

PART I—IMPOSITION AND RATES ACTS

Division 1—Tax Acts

- Income Tax (Companies and Superannuation Funds) Act 1980*
- Income Tax (Individuals) Act 1980*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Act 1981*
- Income Tax (Individuals) Act 1981*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Act 1982*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Amendment Act 1983*
- Income Tax (Individuals) Act 1982*
- Income Tax (Individuals) Amendment Act 1983*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Act 1983*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Amendment Act 1984*
- Income Tax (Individuals) Act 1983*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Act 1984*
- Income Tax (Individuals) Act 1984*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Act 1985*
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Amendment Act 1985*
- Income Tax (Individuals) Act 1985*

Division 2—Medicare Levy Acts

- Medicare Levy Act 1983*
- Medicare Levy Act 1984*
- Medicare Levy Act 1985*

PART II—RATES ACTS

- Income Tax (Rates) Act 1976*
- Income Tax (Rates) Amendment Act 1977*
- Income Tax (Rates) Amendment Act (No. 2) 1977*
- Income Tax (Rates) Amendment Act 1978*
- Income Tax (Rates) Amendment Act (No. 2) 1978*
- Income Tax (Rates) Amendment Act 1979*
- Income Tax (Rates) Amendment Act 1980*
- Income Tax (Rates) Amendment Act (No. 2) 1980*
- Income Tax (Rates) Amendment Act 1982*

Taxation Laws Amendment (No. 4) No. 138, 1987

SCHEDULE 2—continued

Income Tax (Rates) Act 1982

Income Tax (Rates) Amendment Act 1983

Income Tax (Rates) Amendment Act (No. 2) 1983

Income Tax (Rates) Amendment Act 1984

NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123 and 168, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 49, 51, 52, 90, 109, 112 and 154, 1986; and Nos. 23, 58, 61 and 62, 1987.
2. No. 107, 1986, as amended. For previous amendments, see No. 60, 1987.
3. No. 97, 1987.
4. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 49, 112, 144 and 154, 1986; and Nos. 58 and 62, 1987.
5. No. 108, 1987.

[*Minister's second reading speech made in—
House of Representatives on 29 October 1987
Senate on 23 November 1987*]