



Taxation Laws Amendment Act (No. 5) 1992

No. 224 of 1992

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Taxation Laws Amendment Act (No. 5) 1992

No. 224 of 1992

An Act to amend the law relating to taxation

[Assented to 24 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Taxation Laws Amendment Act (No. 5) 1992*.

Commencement

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

10 (2) Subsections 14(2), 15(2), 16(2) and 17(2) commence on 1 July 1993.

(3) Part 5 is taken to have commenced on 1 July 1991.

(4) Parts 7 and 8 are taken to have commenced immediately after the commencement of section 8 of the *Customs and Excise Legislation Amendment Act 1992*.

(5) Part 9 is taken to have commenced immediately after the commencement of the *Sales Tax Assessment Act 1992*. 5

(6) Part 10 is taken to have commenced immediately after the commencement of the *Sales Tax (Exemptions and Classifications) Act 1992*.

PART 2—AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936 10

Division 1—Principal Act

Principal Act

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

Division 2—Amendments to improve the readability of the capital gains tax provisions 15

Heading to Division 1 of Part IIIA

4. The heading to Division 1 of Part IIIA of the Principal Act is amended by omitting “*Interpretation*” and substituting “*Preliminary*”.

5. Before section 160A of the Principal Act the following Subdivision and heading are inserted: 20

“Subdivision A—Object, simplified outline, example and index

Object

“160AX. The object of this Part is to provide for net capital gains to be included in assessable income (see section 160ZO). 25

Simplified outline of scheme of Part

[Simplified outline]

“160AY.(1) The following is a simplified outline of the scheme of this Part.

[Step 1—disposal of an asset] 30

“(2) This Part applies if a taxpayer disposes of an asset. For a basic definition of ‘asset’, see section 160A. The taxpayer must have acquired the asset on or after 20 September 1985 and the disposal of the asset must occur on or after that date (see section 160L). 160M is the basic provision defining ‘disposal’ and ‘acquisition’. The timing of disposal and acquisition is dealt with by section 160U. There are various 35

exemptions, including the principal residence exemption (see the Exemptions Sub Index in section 160AZA). There are also various provisions giving roll-over relief on the disposal of assets (see the Roll-overs Sub Index in section 160AZA).

5 **[Step 2—disposal of asset may result in a capital gain or a capital loss]**

“(3) The disposal of the asset may result in a capital gain or capital loss (see section 160Z).

Capital gain—asset owned for 12 months or more

Consideration in respect of disposal	—	Indexed cost base of asset	=	Capital gain
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10 *Capital gain—asset owned for less than 12 months*

Consideration in respect of disposal	—	Cost base of asset	=	Capital gain
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Capital loss

Reduced cost base of asset	—	Consideration in respect of disposal	=	Capital loss
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15 For a basic definition of ‘consideration in respect of a disposal of an asset’, see section 160ZD. For basic definitions of ‘cost base’, ‘indexed cost base’ and ‘reduced cost base’, see section 160ZH. The basic idea is that the cost base of an asset consists of the cost of acquiring the asset and certain other costs, the indexed cost base is the cost base indexed for inflation (see section 160ZJ) and the reduced cost base is the cost base adjusted to take account of certain capital deductions and balancing charges (see section 160ZK).

[Step 3—calculation of net capital gain]

“(4) Capital gains and capital losses are netted under section 160ZC to work out the net capital gain.

25 Example:

Capital gains accrued during year	-	Capital losses incurred during year	=	Net capital gain
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[Step 4—net capital gain to be included in assessable income under section 160ZO]

“(5) The amount of the net capital gain is included in the taxpayer’s assessable income under section 160ZO.

5

Example of how this Part works

[Typical example]

“160AZ.(1) This section sets out an example of how this Part will work in a typical case involving the acquisition and disposal of an asset by a taxpayer. The taxpayer acquired the asset on 29 September 1985 for a cost of \$100,000 and disposed of the asset on 29 September 1991 for \$300,000. The cost base is \$100,000. The indexed cost base is calculated as follows:

10

$$\begin{array}{r}
 \$149,600 \\
 \text{(indexed} \\
 \text{cost base)}
 \end{array}
 =
 \begin{array}{r}
 \$100,000 \\
 \text{(cost} \\
 \text{base)}
 \end{array}
 \times
 \frac{215.7 \text{ (index number for} \\
 \text{September 1991 quarter)}}{144.2 \text{ (index number for} \\
 \text{September 1985 quarter)}}$$

(The fraction on the right is rounded up to 1.496.)

15

[Capital gain on disposal]

“(2) There is a capital gain on disposal of the asset.

Consideration in respect of disposal \$300,000	-	Indexed cost base of asset \$149,600	=	Capital gain \$150,400
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[Calculation of net capital gain]

“(3) Assuming that the taxpayer has no capital losses, the net capital gain is \$150,400.

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[Inclusion of net capital gain in assessable income under section 160ZO]

“(4) The taxpayer’s assessable income includes \$150,400.

Index of key concepts

25

“160AZA. The following is an index of the key concepts relevant to the operation of this Part.

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“Subdivision B—Interpretation”.

Division 3—Amendments relating to tax-deductible gifts

Re-location of subsection 51(7A) of the Principal Act (contributions to registered political parties)

- 5 6. The Principal Act is amended by re-locating and re-numbering subsection 51(7A) of the Principal Act so that:
- (a) it is located after subsection 78(1A) of the Principal Act; and
 - (b) it becomes subsection 78(1B) of the Principal Act; and
 - 10 (c) its cross-reference to paragraph 78(1)(aaa) becomes a cross-reference to paragraph (1)(aaa).

Gifts, pensions etc.

7. Section 78 of the Principal Act is amended:

- (a) by omitting from subparagraph (1)(a)(cvii) “register” and substituting “Register of Cultural Organisations”;
- 15 (b) by inserting after subparagraph (1)(a)(cvii) the following subparagraphs:
 - “(cviii) The Australia-United States Coral Sea Commemorative Council Inc.;
 - 20 (cix) a fund that, when the gift is made, is on the Register of Environmental Organisations kept under section 78AB;”;
- (c) by inserting after subsection (5) the following subsection:
 - 25 “(6) A deduction is not allowable under subparagraph (1)(a)(xlv), (xlvii), (lxxiii), (lxxiv) or (civ) for a gift made to an institution during the financial year commencing on 1 July 1993 or a later financial year unless, at the time the gift is made:
 - 30 (a) the institution has agreed to give to the Department of the Arts, Sport, the Environment and Territories, within a reasonable period after the end of the financial year, statistical data about gifts made to the institution during the financial year; and
 - (b) the institution has a policy of not acting as a mere conduit for the donation of money or property to other institutions, bodies or persons.”;
- 35 (d) by inserting after subsection (6AK) the following subsection:
 - “(6AL) A gift to the institution specified in subparagraph (1)(a)(cviii) is not an allowable deduction under this section unless the gift was made on or after 26 November 1991 and before 1 July 1992.”.

Register of Cultural Organisations

8. Section 78AA of the Principal Act is amended by omitting “, Tourism” from the definitions of “Arts Department” and “Arts Minister” in subsection (1).

9. After section 78AA of the Principal Act the following section is inserted: 5

Register of Environmental Organisations

[Certification by Environment Minister]

“78AB.(1) If the Environment Minister is satisfied that a body meets all of the eligibility criteria for registration as an environmental organisation set out in subsection (2), the Environment Minister must give a written certificate to the Treasurer stating that the body is eligible for registration under this section. 10

[Eligibility criteria for registration]

“(2) The eligibility criteria for registration of a body as an environmental organisation are as follows: 15

- (a) its principal purpose, or each of its principal purposes, must be an environmental purpose;
- (b) it must not pay any of its profits or financial surplus, or give any of its property, to its shareholders, members, beneficiaries, controllers or owners, as the case requires; 20
- (c) it must have a public fund (the ‘gift fund’):
 - (i) to which gifts of money or property for its environmental purpose or purposes are to be made; and
 - (ii) to which any interest on money in the fund is to be credited; and 25
 - (iii) to which money derived from the property given to the fund is to be paid; and
 - (iv) that does not receive any other money or property; and
 - (v) that is used only to support the body’s environmental purpose or purposes; 30
- (d) it must have rules relating to its gift fund which provide that, in the event of the winding up of that fund, any surplus assets are to be transferred to another fund that is on the Register of Environmental Organisations; 35
- (e) it must agree to give to the Environment Department, within a reasonable period after the end of each financial year, statistical data about gifts to its gift fund during the financial year;
- (f) it must agree to comply with any rules made from time to time by the Environment Minister and the Treasurer to ensure that gifts to its gift fund are used only to support its environmental purpose or purposes; 40

(g) it must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons;

5 (h) if the body is a body corporate (other than a statutory authority) or a co-operative society:

(i) the membership of the body must consist wholly or principally of bodies corporate; or

(ii) there must be at least 50 members of the body who are:

(A) natural persons; and

10 (B) regarded as financial members; and

(C) entitled to vote at a general meeting of the body; or

15 (iii) the Environment Minister determines that, because of special circumstances, the body does not have to meet either of the criteria set out in subparagraph (i) or (ii).

[Environment Minister and Treasurer may direct registration of certified body]

20 “(3) If the Environment Minister has given a certificate to the Treasurer stating that a body is eligible for registration under this section, the Environment Minister and the Treasurer may direct the Environment Department in writing to enter the body and its gift fund on the Register of Environmental Organisations on a specified day on or after the day on which the direction is given.

[Government policies and budgetary priorities to be taken into account]

25 “(4) In considering whether to give a direction, the Environment Minister and the Treasurer are to take into account the policies and budgetary priorities of the Commonwealth Government.

[Register of Environmental Organisations to be kept]

30 “(5) The Environment Department must keep a register, to be known as the Register of Environmental Organisations, listing such bodies and their gift funds as are required to be on the register because of this section.

[Removal from Register of Environmental Organisations]

35 “(6) The Environment Minister and the Treasurer may direct the Environment Department in writing to remove a body and its gift fund from the Register of Environmental Organisations on a specified day on or after the day on which the direction is given.

[Definitions]

“(7) In this section:

40 ‘body’ means:

(a) a body corporate; or

- (b) a co-operative society; or
 - (c) a trust established by a deed or will; or
 - (d) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;
- 'environment'** means natural environment, and includes all aspects of the natural surroundings of humans, whether affecting them as individuals or in social groupings; 5
- 'environmental purpose'** means:
- (a) the protection and enhancement of the environment or of a significant aspect of the environment; or 10
 - (b) a purpose relating to the dissemination of information, the provision of education, or the carrying on of research, about the environment or about a significant aspect of the environment;
- whether the environment concerned is in Australia or elsewhere; 15
- 'Environment Department'** means the Department of the Arts, Sport, the Environment and Territories;
- 'Environment Minister'** means the Minister for the Arts, Sport, the Environment and Territories;
- 'gift fund'** has the meaning given by paragraph (2)(c); 20
- 'Register of Environmental Organisations'** means the Register of Environmental Organisations required by subsection (5).”.

Division 4—Amendments relating to provisional tax

Interpretation

10. Section 221YA of the Principal Act is amended by omitting from subsection (1) the definition of “provisional tax uplift factor” and substituting the following definition: 25

“ **‘provisional tax uplift factor’**:

- (a) in relation to the 1992-93 year of income—means 8%; and
- (b) in relation to a later year of income—means, until the Parliament otherwise provides, 10%;” 30

Uplifted provisional tax amount

11. Section 221YCAA of the Principal Act is amended by inserting in paragraphs (2)(m) and (q) “or 221YHZK” after “160AF”.

Additional tax where income under-estimated or where PAYE deductions over-estimated 35

12. Section 221YDB of the Principal Act is amended:

- (a) by omitting from subsections (1), (1AAA), (1AA) and (1ABA) “90%” (wherever occurring) and substituting “85%”; 40
- (b) by omitting from subsections (1AAA) and (1ABA) “110%” and substituting “115%”.

Application

13. The amendments made by this Division apply in relation to provisional tax (including instalments) payable for the 1992-93 year of income and for all later years of income.

5 ***Division 5—Amendments to increase zone rebates and related rebates***

Income of certain persons serving with an armed force under the control of the United Nations

14.(1) Section 23AB of the Principal Act is amended by omitting from subsection (7) “\$270” and substituting “\$304”.

10 (2) Section 23AB of the Principal Act is amended by omitting from subsection (7) “\$304” and substituting “\$338”.

Rebates for residents of isolated areas

15.1) Section 79A of the Principal Act is amended:

15 (a) by omitting from paragraph (2)(a) “\$938” and substituting “\$1,056”;

(b) by omitting from paragraph (2)(d) “\$270” and substituting “\$304”;

(c) by omitting from paragraph (2)(e) “\$45” and substituting “\$51”.

(2) Section 79A of the Principal Act is amended:

20 (a) by omitting from paragraph (2)(a) “\$1,056” and substituting “\$1,173”;

(b) by omitting from paragraph (2)(d) “\$304” and substituting “\$338”;

(c) by omitting from paragraph (2)(e) “\$51” and substituting “\$57”.

25 **Rebates for members of Defence Force serving overseas**

16.(1) Section 79B of the Principal Act is amended by omitting from subsections (2), (4) and (4A) “\$270” and substituting “\$304”.

(2) Section 79B of the Principal Act is amended by omitting from subsections (2), (4) and (4A) “\$304” and substituting “\$338”.

30 **Application**

17.(1) The amendments made by subsections 14(1), 15(1) and 16(1) apply to assessments in respect of income of the 1992-93 year of income.

35 (2) The amendments made by subsections 14(2), 15(2) and 16(2) apply to assessments in respect of income of the 1993-94 year of income and of all later years of income.

Division 6—Amendments relating to disposals and redemptions of traditional securities

Redemption of special bonds redeemable at a premium

18. Section 23E of the Principal Act is amended by omitting from paragraph (2)(b) “and subsection 160ZB(6)”. 5

Deduction for loss on disposal or redemption of traditional securities

19. Section 70B of the Principal Act is amended by adding at the end the following subsections:

“(4) If:

(a) a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed; and 10

(b) there is a loss on the disposal or redemption; and

(c) in the case of a disposal or redemption of a marketable security:

(i) the taxpayer did not acquire the security in the ordinary course of trading on a securities market; and 15

(ii) at the time the taxpayer acquired the security, it was not open to the taxpayer to acquire an identical security in the ordinary course of trading on a securities market; and

(d) in the case of a disposal of a marketable security—the disposal did not take place in the ordinary course of trading on a securities market; and 20

(e) having regard to:

(i) the financial position of the issuer of the security; and

(ii) perceptions of the financial position of the issuer of the security; and 25

(iii) other relevant matters;

it would be concluded that the disposal or redemption took place for the reason, or for reasons that included the reason, that there was an apprehension or belief that the issuer was, or would be likely to be, unable or unwilling to discharge all liability to pay amounts under the security; 30

a deduction is not allowable to the taxpayer under this section in respect of so much of the amount of the loss as is a loss of capital or a loss of a capital nature. 35

“(5) A reference in this section to the disposal by a taxpayer of a security, or to the redemption of a security of a taxpayer, does not include a reference to the waiver or release by the taxpayer of:

(a) the whole or a part of the debt the subject of the security; or

(b) any other right of the taxpayer under the security. 40

“(6) Subsection (5) does not, by implication, affect the meaning of an expression used in:

- (a) a provision of this Act other than this section; or
- (b) any other law of the Commonwealth.

“(7) In this section:

- 5 ‘**issuer**’, in relation to a security at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be liable to pay the amount or amounts;
- ‘**marketable security**’ means a traditional security that is covered by paragraph (a) of the definition of ‘security’ in subsection 159GP(1);
- 10 ‘**securities market**’ means a market, exchange or other place at which, or a facility by means of which, offers to sell, purchase or exchange marketable securities are regularly made or accepted.”.

Exemption of certain gains or losses

- 15 20. Section 160ZB of the Principal Act is amended by omitting subsection (6).

Application

21. The amendments made by this Division apply to disposals or redemptions of traditional securities on or after 1 July 1992.

Transitional—subsection 70B(5) of the amended Act

- 20 22.(1) This section applies to disposals or redemptions before 1 July 1992.

(2) Subsection 70B(5) of the Principal Act as amended by this Act is to be disregarded in determining the meaning of the expression “disposal” or “redemption”, and other parts of speech of that expression, when used in:

- (a) a provision of the Principal Act; or
- (b) any other law of the Commonwealth.

Division 7—Amendments relating to live stock

- 30 23. Section 32 of the Principal Act is repealed and the following sections are substituted:

Live stock other than horse breeding stock—value at end of year of income

[Option as to value]

- 35 “32.(1) Subject to subsections (2) and (3), the value of live stock to be taken into account at the end of the year of income is to be, at the option of the taxpayer:

- (a) the cost price of the live stock; or
- (b) the market selling value of the live stock.

[Adoption of other value]

“(2) If the Commissioner is satisfied that there are circumstances which justify the adoption by the taxpayer of some other value, the taxpayer may adopt that other value.

[Option not exercised—value is cost price]

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“(3) If the taxpayer does not exercise the option within the time prescribed, the value of the live stock to be taken into account at the end of the year of income is to be the cost price of the live stock.

[This section does not apply to horse breeding stock]

“(4) This section does not apply in determining the value of live stock to be taken into account at the end of the year of income if the live stock is horse breeding stock (within the meaning of section 32A) at the end of the year of income.

10

Horse breeding stock—value at end of year of income

[Section applies to horse breeding stock]

15

“32A.(1) This section applies in determining the value of live stock to be taken into account at the end of the year of income if the live stock is horse breeding stock of the taxpayer at the end of the year of income.

[Option as to value]

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“(2) Subject to subsections (3) and (4), the value of live stock to be taken into account at the end of the year of income is to be, at the option of the taxpayer:

- (a) the special closing value of the live stock in relation to the year of income; or
- (b) the cost price of the live stock; or
- (c) the market selling value of the live stock.

25

[Adoption of other value]

“(3) If the Commissioner is satisfied that there are circumstances which justify the adoption by the taxpayer of some other value, the taxpayer may adopt that other value.

30

[Option not exercised—value is cost price]

“(4) If the taxpayer does not exercise the option within the time prescribed, the value of the live stock to be taken into account at the end of the year of income is to be the cost price of the live stock.

35

[What is horse breeding stock]

“(5) For the purposes of this section, live stock is horse breeding stock of a taxpayer at the end of the year of income if, and only if:

- (a) the live stock is a horse acquired by the taxpayer under a contract; and

40

- (b) the horse has attained the age of 3 years before the end of the year of income; and
- (c) at the end of the year of income, the horse is held by the taxpayer for breeding purposes.

5 **[Special closing value]**

“(6) The special closing value of a horse in relation to a year of income is:

- (a) if the horse is a female horse which has attained the age of 12 years before the end of the year of income—\$1; or
- 10 (b) if the reduction amount in relation to the horse in relation to the year of income is equal to or greater than the opening value of the horse in relation to the year of income—\$1; or
- (c) in any other case—the amount worked out using the formula:

$$\text{Opening value} - \text{Reduction amount}$$

15 where:

‘**Opening value**’ means the opening value in relation to the horse in relation to the year of income;

‘**Reduction amount**’ means the reduction amount in relation to the horse in relation to the year of income.

20 **[Opening value]**

“(7) For the purposes of this section, the opening value in relation to a horse in relation to a year of income (the ‘**current year of income**’) is:

- (a) if:
 - 25 (i) the horse was live stock of the taxpayer at the end of the year of income immediately preceding the current year of income; and
 - (ii) the horse was live stock of the taxpayer during the whole of the current year of income;
- 30 the value of the horse taken into account at the end of the preceding year of income; or
- (b) if the horse became live stock of the taxpayer at a time during the current year of income—whichever is the lesser of:
 - (i) the cost price of the horse; or
 - 35 (ii) the depreciated value of the horse, within the meaning of section 62, at that time.

[Reduction amount—male horse]

“(8) For the purposes of this section, the reduction amount in relation to a male horse in relation to the year of income is the amount
40 worked out using the formula:

$$\text{Base amount} \times \text{Nominated percentage} \times \frac{\text{Holding days in year of income}}{\text{Total days in year of income}}$$

where:

'Base amount' means whichever is the lesser of:

- (a) the cost price of the horse; or
- (b) the depreciated value of the horse, within the meaning of section 62, at the time the horse became live stock of the taxpayer; 5

'Nominated percentage' means the percentage, not exceeding 25%, nominated by the taxpayer at the same time as the taxpayer selects the option referred to in paragraph (2)(a); 10

'Holding days in year of income' means:

- (a) if the horse was held by the taxpayer for breeding purposes during the whole of the year of income—the number of days in the year of income; or
- (b) if the taxpayer commenced to hold the horse for breeding purposes during the year of income—the number of whole days in so much of the year of income as occurred after that commencement; 15

'Total days in year of income' means the number of days in the year of income. 20

[Reduction amount—female horse less than 12 years old]

“(9) If a female horse has not attained the age of 12 years before the end of the year of income, then, for the purposes of this section, the reduction amount in relation to the horse in relation to the year of income is worked out using the formula: 25

$$\frac{\text{Base amount}}{\text{Reducing factor}} \times \frac{\text{Holding days in year of income}}{\text{Total days in year of income}}$$

where:

'Base amount' means whichever is the lesser of:

- (a) the cost price of the horse; or
- (b) the depreciated value of the horse, within the meaning of section 62, at the time the horse became live stock of the taxpayer; 30

'Reducing factor' means whichever is the greater of:

- (a) 3; or
- (b) the difference between 12 and the number of whole years in the age attained by the horse on the day on which the horse commenced to be held by the taxpayer for breeding purposes; 35

'Holding days in year of income' means:

- (a) if the horse was held by the taxpayer for breeding purposes during the whole of the year of income—the number of days in the year of income; or
- 5 (b) if the taxpayer commenced to hold the horse for breeding purposes during the year of income—the number of whole days in so much of the year of income as occurred after that commencement;

10 **'Total days in year of income'** means the number of days in the year of income.

[Age of horse]

“(10) For the purposes of this section, the time when a horse attains a particular age expressed in years is the commencement of the relevant anniversary of the birth date of the horse.

15 **[Horse becoming live stock more than once before end of year of income]**

20 “(11) For the purposes of this section, if a horse becomes live stock of the taxpayer more than once before the end of the year of income, the horse is taken to have become live stock of the taxpayer on the last occasion before the end of the year of income on which it became live stock of the taxpayer.

[Horse commencing to be held for breeding purposes more than once before end of year of income]

25 “(12) For the purposes of this section, if the taxpayer commences to hold a horse for breeding purposes more than once before the end of the year of income, the taxpayer is taken to have commenced to hold the horse for breeding purposes on the last occasion before the end of the year of income on which the taxpayer commenced to hold the horse for breeding purposes.

30 **[Definitions]**

“(13) In this section:

'birth date':

- (a) in relation to a horse foaled on or after 1 August in a calendar year—means 1 August in that year; and
- 35 (b) in relation to a horse foaled before 1 August in a calendar year—means 1 August in the preceding year;

'horse breeding stock' has the meaning given by subsection (5);

'opening value' has the meaning given by subsection (7);

40 **'reduction amount'** has the meaning given by whichever of subsections (8) and (9) is applicable;

'special closing value' has the meaning given by subsection (6).”.

Application

[Sections 32 and 32A of the amended Act]

24.(1) Sections 32 and 32A of the Principal Act as amended by this Act apply in relation to live stock:

- (a) in any case—acquired by a taxpayer under a contract entered into on or after 19 August 1992; or 5
- (b) in the case of section 32 of the Principal Act as amended by this Act—acquired by a taxpayer otherwise than under a contract, where the acquisition occurred on or after 19 August 1992. 10

[Section 32 of the Principal Act]

(2) In spite of the repeal of section 32 of the Principal Act effected by this Division, that section continues to apply, in relation to live stock:

- (a) acquired by a taxpayer under a contract entered into before 19 August 1992; or 15
- (b) acquired by a taxpayer otherwise than under a contract, where the acquisition occurred before 19 August 1992;

as if that repeal had not been effected.

Division 8—Amendments to allow deductions for environment protection expenditure 20

25. After section 82BG of the Principal Act the following Subdivision is inserted:

“Subdivision CA—Deductions for environment protection expenditure

Objects of Subdivision 25

“82BH. The objects of this Subdivision are:

- (a) to provide for the deductibility of allowable environment protection expenditure (section 82BK); and
- (b) to allow property used for eligible environment protection activities to be treated as if it were used for the purpose of producing assessable income (section 82BR). 30

Interpretation

“82BJ. In this Subdivision:

‘allowable environment protection expenditure’ has the meaning given by section 82BL; 35

‘eligible environment protection activity’ has the meaning given by section 82BM;

‘environment’ includes all aspects of the surroundings of humans, whether affecting them as individuals or in social groupings;

'income-producing activity', in relation to a taxpayer, means an activity (including an investment activity) carried on for the purpose, or for purposes that include the purpose, of producing assessable income (other than assessable income attributable to section 160Z) of the taxpayer of any year of income;

'site' includes a part of a site.

Deduction of allowable environment protection expenditure

[Deduction allowable]

“82BK.(1) Subject to this Subdivision, allowable environment protection expenditure incurred by a taxpayer on or after 19 August 1992 is an allowable deduction for the year of income in which the expenditure is incurred.

[Section 51 limits apply]

“(2) A provision of this Act (including a provision of section 51, other than subsection 51(1)) that expressly prevents or restricts the operation of section 51 applies in the same way to this section.

Allowable environment protection expenditure

[Meaning of “allowable environment protection expenditure”]

“82BL.(1) For the purposes of this Subdivision, if:

(a) a taxpayer incurs expenditure (whether of a capital nature or otherwise) for the sole or dominant purpose of carrying on one or more eligible environment protection activities;

then:

(b) the expenditure, to the extent that the expenditure is in respect of eligible environment protection activities in relation to the taxpayer, is allowable environment protection expenditure of the taxpayer.

[Allowable environment protection expenditure does not include allowable environmental impact expenditure]

“(2) Expenditure is taken not to be allowable environment protection expenditure to the extent to which it is allowable environmental impact expenditure (within the meaning of section 82BC).

[Deduction of last resort]

“(3) Expenditure is taken not to be allowable environment protection expenditure to the extent to which a deduction is allowable in respect of that expenditure under a provision of this Act other than section 82BK.

Eligible environment protection activity

[Meaning of “eligible environment protection activity”]

“82BM.(1) A reference in this Subdivision to an eligible environment protection activity in relation to a taxpayer is a reference to any of the following activities carried on by or on behalf of the taxpayer:

- (a) preventing, combating or rectifying pollution of the environment, where:
- (i) the pollution has resulted, or is likely to result, from an income-producing activity that was, is, or is proposed to be, carried on by the taxpayer; or 5
 - (ii) the pollution is of a site on which the taxpayer carried on, carries on, or proposes to carry on, an income-producing activity; or
 - (iii) the source of the pollution is a site on which the taxpayer carried on, carries on, or proposes to carry on, an income-producing activity; or 10
 - (iv) the pollution is of a site on which the predecessor of the taxpayer carried on a business activity; or
 - (v) the source of the pollution is a site on which the predecessor of the taxpayer carried on a business activity; 15
- (b) treating, cleaning up, removing or storing waste, where:
- (i) the waste has resulted, or is likely to result, from an income-producing activity that was, is, or is proposed to be, carried on by the taxpayer; or
 - (ii) the waste is on a site on which the taxpayer carried on, carries on, or proposes to carry on, an income-producing activity; or 20
 - (iii) the source of the waste is a site on which the taxpayer carried on, carries on, or proposes to carry on, an income-producing activity; or 25
 - (iv) the waste is on a site on which the predecessor of the taxpayer carried on a business activity; or
 - (v) the source of the waste is a site on which the predecessor of the taxpayer carried on a business activity.

[Site on which investment activities carried on] 30

“(2) For the purposes of this section, if a taxpayer carried on, carries on, or proposes to carry on, an income-producing activity consisting of:

- (a) the leasing of a site owned by the taxpayer; or
- (b) the granting of rights to use a site owned by, or under the control of, the taxpayer; or 35
- (c) any similar thing;

the taxpayer is taken to have carried on, to carry on, or to propose to carry on, the income-producing activity on that site, as the case requires.

[Site on which predecessor of taxpayer carried on a business activity] 40

“(3) For the purposes of this section, a site (‘old site’) is a site on which the predecessor of a taxpayer carried on a business activity, if, and only if:

- (a) the taxpayer carries on an income-producing activity on another site (**'new site'**); and
- (b) the taxpayer's income-producing activity consists of the carrying on of a business; and
- 5 (c) the taxpayer acquired the business from another person who, or whose predecessor (whether immediate or otherwise), carried on the business on the old site; and
- (d) apart from the change of site, the taxpayer's business is the same, or substantially the same, as the business carried on by
- 10 the other person, or by the other person's predecessor, as the case requires, on the old site.

No deduction for expenditure on land, plant etc.

[No deduction for expenditure on land, buildings etc.]

- “82BN.(1) A deduction is not allowable under section 82BK for:
- 15 (a) expenditure in respect of acquiring land; or
 - (b) expenditure of a capital nature in respect of constructing a building, structure or structural improvement; or
 - (c) expenditure of a capital nature in respect of constructing an extension, alteration or improvement to a building, structure or
 - 20 structural improvement; or
 - (d) expenditure in respect of a bond or security, however described, for the performance of eligible environment protection activities.

[No deduction for depreciable plant]

- “(2) A deduction is not allowable under section 82BK for
- 25 expenditure to the extent to which it is taken into account in calculating an amount of depreciation that is allowable as a deduction.

No deduction where expenditure is recouped

[No deduction where expenditure is recouped]

- “82BP.(1) Section 82BK does not apply, and is taken never to have
- 30 applied, to expenditure if:
- (a) the taxpayer, whether before or after the commencement of this subsection, receives, or becomes entitled to receive, a recoupment of, or grant in respect of, the expenditure; and
 - (b) the amount of the recoupment or the grant is not, and will not
 - 35 be, included in the taxpayer's assessable income of any year of income.

[Dissection of amounts]

- “(2) For the purposes of subsection (1), if a taxpayer receives, or becomes entitled to receive, an amount that constitutes to an unspecified
- 40 extent a recoupment of, or a grant in respect of, expenditure, then so much of that amount as is reasonable is taken to be a recoupment of, or grant in respect of, that expenditure, as the case requires.

[Amendment of assessments]

“(3) Section 170 does not prevent the amendment of an assessment at any time for the purpose of giving effect to this section.

Transactions between persons not at arm’s length

“82BQ. If:

(a) a person has incurred expenditure in connection with a transaction where the parties to the transaction are not dealing with each other at arm’s length in relation to the transaction; and

(b) deductions are or have been allowable under this Subdivision in respect of the expenditure; and

(c) the amount of the expenditure is greater or less than is reasonable;

the amount of the expenditure is taken, for all purposes of the application of this Act in relation to the parties to the transaction, to be the amount that would have been reasonable if the parties were dealing with each other at arm’s length.

Property used for eligible environment protection activities taken to be used for the purpose of producing assessable income

“82BR.(1) For the purposes of this Act, if property is used by a taxpayer on or after 19 August 1992 for eligible environment protection activities, that use of the property by the taxpayer is taken to be for the purpose of producing assessable income of the taxpayer.

“(2) Subsection (1) has effect subject to a provision of this Act that expressly provides that a particular use of property is not taken to be for the purpose of producing assessable income.”.

Interpretation

26. Section 124ZF of the Principal Act is amended by omitting from subsection (1) the definition of “building” and substituting the following definition:

“ ‘building’ includes:

(a) a structural improvement covered by section 124ZFB; and

(b) an earthwork covered by section 124ZFC;”.

27. After section 124ZFB of the Principal Act the following section is inserted:

Division has effect as if certain environment protection earthworks were buildings

[Earthworks to which this section applies]

“124ZFC.(1) This section applies to an earthwork if:

(a) the earthwork was constructed as the result of carrying out an

eligible environment protection activity in relation to any taxpayer (within the meaning of section 82BM); and

(b) the earthwork can be economically maintained in reasonably good order and condition for an indefinite period; and

5 (c) the earthwork is not integral to the construction of a building.

[Earthworks deemed to be buildings]

“(2) This Division has effect as if the earthwork were a building.

[Application]

10 “(3) This section applies in relation to expenditure incurred on or after 19 August 1992 in respect of the construction of an earthwork, or an extension, alteration or improvement to an earthwork.”.

Division 9—Amendments relating to research and development

Expenditure on research and development activities

[Amendments to extend the 150% concession for an indefinite period]

15 28.(1) Section 73B of the Principal Act is amended:

(a) by omitting “(a) in the case of the year of income ending on 30 June 1993 or an earlier year of income:” from the definition of “deduction acceleration factor” in subsection (1);

20 (b) by re-numbering and re-aligning subparagraphs (a)(i) and (ii) of the definition of “deduction acceleration factor” in subsection (1) so that they become paragraphs (a) and (b) respectively of that definition;

(c) by omitting “or” from the end of paragraph (a) of the definition of “deduction acceleration factor” in subsection (1);

25 (d) by omitting paragraph (b) of the definition of “deduction acceleration factor” in subsection (1);

(e) by omitting from subsection (13) all the words after “multiplied” and substituting “by 1.5 is an allowable deduction to the company for the year of income.”;

30 (f) by omitting subsection (15B).

[Amendments to remove the \$10 million limit applying to pilot plant]

(2) Section 73B of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

“(6) If:

35 (a) the cost of a unit of pilot plant to an eligible company exceeds \$10 million; and

(b) any of the following applies:

(i) the unit was acquired by the eligible company under a contract entered into before 19 August 1992;

- (ii) the construction of the unit commenced before 19 August 1992;
- (iii) a contract for the construction of the unit was entered into before 19 August 1992;

the cost of the unit of plant is taken, for the purposes of this section, to be \$10 million.”. 5

[Amendments consequential upon amendments of the *Industry Research and Development Act 1986* made by this Act]

(3) Section 73B of the Principal Act is amended:

(a) by omitting subsection (10) and substituting the following subsection: 10

“(10) A deduction is not allowable under this section to an eligible company for a year of income in respect of expenditure in relation to research and development activities unless:

(a) the company is registered, in relation to the year of income, under section 39J of the *Industry Research and Development Act 1986*; or 15

(b) the company is registered, in relation to the year of income and in relation to a project comprising or including those activities, under section 39P of that Act.”; 20

(b) by inserting in subsection (33) “or 39MA” after “39M”.

Recouped expenditure on research and development activities

29. Section 73C of the Principal Act is amended by omitting from subsection (8) all the words after “that subsection” and substituting “‘multiplied by 1.5’ ”. 25

30. After section 73CA of the Principal Act the following section is inserted:

Expenditure incurred to government bodies—guaranteed returns

[Interpretation—this section to be treated as part of section 73B]

“73CB.(1) For the purposes of interpretation, this section is to be construed as if it were part of section 73B. 30

[No deduction for expenditure incurred to government body if return guaranteed]

“(2) If:

(a) an eligible company incurs expenditure to a government body, or an associate of a government body, in connection with research and development activities carried out on behalf of the company; and 35

(b) the Commissioner is satisfied that, when the expenditure was incurred, the company was not at risk in respect of the whole or a part of the expenditure; and 40

- (c) at the time when the expenditure was incurred, the government body or associate, as the case requires, was not entered on the Register of Commercial Government Bodies kept under section 39HA of the *Industry Research and Development Act 1986*;
- 5 a deduction is not allowable to the company under section 73B for any part of that expenditure.

[When company not at risk in respect of expenditure]

“(3) Subsection 73CA(5) applies for the purposes of this section in the same way as it applies for the purposes of section 73CA.

10 **[Universities, research institutions etc. deemed to be government bodies]**

“(4) For the purposes of this section:

- (a) a university or other educational institution established by a law of the Commonwealth, a State or a Territory is taken to be an authority of the Commonwealth, the State or the Territory,
- 15 as the case requires; and
- (b) a research institution established by a law of the Commonwealth, a State or a Territory is taken to be an authority of the Commonwealth, the State or the Territory, as the case requires.

[Extended meaning of “associate”—government authorities]

20 “(5) For the purposes of this section, but without limiting the meaning of the expression ‘associate’:

- (a) the Commonwealth is taken to be an associate of each authority of the Commonwealth; and
- 25 (b) an authority of the Commonwealth is taken to be an associate of each other authority of the Commonwealth; and
- (c) a State is taken to be an associate of each authority of the State; and
- (d) an authority of a State is taken to be an associate of each other authority of the State; and
- 30 (e) a Territory is taken to be an associate of each authority of the Territory; and
- (f) an authority of a Territory is taken to be an associate of each other authority of the Territory.

[Meaning of “government body”]

35 “(6) In this section:

‘government body’ means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth, a State or a Territory.”.

Amendment of assessments

40 **31.** Section 170 of the Principal Act is amended by inserting in subsection (10) “, 73CB” after “73C”.

Application

[Subsection 73B(10)]

32.(1) The amendments made by subsection 28(3) of this Act apply in relation to registration under section 39J or 39P of the *Industry Research and Development Act 1986*, where the application for registration was made after 15 October 1992. 5

[Section 73CB]

(2) Subject to subsection (3) of this section, section 73CB of the amended Act applies in relation to expenditure incurred by an eligible company in a year of income in connection with particular research and development activities where: 10

- (a) on or after 19 August 1992, the company made an application under section 39J of the *Industry Research and Development Act 1986* for registration in respect of the year of income; or
- (b) on or after 19 August 1992, an application was made under section 39P of the *Industry Research and Development Act 1986* on behalf of the company for joint registration of the company and one or more other companies in respect of the year of income in relation to one or more proposed projects comprising or including those research and development activities; or 15 20
- (c) both:
 - (i) before 19 August 1992, the company made an application under section 39J of the *Industry Research and Development Act 1986* for registration in respect of the year of income; and 25
 - (ii) a finance scheme in relation to those research and development activities was entered into, or varied, on or after 19 August 1992; or
- (d) both:
 - (i) before 19 August 1992, an application was made under section 39P of the *Industry Research and Development Act 1986* on behalf of the company for joint registration of the company and one or more other companies in respect of the year of income in relation to one or more proposed projects comprising or including those research and development activities; and 30 35
 - (ii) a finance scheme in relation to those research and development activities was entered into, or varied, on or after 19 August 1992.

[Exception to the rule in subsection (2)] 40

(3) Section 73CB of the amended Act does not apply in relation to expenditure incurred by an eligible company in a year of income in connection with particular research and development activities if:

- (a) during the interim period:

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- (i) the company made an application under section 39J of the *Industry Research and Development Act 1986* for registration in respect of the year of income; or
 - (ii) an application was made under section 39P of the *Industry Research and Development Act 1986* on behalf of the company for joint registration of the company and one or more other companies in respect of the year of income in relation to one or more proposed projects comprising or including those research and development activities; or
 - (iii) the Board granted an application made by the company under section 39J of the *Industry Research and Development Act 1986* for registration in respect of the year of income; or
 - (iv) the Board granted an application made under section 39P of the *Industry Research and Development Act 1986* on behalf of the company for joint registration of the company and one or more other companies in respect of the year of income in relation to one or more proposed projects comprising or including those research and development activities; or
 - (v) the company made an application for an advance eligibility ruling in relation to an application proposed to be made by the company under section 39J of the *Industry Research and Development Act 1986* for registration in respect of the year of income; or
 - (vi) an application was made for an advance eligibility ruling in relation to an application proposed to be made under section 39P of the *Industry Research and Development Act 1986* on behalf of the company for joint registration of the company and one or more other companies in respect of the year of income in relation to one or more proposed projects comprising or including those research and development activities; or
 - (vii) the Board issued an advance eligibility ruling in relation to an application proposed to be made by the company under section 39J of the *Industry Research and Development Act 1986* for registration in respect of the year of income; or
 - (viii) the Board issued an advance eligibility ruling in relation to an application proposed to be made under section 39P of the *Industry Research and Development Act 1986* on behalf of the company for joint registration of the company and one or more other companies in respect of the year of income in relation to one or more proposed

projects comprising or including those research and development activities; and

- (b) if there was or is a finance scheme in relation to those research and development activities—the finance scheme was not entered into, or varied, on or after 1 July 1993.

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[Definitions]

(4) In this section:

“**advance eligibility ruling**”, in relation to a proposed application for the registration of a company or companies, means a statement issued by the Board to the effect that the Board is of the opinion that particular activities carried on, or proposed to be carried on, by or on behalf of the company or companies are research and development activities, where the statement is issued in connection with the proposed application;

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“**amended Act**” means the Principal Act as amended by this Act;

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“**finance scheme**” has the same meaning as in section 39A of the *Industry Research and Development Act 1986* as amended by this Act;

“**interim period**” means the period:

(a) commencing on 31 March 1992; and

(b) ending at the end of 10 June 1992.

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Division 10—Amendments to limit deductions for interest etc. on loans obtained to finance certain superannuation contributions and life assurance premiums

33. After section 67 of the Principal Act the following section is inserted:

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Deductions not allowable for interest etc. on loans obtained to finance certain superannuation contributions and life assurance premiums

[Superannuation contributions—interest etc. not deductible unless contributions deductible under section 82AAC]

“67AAA.(1) A deduction is not allowable under this Act to a taxpayer in respect of a financing cost in relation to:

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(a) contributions made to a fund for the purpose of making provision for superannuation benefits for, or for dependants of, the taxpayer or another person;

unless:

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(b) a deduction is allowable to the taxpayer under section 82AAC for those contributions (assuming subsections 82AAC(2) to (3) (inclusive) had not been enacted).

[Life assurance premiums—interest etc. not deductible unless premium consists wholly of risk component and policy pay-out is assessable]

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“(2) A deduction is not allowable under this Act to a taxpayer in respect of a financing cost in relation to a premium for a life assurance policy unless:

- (a) the whole of the premium received by the insurer consists of a risk component within the meaning of section 110; and
- (b) each amount which the insurer is liable to pay under the policy would be included in the taxpayer's assessable income if it were paid.

[Definitions]

“(3) In this section:

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

‘**financing cost**’, in relation to an amount (‘**financed amount**’), means expenditure incurred by a taxpayer to the extent to which it is incurred in respect of obtaining finance for the financed amount and, without limiting the generality of the foregoing, includes:

- (a) interest or a payment in the nature of interest; and
- (b) expenses of borrowing;

‘**life assurance policy**’ has the same meaning as in section 110, but does not include an annuity.”.

Application

34. Section 67AAA of the Principal Act as amended by this Division applies to a financing cost to the extent to which it is incurred in respect of:

- (a) a loan, or other financing arrangement, that was entered into after 18 August 1992; or
- (b) a loan, or other financing arrangement, resulting from a “roll-over”, after 18 August 1992, of the whole or a part of a previous loan or financing arrangement; or
- (c) a period of extension of the period for which:
- (i) loan money was lent; or
- (ii) other finance was provided;
- where the extension occurred after 18 August 1992.

Division 11—Amendments to extend the concept of Crown leases for the purposes of the depreciation provisions

Property installed on leased Crown land—lessee deemed to be owner etc.

35. Section 54AA of the Principal Act is amended:

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

["Crown lease", "lessee" and "lessor" have extended meanings]

“(1A) The expressions “Crown lease”, “lessee” and “lessor” are given extended meanings for the purposes of this section (see subsection (8)).”;

- (b) by omitting “the lease” (wherever occurring) and substituting “the Crown lease”;
- (c) by omitting from paragraph (2)(a) and subsection (4) “the lessor” and substituting “any other person”;
- (d) by inserting after subsection (7) the following subsection: 5

[Meaning of “eligible government body”]

“(7A) For the purposes of this section, a person is an eligible government body at a particular time if:

- (a) the person is the Commonwealth, a State or a Territory; 10
or
- (b) both:
 - (i) the person is an authority of the Commonwealth, a State or a Territory; and
 - (ii) assuming that the authority had derived income at that time, that income would be exempt from tax because of a relevant exempting provision (within the meaning of section 160K); or 15
- (c) the person is the government of, or of a part of, a foreign country; or
- (d) both: 20
 - (i) the person is an authority of the government of a foreign country or an authority of the government of a part of a foreign country; and
 - (ii) the authority is of a similar nature to an authority covered by paragraph (b).”; 25
- (e) by omitting from subsection (8) the definition of “Crown lease” and substituting the following definition:
 - “‘Crown lease’ means:
 - (a) a lease of land granted by an eligible government body; 30
or
 - (b) an easement in connection with land, where the easement was granted by an eligible government body; or
 - (c) any other right, power or privilege over, or in connection with, land, where the right, power or privilege was granted by an eligible government body;”; 35
- (f) by inserting in subsection (8) the following definitions:
 - “‘eligible government body’ has the meaning given by subsection (7A);
 - ‘lessee’, in relation to a Crown lease, means the holder of the Crown lease; 40
 - ‘lessor’, in relation to a Crown lease, means:
 - (a) the eligible government body which granted the Crown lease; or

(b) if the interests of the grantor in relation to the Crown lease are held by another person—that other person;”.

Application

5 36. Section 38 of the *Taxation Laws Amendment Act (No. 3) 1992* has, and is taken to have had, effect as if the amendments made by this Division had been made by that Act.

Division 12—Amendments to extend the concept of eligible lessees for the purposes of the provisions relating to deductions for capital expenditure on buildings and structural improvements

10 **Interpretation**

37. Section 124ZF of the Principal Act is amended by inserting the following definitions in subsection (1):

“‘**Crown lease**’ has the same meaning as in section 54AA;

‘**lease**’ includes a Crown lease;

15 ‘**lessee**’, in relation to a Crown lease, means a person who is a lessee within the meaning of section 54AA;”.

Application

20 38. The amendments made by this Division apply in relation to expenditure incurred in respect of the construction of a building, or an extension, alteration or improvement to a building, if the construction commenced after 26 February 1992.

Division 13—Amendments to deem the lessee of property installed on leased Crown land to be the owner for the purposes of the development allowance provisions

25 **Interpretation**

39. Section 82AQ of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) If:

30 (a) a taxpayer is the lessee of land under a Crown lease; and

(b) a unit of property is affixed to the land; and

(c) because of section 54AA, the provisions of this Act relating to depreciation apply as if the taxpayer were the owner of the property instead of any other person;

35 this Subdivision applies as if the taxpayer were the owner of the property instead of any other person.

“(3B) In subsection (3A):

‘**Crown lease**’ has the same meaning as in section 54AA;

‘**lessee**’ has the same meaning as in section 54AA.”.

Application

40. The amendment made by this Division applies to expenditure incurred by a taxpayer:

- (a) in respect of the acquisition of a unit of property under a contract entered into after 26 February 1992; or 5
- (b) in respect of the construction of a unit of property where the construction commenced after 26 February 1992.

Division 14—Amendments relating to roll-over relief where deductions allowed for research and development under section 73B

Disposal, loss or destruction of depreciated property 10

41. Section 59 of the Principal Act is amended:

- (a) by omitting from subsection (2AA) “For” and substituting “Subject to subsection (2AB), for”;
- (b) by inserting after subsection (2AA) the following subsection:

“(2AB) If: 15

- (a) property of a taxpayer was acquired as the result of a disposal to which section 58 or 73E applied; and
- (b) either:

- (i) a deduction or deductions has or have been allowed or allowable to the transferor concerned under section 73B in relation to the property; or 20

- (ii) if the disposal of the property to the taxpayer was the last of a series of 2 or more successive transfers of the property to which either one of section 58 or 73E has applied (whether alternately or otherwise)—a deduction or deductions has or have been allowed or allowable to any of the prior successive transferors under section 73B in relation to the property; 25

then, for the purposes of the application of subsection (2) of this section to the property, the amount worked out using the following formula is taken to have been an amount allowed to the taxpayer in respect of depreciation in relation to the property: 30

$$\frac{\text{Transferor's original cost}}{\text{Modified written-down value}} \quad 35$$

where:

“Transferor’s original cost” means:

- (a) the cost of the property to the transferor for the purposes of section 73B (worked out as if subsection 73B(6) had not been enacted); or 40
- (b) if the disposal of the property to the taxpayer was the

5 last of a series of 2 or more successive transfers to which either one of section 58 or 73E has applied (whether alternately or otherwise)—the cost of the property to the earliest prior successive transferor for the purposes of section 73B (worked out as if subsection 73B(6) had not been enacted);

‘**Modified written-down value**’ means the amount that would have been the written-down value of the property to the taxpayer for the purposes of section 73B if:

10 (a) whichever of the following is applicable:

(i) the deductions allowed or allowable under section 73B to the transferor in respect of one or more years of income in relation to the property;

15 (ii) if the disposal of the property to the taxpayer was the last of a series of 2 or more successive transfers to which either one of section 58 or 73E has applied (whether alternately or otherwise)—the deductions allowed or allowable under section 73B to the prior successive transferors in respect of one or more years of income in relation to the property;

20 had been deductions allowed or allowable to the taxpayer under section 73B in respect of the years of income in relation to the property; and

(b) whichever of the following is applicable:

25 (i) the cost of the property to the transferor for the purposes of section 73B (worked out as if subsection 73B(6) had not been enacted);

30 (ii) if the disposal of the property to the taxpayer was the last of a series of 2 or more successive transfers to which either one of section 58 or 73E has applied (whether alternately or otherwise)—the cost of the property to the earliest prior successive transferor for the purposes of section 73B (worked out as if subsection 73B(6) had not been enacted);

35 had been the cost of the property to the taxpayer.”.

42. After section 73D of the Principal Act the following sections are inserted:

Section 73B roll-over relief on disposal of unit of plant where CGT roll-over relief allowed under section 160ZZO

40 **[Roll-over relief where CGT roll-over relief allowed]**

“73E.(1) This section applies to the disposal of a unit of plant by an eligible company (in this section called the ‘transferor’) to another eligible company (in this section called the ‘transferee’) if:

- (a) section 16ZZO applies to the disposal of the unit by the transferor; and
- (b) subject to subsection (11), a deduction or deductions have been allowed or are allowable under subsection 73B(15) to the transferor in respect of the unit; and
- (c) no deduction has been allowed or is allowable under section 54 to the transferor in respect of the unit.

5

[No balancing charges]

“(2) Subsection 73B(23) or (24), as the case requires, does not apply in respect of the disposal of the unit by the transferor.

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[No depreciation deduction for transferor in year of disposal]

“(3) A deduction under section 54 is not allowable to the transferor in respect of the unit in relation to the year of income in which the disposal took place.

[Subsection 73B(4) definition of “qualifying plant expenditure” not applicable to transferee]

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“(4) Subsection 73B(4) does not apply to the transferee in relation to the unit.

[Transferee to inherit transferor’s qualifying plant expenditure]

“(5) If:

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- (a) immediately after the disposal took place, the transferee commences to use the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities; and
- (b) apart from the disposal, there would have been an amount of qualifying plant expenditure in relation to the transferor in relation to:
 - (i) the year of income of the transferor in which the disposal took place; or
 - (ii) the first subsequent year of income of the transferor;

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then:

- (c) subject to subsection 73B(5), section 73B and this section have effect as if an amount equal to that amount were taken:
 - (i) to have been incurred by the transferee in the acquisition of the unit; and
 - (ii) to be an amount of qualifying plant expenditure in relation to the transferee in relation to:
 - (A) if subparagraph (b)(i) applies—the year of income of the transferee in which the disposal took place; and
 - (B) if subparagraph (b)(ii) applies—the first subsequent year of income of the transferee; and

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5 (d) a reference in subsection 73B(21) to the end of the second year of income after the year of income in which the transferee first used the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities is to be read as a reference to the end of the 3-year period commencing at the beginning of:

10 (i) the year of income in which the transferor first used the unit exclusively for the purpose of the carrying on by or on behalf of the transferor of research and development activities; or

15 (ii) if there have been 2 or more prior successive applications of this section—the earliest year of income in which a prior successive transferor first used the unit exclusively for the purpose of the carrying on by or on behalf of the prior successive transferor of research and development activities; and

20 (e) the reference in subsection 73B(22) to deductions having been allowed to the transferee under subsection 73B(15) in relation to the unit in respect of 3 years of income is to be read as a reference to deductions having been allowed to the transferee under subsection 73B(15) in relation to the unit in respect of 3 years of income, reduced by one year for each year of income for which a deduction was allowed or allowable under subsection 73B(15) to:

25 (i) the transferor in respect of the unit; or

(ii) if there have been 2 or more prior successive applications of this section—any of the prior successive transferors in respect of the unit.

[Modification of depreciation provisions applicable to transferee]

30 “(6) If depreciation is or becomes allowable to the transferee in respect of the unit, the provisions of this Act relating to depreciation apply as if:

(a) the transferee had acquired the unit for a cost equal to the modified written-down value of the unit; and

35 (b) subsections 73B(21) and (22) had effect as if a reference in those subsections to the written-down value of the unit were a reference to the modified written-down value of the unit; and

40 (c) subsection 56(1A) had effect, in relation to the year of income of the transferee in which the disposal took place, as if a day in that year of income on which the unit was dealt with in the prescribed manner (within the meaning of that subsection) by the transferor were treated as if it were a day in that year of income on which the unit was dealt with in the prescribed manner (within the meaning of that subsection) by the transferee.

[Disposal by transferee where no roll-over relief—inheritance of transferor’s cost and deductions]

“(7) If:

- (a) after the disposal of the unit to the transferee, the unit is lost or destroyed or the transferee disposes of the unit; and 5
- (b) in the case of a disposal by the transferee—this section does not apply to the disposal;

then, for the purposes of the application of subsection 73B(23) or (24), as the case may be, in relation to the loss, destruction or disposal, those subsections have effect as if: 10

- (c) a reference in those subsections to the written-down value of the unit were a reference to the modified written-down value of the unit; and
 - (d) a reference in those subsections, and in the definition of ‘ineligible pilot plant amount’ in subsection 73B(1), to the cost of the unit were a reference to: 15
 - (i) the cost of the unit to the transferor (worked out as if subsection 73B(6) had not been enacted); or
 - (ii) if there have been 2 or more prior successive applications of this section—the cost of the unit to the earliest prior successive transferor (worked out as if subsection 73B(6) had not been enacted); and 20
 - (e) a reference in paragraph 73B(24)(f) to a year of income in respect of which a deduction has been allowed under section 73B to the transferee in respect of the unit were worked out on the basis that whichever of the following is applicable: 25
 - (i) the deductions allowed or allowable to the transferor under section 73B in respect of one or more years of income in relation to the unit;
 - (ii) if there have been 2 or more prior successive applications of this section—the deductions allowed or allowable to the prior successive transferors under section 73B in respect of one or more years of income in relation to the unit; 30
- had been deductions allowed or allowable to the transferee under section 73B in respect of the years of income in relation to the unit. 35

[Meaning of “modified written-down value”]

“(8) For the purposes of the application of subsections (6) and (7) to the transferee, the modified written-down value of the unit is the amount that would have been the written-down value if: 40

- (a) whichever of the following is applicable:
 - (i) the deductions allowed or allowable to the transferor

under section 73B in respect of one or more years of income in relation to the unit;

- 5 (ii) if there have been 2 or more prior successive applications of this section—the deductions allowed or allowable to the prior successive transferors under section 73B in respect of one or more years of income in relation to the unit;

10 had been deductions allowed or allowable to the transferee under section 73B in respect of the years of income in relation to the unit; and

(b) whichever of the following is applicable:

(i) the cost of the unit to the transferor (worked out as if subsection 73B(6) had not been enacted);

- 15 (ii) if there have been 2 or more prior successive applications of this section—the cost of the unit to the earliest prior successive transferor (worked out as if subsection 73B(6) had not been enacted);

had been the cost of the unit to the transferee.

[Pilot plant covered by subsection 73B(6)]

20 “(9) If subsection 73B(6) applied to the unit in relation to the transferor, section 73B and this section have effect as if subsection 73B(6) applies to the unit in relation to the transferee.

[Recoupment of expenditure—consequential amendment of assessments]

25 “(10) Section 170 does not prevent the amendment at any time of an assessment of the transferee where section 73C, 73CB or 73D has applied to:

- (a) the transferor in respect of the unit; or
30 (b) if there have been 2 or more prior successive applications of this section—any of the prior successive transferors in respect of the unit.

[Second or subsequent application of section—paragraph (1)(b) does not apply]

35 “(11) If, apart from this subsection, this section has applied to the disposal of the unit to the transferee, then, in working out whether this section applies to a subsequent disposal of the unit by:

- (a) the transferee; or
(b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.

[CGT roll-over relief applies to motor vehicles]

“(12) For the purposes of this section, in addition to the effect that section 160ZZO has apart from this subsection, that section also has the effect that it would have if a reference in that section to an asset included a reference to a motor vehicle of a kind mentioned in paragraph 82AF(2)(a).”

5

[Interpretation]

“(13) For the purposes of interpretation, this section is to be construed as if it were part of section 73B.”

[Definition]

10

“(14) In this section:

‘**modified written-down value**’ has the meaning given by subsection (8).

Section 73B roll-over relief on disposal of building etc. where CGT roll-over relief allowed under section 160ZZO

[Meaning of “unit”]

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“73F.(1) In this section:

‘**unit**’ means a building or an extension, alteration or improvement to a building.

[Roll-over relief where CGT roll-over relief allowed]

“(2) This section applies to the disposal of a unit by an eligible company (in this section called the ‘**transferor**’) to another eligible company (in this section called the ‘**transferee**’) if:

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(a) section 160ZZO applies to the disposal of the unit by the transferor; and

(b) subject to subsection (14), a deduction or deductions have been allowed or are allowable under subsection 73B(17) to the transferor in respect of the unit.

25

[No balancing charges]

“(3) Subsection 73B(27) does not apply in respect of the disposal of the unit by the transferor.”

30

[5-year deduction disallowance rule does not apply]

“(4) Subsection 73B(28) does not apply in respect of the disposal of the unit by the transferor.”

[Subsection 73B(4) definition of “qualifying building expenditure” not applicable to transferee]

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“(5) Subsection 73B(4) does not apply to the transferee in relation to the unit.”

[Transferee to inherit transferor's qualifying building expenditure]

“(6) If:

5 (a) immediately after the disposal took place, the transferee commences to use the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities; and

(b) apart from the disposal, there would have been an amount of qualifying building expenditure in relation to the transferor in relation to:

10 (i) the year of income of the transferor in which the disposal took place; or

(ii) the first subsequent year of income of the transferor;

then, subject to subsection 73B(5), section 73B and this section have effect as if an amount equal to that amount were taken:

15 (c) to have been incurred by the transferee in the acquisition of the unit; and

(d) to be an amount of qualifying building expenditure in relation to the transferee in relation to:

20 (i) if subparagraph (b)(i) applies—the year of income of the transferee in which the disposal took place; and

(ii) if subparagraph (b)(ii) applies—the first subsequent year of income of the transferee.

[Pre-21 November 1987 rule not applicable to transferee]

25 “(7) Subsection 73B(5A) does not apply in relation to the acquisition of the unit by the transferee.

[Modification of 5-year deduction disallowance rule]

30 “(8) A reference in subsection 73B(28) to the day on which the transferee commenced to use the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities is to be read as a reference to:

(a) the day on which the transferor first used the unit exclusively for the purpose of the carrying on by or on behalf of the transferor of research and development activities; or

35 (b) if there have been 2 or more prior successive applications of this section—the earliest day on which a prior successive transferor first used the unit exclusively for the purpose of the carrying on by or on behalf of the prior successive transferor of research and development activities.

[Deemed cessation of use by transferee—5-year deduction disallowance rule]

40 “(9) For the purposes of the application of subsection 73B(28) and subsection (10) of this section to the transferee, if, immediately after the disposal of the property to the transferee took place, the transferee

did not commence to use the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities, the transferee is taken to have ceased to use the unit for that purpose immediately after the disposal took place.

- [Adjustments where 5-year deduction disallowance rule applies]** 5
- “(10) If:
- (a) after the disposal of the unit to the transferee, the transferee:
 - (i) disposes of the unit; or
 - (ii) ceases to use the unit exclusively for the purpose of the carrying on by or on behalf of the transferee of research and development activities; and 10
 - (b) subsection 73B(28) applies in relation to the disposal of the unit by the transferee or in relation to the cessation of use by the transferee;
- then: 15
- (c) the transferee’s assessable income of the year of income in which the acquisition of the unit by the transferee took place includes:
 - (i) the total amount allowed or allowable as deductions to the transferor under subsection 73B(17) in relation to the unit; or 20
 - (ii) if there have been 2 or more prior successive applications of this section—the total amount allowed or allowable as deductions to the prior successive transferors under subsection 73B(17) in relation to the unit; and 25
 - (d) the following amounts are allowable deductions to the transferee for the year of income in which the acquisition of the unit by the transferee took place:
 - (i) the total amount of the deductions (if any) that would have been allowable to the transferor under section 75B or 124JA or Division 10, 10AAA, 10AA or 10D in relation to the unit if section 73B had not been enacted; or 30
 - (ii) if there have been 2 or more prior successive applications of this section—the total amount of the deductions (if any) that would have been allowable to the prior successive transferors under section 75B or 124JA or Division 10, 10AAA, 10AA or 10D in relation to the unit if section 73B had not been enacted; and 35
 - (e) for the purposes of the application of section 75B or 124JA or Division 10, 10AAA, 10AA or 10D to the transferee in relation to the unit: 40
 - (i) whichever of the following is applicable:

(A) the expenditure incurred by the transferor in the acquisition or construction of the unit;

(B) if there have been 2 or more prior successive applications of this section—the expenditure incurred by the earliest prior successive transferor in the acquisition or construction of the unit;

is taken to have been expenditure incurred by the transferee in the acquisition of the unit; and

(ii) a deduction allowable to the transferee under paragraph (d) of this subsection in relation to the unit is taken to be a deduction allowable to the transferee in relation to the unit under section 75B or 124JA or Division 10, 10AAA, 10AA or 10D, as the case requires.

[Disposal by transferee where no roll-over relief—inheritance of transferor's deductions]

“(11) If:

(a) after the disposal of the unit to the transferee, the transferee disposes of the unit; and

(b) this section does not apply to the disposal by the transferee; and

(c) subsection 73B(27) applies to the disposal by the transferee;

then, for the purposes of the application of subsection 73B(27) in relation to the disposal:

(d) whichever of the following is applicable:

(i) the expenditure incurred by the transferor in the acquisition or construction of the unit;

(ii) if there have been 2 or more prior successive applications of this section—the expenditure incurred by the earliest prior successive transferor in the acquisition or construction of the unit;

is taken to have been expenditure incurred by the transferee in the acquisition of the unit; and

(e) the total of:

(i) the amounts that would, apart from section 73B, have been allowed or allowable as deductions to the transferor under Division 10D in respect of the expenditure of the transferor in the acquisition or construction of the unit; and

(ii) if there have been 2 or more prior successive applications of this section—the amounts that would, apart from section 73B, have been allowed or allowable as deductions to the prior successive transferors under Division 10D in respect of the expenditure incurred by the earliest prior

successive transferor in the acquisition or construction of the unit;
are taken to have been amounts that would, apart from section 73B, have been allowed or allowable as deductions to the transferee under Division 10D in respect of expenditure incurred by the transferee in the acquisition of the unit.

5

[Destruction of building etc.—inheritance of transferor’s deductions]

“(12) If, after the disposal of the unit to the transferee, the unit, or a part of the unit, is destroyed, then, for the purposes of the application of subsection 73B(25) or (26), as the case may be, in relation to the destruction:

10

(a) whichever of the following is applicable:

- (i) the expenditure incurred by the transferor in the acquisition or construction of the unit;
- (ii) if there have been 2 or more prior successive applications of this section—the expenditure incurred by the earliest prior successive transferor in the acquisition or construction of the unit;

15

is taken to have been expenditure incurred by the transferee in the acquisition of the unit; and

20

(b) the total of:

- (i) the amounts allowed or allowable as deductions to the transferor under subsection 73B(17) in relation to the unit; or
- (ii) if there have been 2 or more prior successive applications of this section—the amounts allowed or allowable as deductions to the prior successive transferors under subsection 73B(17) in relation to the unit;

25

are taken to have been amounts allowed or allowable to the transferee as deductions under subsection 73B(17) in relation to the unit.

30

[Recoupment of expenditure—consequential amendment of assessments]

“(13) Section 170 does not prevent the amendment at any time of an assessment of the transferee where section 73C or 73D has applied to:

35

- (a) the transferor in respect of the unit; or
- (b) if there have been 2 or more prior successive applications of this section—any of the prior successive transferors in respect of the unit.

[Second or subsequent application of section—paragraph (2)(b) does not apply]

40

“(14) If, apart for this subsection, this section has applied to the disposal of the unit to the transferee, then, in working out whether this section applies to a subsequent disposal of the unit by:

- (a) the transferee; or
- (b) one or more subsequent successive transferees;

this section has effect as if paragraph (2)(b) (which deals with deductions) had not been enacted.

5 **[Interpretation]**

“(15) For the purposes of interpretation, this section is to be construed as if it were part of section 73B.

Section 73B roll-over relief on disposal of unit of industrial property where CGT roll-over relief allowed under section 160ZZO

10 **[Roll-over relief where CGT roll-over relief allowed]**

“73G.(1) This section applies to the disposal of a unit of industrial property (within the meaning of Division 10B) by an eligible company (the ‘transferor’) to another eligible company (the ‘transferee’) if:

- 15 (a) section 160ZZO applies to the disposal of the unit by the transferor; and
- (b) subject to subsection (5), apart from this section, an amount would be included in the transferor’s assessable income under subsection 73B(27A) in respect of the disposal.

[Transferor not assessable under subsection 73B(27A) on disposal]

20 “(2) Subsection 73B(27A) does not apply in respect of the disposal of the unit by the transferor.

[No deduction for transferee’s acquisition expenditure]

25 “(3) No part of the expenditure (if any) incurred by the transferee in the acquisition of the unit is an allowable deduction to the transferee under any provision of this Act.

[Disposal by transferee where no roll-over relief—proceeds of disposal assessable to transferee]

“(4) If:

- 30 (a) after the disposal of the unit to the transferee, the transferee disposes of the unit; and
 - (b) this section does not apply to the disposal by the transferee;
- the transferee’s assessable income of the year of income in which the disposal by the transferee took place includes the consideration receivable in respect of the disposal.

35 **[Subsequent application of section—paragraph (1)(b) does not apply]**

“(5) If, apart from this subsection, this section has applied to the disposal of the unit to the transferee, then, in working out whether this section applies to a subsequent disposal of the unit by:

- (a) the transferee; or
- 40 (b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(b) (which deals with assessability under subsection 73B(27A)) had not been enacted.

[Interpretation]

“(6) For the purposes of interpretation, this section is to be construed as if it were part of section 73B.”.

5

Keeping of records

43. Section 262A of the Principal Act is amended:

(a) by inserting in subsection (4AC) “73E(1), 73F(1), 73G(1),” after “73AA(1),”;

(b) by inserting in paragraph (4AC)(a) “73E, 73F, 73G,” after “73AA,”.

10

Application

[Meaning of “amended Act”]

44.(1) In this section:

“amended Act” means the Principal Act as amended by this Act.

15

[Depreciation balancing charge—section 58 or 73E roll-over relief]

(2) The amendments of section 59 of the Principal Act made by this Division apply in relation to disposals of property before, at or after the commencement of this subsection.

[Section 73B (research and development) roll-over relief]

20

(3) Sections 73E, 73F and 73G of the amended Act apply to disposals of property after 15 October 1992.

Transitional—elective roll-over relief where property disposed of after 6 December 1990

[Definitions]

25

45.(1) In this section:

“amended Act” means the Principal Act as amended by this Act;

“eligible company” has the same meaning as in section 73B of the Principal Act;

“roll-over section” means section 73E, 73F or 73G.

30

[Extended application of roll-over sections]

(2) If:

(a) an eligible company (the “transferor”) disposed of property to another eligible company (the “transferee”); and

(b) the disposal took place after 6 December 1990 and before 16 October 1992; and

(c) the transferor and the transferee make a joint election that this section apply to the disposal; and

35

(d) assuming that both the transferor and the transferee had elected under paragraph 160ZZO(1)(d) of the Principal Act that section 160ZZO of the Principal Act apply in respect of the disposal of the property:

- 5 (i) section 160ZZO of the Principal Act would have applied to the disposal of the property; and
 (ii) if the disposal had taken place after 15 October 1992, a roll-over section would have applied to the disposal of the property;

10 then, in addition to the application of the roll-over section concerned apart from this section, the roll-over section applies to the disposal.

[How joint election made]

(3) A joint election under subsection (2) has no effect unless it:

- 15 (a) is in writing; and
 (b) is made:
 (i) within 6 months after the later of the following:
 (A) the end of the year of income of the transferee in which the disposal occurred;
 (B) the commencement of this subsection; or
20 (ii) within such further period as the Commissioner allows.

[Retention of joint election]

(4) A person who is a party to a joint election under subsection (2) must retain the election, or a copy, until the end of 5 years after the earlier of:

- 25 (a) the disposal by the person of the property; or
 (b) the loss or destruction of the property.

Penalty: \$3,000.

[Exceptions to retention rules]

30 (5) Subsection (4) does not require a person to retain an election, or a copy, if:

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

35 **[Extension of roll-over relief to motor vehicles]**

 (6) For the purposes of this section, in addition to the effect that section 160ZZO of the Principal Act has apart from this subsection, that section also has the effect that it would have if a reference in that section to an asset included a reference to a motor vehicle of a kind
40 mentioned in paragraph 82AF(2)(a) of the Principal Act.

Division 15—Amendments relating to roll-over relief where capital deductions have been allowed

Depreciation roll-over relief for unpooled property where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 59AA 5

46. Section 58 of the Principal Act is amended:

(a) by inserting in paragraph (1)(b) “subject to subsection (7A),” before “depreciation”;

(b) by inserting after subsection (7) the following subsection: 10

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(7A) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by: 15

(a) the transferee; or

(b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(b) (which deals with deductions for depreciation) had not been enacted.”. 20

Section 73A roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO

47. Section 73AA of the Principal Act is amended:

(a) by inserting in paragraph (1)(b) “subject to subsection (7),” before “deductions”; 25

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

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(7) If, apart from this subsection, this section has applied to the disposal of the building or the part of the building to the transferee, then, in working out whether this section applies to a subsequent disposal of the building or the part of the building by: 30

(a) the transferee; or

(b) one or more subsequent successive transferees; 35

this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 122R

48. Section 122JAA of the Principal Act is amended:

- 5 (a) by inserting in paragraph (1)(b) “subject to subsection (22A),” before “deductions”;
- (b) by inserting after subsection (22) the following subsection:

[Second or subsequent application of section—paragraph (1)(b) does not apply]

10 “(22A) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by:

(a) the transferee; or

15 (b) one or more subsequent successive transferees;
this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 122R

49. Section 122JG of the Principal Act is amended:

- 20 (a) by inserting in paragraph (1)(b) “subject to subsection (12A),” before “deductions”;
- (b) by inserting after subsection (12) the following subsection:

25 **[Second or subsequent application of section—paragraph (1)(b) does not apply]**

30 “(12A) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by:

(a) the transferee; or

(b) one or more subsequent successive transferees;
this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 123F

50. Section 123BBA of the Principal Act is amended:

- 40 (a) by inserting in paragraph (1)(b) “subject to subsection (16),” before “deductions”;
- (b) by adding at the end the following subsection:

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(16) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by:

- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 123F

51. Section 123BF of the Principal Act is amended:

- (a) by inserting in paragraph (1)(b) “subject to subsection (9),” before “deductions”;
- (b) by adding at the end the following subsection:

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(9) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by:

- (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 124AO

52. Section 124AMAA of the Principal Act is amended:

- (a) by inserting in paragraph (1)(b) “subject to subsection (18A),” before “deductions”;
- (b) by inserting after subsection (18) the following subsection:

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(18A) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by:

- (a) the transferee; or

(b) one or more subsequent successive transferees;
this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

5 **Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO**

53. Section 124GA of the Principal Act is amended:

- (a) by inserting in paragraph (1)(b) “subject to subsection (5),” before “deductions”;
- (b) by adding at the end the following subsection:

10 **[Second or subsequent application of section—paragraph (1)(b) does not apply]**

“(5) If, apart from this subsection, this section has applied to the disposal of the property to the transferee, then, in working out whether this section applies to a subsequent disposal of the property by:

- 15 (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

20 **Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO**

54. Section 124JD of the Principal Act is amended:

- (a) by inserting in paragraph (1)(b) “subject to subsection (5),” before “deductions”;
- 25 (b) by adding at the end the following subsection:

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(5) If, apart from this subsection, this section has applied to the disposal of the building to the transferee, then, in working out whether this section applies to a subsequent disposal of the building by:

- 30 (a) the transferee; or
 - (b) one or more subsequent successive transferees;
- this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”.

35 **Roll-over relief where CGT roll-over relief allowed under section 160ZZM, 160ZZMA, 160ZZN, 160ZZNA or 160ZZO or where election for roll-over relief made under section 122W**

55. Section 124PA of the Principal Act is amended:

- 40 (a) by inserting in paragraph (1)(b) “subject to subsection (6),” before “deductions”;

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

[Second or subsequent application of section—paragraph (1)(b) does not apply]

“(6) If, apart from this subsection, this section has applied to the disposal of the unit to the transferee, then, in working out whether this section applies to a subsequent disposal of the unit by: 5

(a) the transferee; or

(b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(b) (which deals with deductions) had not been enacted.”. 10

Application

56. The amendments made by this Division apply to disposals of property after 19 December 1991.

Transitional—elective capital deduction roll-over relief where CGT roll-over relief available under section 160ZZO of the Principal Act and property disposed of after 6 December 1990 15

57. Section 72 of the *Taxation Laws Amendment Act 1992* has, and is taken to have had, effect as if the amendments made by this Division had been made by that Act. 20

Division 16—Amendment relating to record-keeping

Keeping of records

58. Section 262A of the Principal Act is amended by re-locating subsection (4A) so that it becomes the subsection after subsection (4). 25

Division 17—Amendments relating to royalties

Interpretation

59. Section 6 of the Principal Act is amended:

(a) by inserting after paragraph (d) of the definition of “royalty” or “royalties” in subsection (1) the following paragraphs: 30

“(da) the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by:

(i) satellite; or

(ii) cable, optic fibre or similar technology;

(db) the use in connection with television broadcasting or radio broadcasting, or the right to use in connection with television broadcasting or radio broadcasting, visual images or sounds, or both, transmitted by: 35

(i) satellite; or

- (ii) cable, optic fibre or similar technology;”;
- (b) by omitting “or” from the end of subparagraph (f)(ii) of the definition of “royalty” or “royalties” in subsection (1);
- (c) by inserting after subparagraph (f)(ii) of the definition of “royalty” or “royalties” in subsection (1) the following subparagraphs:
 - “(iia) the reception of, or the granting of the right to receive, any such visual images or sounds as are mentioned in paragraph (da);
 - (iib) the use of, or the granting of the right to use, any such visual images or sounds as are mentioned in paragraph (db); or”.

Source of royalty income derived by a non-resident

60. Section 6C of the Principal Act is amended by omitting from subsection (2) “, section 25, Division 13A of Part III and section 255” and substituting “and section 25”.

Interpretation

61. Section 103 of the Principal Act is amended by inserting in paragraph (a) of the definition of “the distributable income” in subsection (1) “the repealed” before “section 136A”.

Heading to Division 11A of Part III

62. The heading to Division 11A of Part III of the Principal Act is amended by omitting “*and Interest*” and substituting “, *Interest and Royalties*”.

Interpretation

63. Section 128A of the Principal Act is amended:

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

“(1AA) In this Division and in an Act imposing withholding tax:

‘income’ includes a royalty.”;

- (b) by inserting in subsection (2) “or a royalty” after “interest”;

- (c) by omitting from subsection (3) “or to interest” and substituting “, to interest or to a royalty”;

- (d) by omitting from subsection (3) “or interest” and substituting “, interest or royalty”.

Liability to withholding tax

64. Section 128B of the Principal Act is amended:

- (a) by inserting after subsection (2A) the following subsection:

“(2B) Subject to subsection (3), this section also applies to income that:

- (a) is derived by a non-resident:
 - (i) during the 1993-94 year of income of the non-resident; or
 - (ii) during a later year of income of the non-resident; and 5
- (b) consists of a royalty that:
 - (i) is paid to the non-resident by a person to whom this section applies and is not an outgoing wholly incurred by that person in carrying on business in a foreign country at or through a permanent establishment of that person in that country; or 10
 - (ii) is paid to the non-resident by a person who, or by persons each of whom, is not a resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.”; 15
- (b) by inserting after subsection (5) the following subsection:

“(5A) A person who derives income to which this section applies that consists of a royalty is liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this subsection applies.”. 20

Repeal of Division 13A of Part III

- 65. Division 13A of Part III of the Principal Act is repealed.

Interpretation 25

- 66. Section 221YHZA of the Principal Act is amended:
 - (a) by omitting “a royalty payment” from the definition of “natural resource payment” in subsection (1) and substituting “a payment of, or by way of, royalty”;
 - (b) by omitting from subsection (1) the definition of “royalty payment”. 30

Person making natural resource payment to non-resident to ascertain amount to be deducted in respect of tax

- 67. Section 221YHZB of the Principal Act is amended:
 - (a) by omitting from subsection (1) “, or a royalty payment,”; 35
 - (b) by omitting from paragraph (1)(a) “, or royalty payment, as the case may be,”.

Duties of payers

- 68. Section 221YHZA of the Principal Act is amended by omitting from subsection (1) “, or a royalty payment,”. 40

Interpretation

69. Section 221YK of the Principal Act is amended by inserting in paragraphs (3)(a) and (b) “or a royalty” after “interest”.

Deductions from dividends, interest and royalties

5 70. Section 221YL of the Principal Act is amended:

(a) by inserting after subsection (2F) the following subsections:

10 “(2G) If a royalty is payable by a person, including the Commonwealth, a State or an authority of the Commonwealth or of a State (the ‘royalty payer’) to another person, or to other persons jointly, and:

15 (a) that other person, or one or more of those other persons, is or are shown, in relation to the transaction to which the royalty relates, in any book, document or record in the possession of or kept or maintained on behalf of the royalty payer, as having an address outside Australia; or

(b) the royalty payer is authorised to pay the royalty, either to the person or persons to whom it is payable or to another person or persons, at a place outside Australia;

20 the royalty payer must, subject to this section and to section 221YM, before or at the time when the royalty is paid by the royalty payer, make a deduction from the royalty of an amount determined in accordance with the regulations.

“(2H) Subject to this section and to section 221YM, if:

25 (a) a royalty is paid by a person to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person in Australia (the ‘payee’); and

(b) another person who is a non-resident is entitled:

30 (i) to receive the royalty or a part of the royalty, or the amount of the royalty or of a part of the royalty, from the payee; or

(ii) to have the royalty or a part of the royalty, credited to him or her, or otherwise dealt with on his or her behalf, or as he or she directs, by the payee;

35 the payee must, except as provided by the regulations, immediately make a deduction from the royalty, or the part of the royalty, of an amount determined in accordance with the regulations.”;

(b) by omitting from subsections (3), (3A), (4A) and (4B) “or from interest” and substituting “, from interest or from a royalty”;

40 (c) by omitting from subsection (3) “or the interest” (wherever occurring) and substituting “, the interest or the royalty”;

(d) by omitting from subsection (3A) “or interest” and substituting “, interest or royalty”.

Exemptions and variations

71. Section 221YM of the Principal Act is amended:

- (a) by omitting from paragraph (b) “or” (second-last occurring);
- (b) by adding at the end of paragraph (b) “, or from royalties or from royalties included in a class of royalties”.

5

Deductions to be forwarded to Commissioner etc.

72. Section 221YN of the Principal Act is amended by omitting from subsection (1) “or from interest” and substituting “, from interest or from royalties”.

Liability of person who fails to make deductions etc.

10

73. Section 221YQ of the Principal Act is amended:

- (a) by omitting from subsection (1) “or from interest” and substituting “, from interest or from a royalty”;
- (b) by omitting from paragraph (1)(a) “or interest” and substituting “, interest or royalty”.

15

Interest or royalty not allowable deduction until payment made to Commissioner on account of tax

74. Section 221YRA of the Principal Act is amended:

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

“(1A) If:

20

- (a) a person:

- (i) has not made a deduction from a royalty as required by subsection 221YL(2G); or
- (ii) having made a deduction under that subsection from a royalty, has not complied with paragraph 221YN(1)(a) in relation to the deduction; and

25

- (b) any withholding tax payable in respect of the royalty has not been paid;

then, subject to subsection (2), the royalty is not an allowable deduction.”;

30

- (b) by inserting in subsection (2) “or royalty” after “interest” (wherever occurring);
- (c) by inserting in subsection (2) “or (1A)” after “(1)”;
- (d) by omitting from subsection (3) “subsection (1) applies” and substituting “subsections (1) and (1A) apply”.

35

Credits in respect of deductions made from dividends, interest or royalties

75. Section 221YS of the Principal Act is amended by omitting from subsection (1) “or interest” and substituting “, interest or a royalty”.

40

Liability of trustee to pay deductions to Commissioner

76. Section 221YU of the Principal Act is amended by omitting from paragraph (1)(a) “or from interest” and substituting “, from interest or from a royalty”.

5 **Persons discharged from liability in respect of deductions**

77. Section 221YV of the Principal Act is amended by omitting “or from interest” and substituting “, from interest or from a royalty”.

Person in receipt or control of money from non-resident

10 78. Section 255 of the Principal Act is amended by omitting from subsection (2A) “, or a royalty payment,”.

Certain provisions to be disregarded in calculating attributable income

79. Section 389 of the Principal Act is amended by omitting from paragraph (a) “, section 136A”.

Repeal of the *Income Tax (Film Royalties) Act 1977*

15 80. The *Income Tax (Film Royalties) Act 1977* is repealed.

Application

20 81. The amendments made, and repeals effected, by this Division apply in relation to amounts derived by a taxpayer during the 1993-94 year of income of the taxpayer or during a later year of income of the taxpayer.

Transitional—equipment royalties paid under pre-18 August 1992 contracts

82.(1) Section 128B of the Principal Act as amended by this Act does not apply to an equipment royalty if:

- 25 (a) the royalty was paid or credited under a contract entered into before 8 p.m., by standard time in the Australian Capital Territory, on 18 August 1992; and
- (b) no variation of the contract occurred during the period:
- 30 (i) beginning at that time; and
- (ii) ending immediately before the royalty was paid or credited.

(2) In this section:

“equipment royalty” means:

- 35 (a) a royalty covered by paragraph (b) of the definition of “royalty” or “royalties” in subsection 6(1) of the Principal Act; or
- (b) a royalty covered by subparagraph (f)(i) of that definition, in so far as that subparagraph relates to paragraph (b) of that definition.

Division 18—Amendments relating to foreign income

Distribution benefits—CFCs

83. Section 47A of the Principal Act is amended:

- (a) by adding “and” at the end of paragraph (13)(b);
- (b) by inserting after paragraph (13)(b) the following paragraph: 5
 “(ba) if the eligible benefit consists of the acquisition of a share or unit—at that later time, the share or unit has not been redeemed or bought back by the recipient mentioned in subsection (8) for a consideration equal to or greater than the arm’s length value of the share or unit;” 10
- (c) by adding “and” at the end of paragraph (14)(c);
- (d) by inserting after paragraph (14)(c) the following paragraph: 15
 “(ca) if the second eligible benefit is covered by subsection (8) or (11):
 - (i) the second eligible benefit is provided on or after 13 September 1990; or
 - (ii) both:
 - (A) the second eligible benefit was provided before 13 September 1990; and 20
 - (B) the Commissioner is of the opinion that the provision of the second eligible benefit had, or would be likely to have, the effect of enabling any taxpayer to avoid tax;”;
- (e) by inserting in subsection (21) the following definition: 25
 “‘**arm’s length value**’, in relation to the redemption or buy-back of a share in a company or a unit in a unit trust, means the amount that the company or trustee could reasonably be expected to have been required to pay to obtain the redemption or buy-back of the share or unit under a transaction where the parties to the transaction are dealing with each other at arm’s length in relation to the transaction;” 30

Primary production losses of pre-1990 years of income

84. Section 80AA of the Principal Act is amended by inserting after subsection (5) the following subsections: 35

“(5A) The losses referred to in subsection (4) are not allowable as a deduction from assessable foreign income of a taxpayer except to the extent provided in an election under subsection (5B).

“(5B) A taxpayer who has derived assessable foreign income in a year of income may elect that the whole or a specified part of the losses referred to in subsection (5A) be allowable as a deduction from the taxpayer’s assessable foreign income of that year. 40

Division 2—Amendments relating to royalties

Withholding tax

89. Section 17A of the Principal Act is amended:

(a) by inserting in subsection (1) “or a royalty” after “dividend”
(wherever occurring). 5

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

“(4) If:

(a) a provision (“**basic royalty provision**”) of an agreement is covered by either of the following subparagraphs:

(i) paragraph 1 or 2 of Article 12 of the Chinese
agreement; 10

(ii) a corresponding provision of another agreement;
and

(b) another provision of the agreement expressly excludes
particular royalties (“**excluded royalties**”) from the scope
of the basic royalty provision; 15

section 128B of the Assessment Act (which deals with liability
for withholding tax) does not apply to the excluded royalties.”.

Application

90. The amendments made by this Division apply to withholding
tax that became payable before, or becomes payable on or after, the
date of commencement of this section. 20

**PART 4 —AMENDMENT OF THE INDUSTRY RESEARCH AND
DEVELOPMENT ACT 1986**

Division 1—Principal Act 25

Principal Act

91. In this Part, “**Principal Act**” means the *Industry Research and
Development Act 1986*³.

Division 2—Amendments relating to finance schemes

Interpretation 30

92. Section 4 of the Principal Act is amended by inserting in
subsection (1) the following definition:

“**‘finance scheme guidelines’** means guidelines made under section
39EA;”.

Functions of Board 35

93. Section 7 of the Principal Act is amended by inserting after
paragraph (a) the following paragraph:

“(aa) such functions as are conferred on it by the finance scheme
guidelines;”.

Duties of Chairperson

94. Section 11 of the Principal Act is amended by adding at the end the following subsection:

“(2) In this section:

5 ‘this Act’ includes finance scheme guidelines.”.

Guidelines for policies and practices of Board

95. Section 20 of the Principal Act is amended by adding at the end the following subsection:

“(6) In this section:

10 ‘this Act’ includes finance scheme guidelines.”.

Delegation by Board

96. Section 21 of the Principal Act is amended by adding at the end the following subsection:

“(8) In this section:

15 ‘this Act’ includes finance scheme guidelines.”.

Committees

97. Section 22 of the Principal Act is amended by adding at the end the following subsection:

“(9) In this section:

20 ‘this Act’ includes finance scheme guidelines.”.

Delegation by committee

98. Section 22A of the Principal Act is amended by adding at the end the following subsection:

“(6) In this section:

25 ‘this Act’ includes finance scheme guidelines.”.

Interpretation

99. Section 39A of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘finance’ includes debt finance and equity finance;

30 ‘finance scheme’, in relation to research and development activities carried on, or proposed to be carried on, by or on behalf of an eligible company, means a scheme entered into or carried out by any of the parties to the scheme for the purpose, or for purposes that include the purpose:

35 (a) of enabling the company, or an associate of the company, to obtain finance (whether by way of renewal or otherwise) in connection with those activities; or

(b) of enabling the company, or an associate of the company, to

obtain an extension of the period for which finance was obtained in connection with those activities under an earlier scheme;

'ineligible finance scheme' means a finance scheme that is taken to be an ineligible finance scheme under the finance scheme guidelines;

'scheme' means:

(a) an 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) a scheme, plan, proposal, action, course of action or course of conduct.”.

100. After section 39E of the Principal Act the following section is inserted:

Finance scheme guidelines

“39EA.(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines to enable eligible companies to ascertain whether finance schemes in relation to research and development activities carried on, or proposed to be carried on, by eligible companies will be taken to be ineligible finance schemes for the purposes of this Part.

“(2) The Board must cause the finance scheme guidelines to be:

(a) published in the *Gazette*; and

(b) made available on request, without charge, to any eligible company.

“(3) In making finance scheme guidelines about a particular kind of scheme, the matters to which the Board is to have regard include, but are not limited to:

(a) the manner in which the scheme was entered into or carried out; and

(b) the form and substance of the scheme; and

(c) matters relating to the research and development activities to which the scheme relates; and

(d) the likelihood that section 73CB of the *Income Tax Assessment Act 1936* will apply to expenditure incurred in connection with the research and development activities to which the scheme relates.

“(4) The finance scheme guidelines may confer functions and powers on the Board.

“(5) The first finance scheme guidelines may be expressed to apply to schemes entered into or carried out before the commencement of this section.

“(6) An instrument formulating finance scheme guidelines is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

5 101. After section 39M of the Principal Act the following section is inserted:

Certificate about ineligible finance schemes

“39MA.(1) If:

- 10 (a) expenditure has been incurred in connection with particular research and development activities by a company registered under section 39J or 39P; and
- (b) the Board is of the opinion that there was or is an ineligible finance scheme in relation to those research and development activities;

the Board may give a written certificate to the Commissioner:

- 15 (c) stating that it is of that opinion; and
- (d) specifying the research and development activities concerned; and
- (e) giving the reasons for its opinion.

20 “(2) The Board must not give a certificate under this section in relation to a company unless the Board has:

- (a) given a written notice to the company:
- 25 (i) stating that the Board is considering giving the certificate; and
- (ii) specifying the activities to which the certificate would relate; and
- (iii) informing the company of the reasons why it is considering giving the certificate; and
- (b) invited the company to make a written submission to the Board in relation to the matter within 90 days; and
- 30 (c) if such a submission is made within that period—had regard to the matters raised in the submission.”.

Joint registration

102. Section 39P of the Principal Act is amended by inserting after paragraph (3)(c) the following paragraph:

- 35 “(d) if there was or is a finance scheme in relation to the research and development activities—the finance scheme is not an ineligible finance scheme;”.

Internal review of decisions

40 103. Section 39S of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) This section also applies to a decision of the Board under the finance scheme guidelines.”.

Review of decisions by Administrative Appeals Tribunal

104. Section 39T of the Principal Act is amended by inserting in paragraph (1)(b) “or 39MA” after “39M”.

Statements to accompany notification of decisions

105. Section 39U of the Principal Act is amended by inserting in subsection (3) “or 39MA” after “39M”. 5

Application

[Definitions]

106.(1) In this section:

“advance eligibility ruling”, in relation to an application for the registration of a company or companies, means a statement issued by the Board to the effect that the Board is of the opinion that particular activities carried on, or proposed to be carried on, by or on behalf of the company or companies are research and development activities, where the statement is issued in connection with a proposal to make such an application; 10 15

“amended Act” means the Principal Act as amended by this Act;

“interim period” means the period:

- (a) commencing on 31 March 1992; and
- (b) ending at the end of 10 June 1992. 20

[Section 39MA]

(2) Section 39MA of the amended Act applies to expenditure incurred by a company registered under section 39J or 39P of the *Industry Research and Development Act 1986*, whether the registration was granted before, or is granted after, the commencement of this section, unless: 25

- (a) the registration was granted before the end of the interim period; or
- (b) the application for the registration was made during the interim period; or 30
- (c) an advance eligibility ruling in relation to the application for the registration was issued by the Board during the interim period; or
- (d) an application was made during the interim period for an advance eligibility ruling in relation to the application for the registration. 35

[Paragraph 39P(3)(d)]

(3) Paragraph 39P(3)(d) of the amended Act applies to an application (the “section 39P application”) made under subsection 39P(1) of the *Industry Research and Development Act 1986*, whether the application was made before, or is made after, the commencement of this section, unless: 40

- 5 (a) the section 39P application was granted before the end of the interim period; or
- (b) the section 39P application was made during the interim period; or
- 10 (c) an advance eligibility ruling in relation to the section 39P application was issued by the Board during the interim period; or
- (d) an application was made during the interim period for an advance eligibility ruling in relation to the section 39P application.

Division 3—Amendments relating to registration of companies under section 39P of the Principal Act

Joint registration

107. Section 39P of the Principal Act is amended:

- 15 (a) by inserting in subsection (3) “, in relation to the project, or in relation to a particular one or more of those projects,” after “opinion”;
- 20 (b) by adding at the end of subsection (3) “in relation to that project or in relation to that particular one or more of those projects, as the case requires”;
- (c) by inserting in subsection (3A) “in relation to the project or projects specified in the application” after “jointly”.

Application

25 108. The amendments made by this Division apply to applications made under subsection 39P(1) of the Principal Act after 15 October 1992.

Division 4—Amendments relating to the Register of Commercial Government Bodies

Interpretation

30 109. Section 39A of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘commercial government bodies guidelines’ means guidelines made under section 39HB;

‘eligible government body’ means:

- 35 (a) a government body within the meaning of section 73CB of the *Income Tax Assessment Act 1936*; or
- (b) an associate (within the meaning of that section) of such a government body;

40 ‘Register of Commercial Government Bodies’ means the Register of Commercial Government Bodies required by section 39HA;”.

110. After section 39H of the Principal Act the following sections are inserted:

Register of Commercial Government Bodies

[Register to be kept by Board]

“39HA.(1) The Board must keep a register, to be known as the Register of Commercial Government Bodies, listing such eligible government bodies as are required to be on the register because of this Part. 5

[Register to be open for inspection]

“(2) The Board must cause the Register of Commercial Government Bodies to be made available for inspection at any reasonable time by any person on request. 10

Commercial government bodies guidelines

[Board to make guidelines setting out criteria for entry on Register]

“39HB.(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines (**‘commercial government bodies guidelines’**) setting out criteria to be met by eligible government bodies wishing to be entered on the Register of Commercial Government Bodies. 15

[Guidelines to be published etc.]

“(2) The Board must cause the commercial government bodies guidelines to be: 20

- (a) published in the *Gazette*; and
- (b) made available, without charge, to any interested person.

[Matters to be taken into account in making guidelines]

“(3) In making commercial government bodies guidelines about a particular kind of eligible government body, the matters to which the Board is to have regard include, but are not limited to: 25

- (a) the commercial environment in which the eligible government body operates; and 30
- (b) whether there is a framework for the oversight of the operations, and the monitoring of the performance, of the eligible government body and, if so, the nature of that framework; and
- (c) the extent to which the eligible government body is: 35
 - (i) bound by regulatory laws of the Commonwealth, the States and the Territories; and
 - (ii) subject to taxation and charges under the laws of the Commonwealth, the States and the Territories; and
- (d) the extent of private sector equity investment (whether direct or indirect through one or more interposed companies, partnerships or trusts) in the eligible government body; and 40

- 5 (e) if the eligible government body is established by or under a law of the Commonwealth, a State or a Territory—the policies of the Commonwealth, the State or the Territory, as the case requires, regarding the issue of the extent to which the eligible government body should be treated as a fully commercial entity.

[Tax-exempt bodies ineligible for entry on Register]

- 10 “(4) The commercial government bodies guidelines must set out a criterion to the effect that an eligible government body will not be entered on the Register of Commercial Government Bodies with effect on a particular day if, assuming that the body had derived income on that day, that income would have been exempt from income tax because of a relevant exempting provision (within the meaning of section 160K of the *Income Tax Assessment Act 1936*).

[Guidelines to be disallowable]

- 15 “(5) An instrument formulating commercial government bodies guidelines is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Applications for entry on the Register of Commercial Government Bodies

- 20 “39HC.(1) An eligible government body may apply to the Board to be entered on the Register of Commercial Government Bodies.

“(2) The application must be:

- (a) in writing; and
(b) in a form approved by the Board; and
25 (c) accompanied by such information as the Board requires.

Board’s decision on application for entry on Register of Commercial Government Bodies

[Board’s decision on application]

- 30 “39HD.(1) After considering an application under section 39HC, the Board must decide to:

- (a) grant the application; or
(b) refuse the application.

[Board deemed to have refused application if no decision made within 90 days]

- 35 “(2) If the Board has not made a decision under subsection (1) before whichever time (**‘eligible time’**) is the later of the following times:
(a) the end of the period (**‘original 90-day period’**) of 90 days after the day on which the application was received by the Board;
40 (b) if the Board, by written notice given to the applicant within the original 90-day period, requests the applicant to give further

information about the application—the end of the period of 90 days after the Board receives the further information; then, at the eligible time, the Board is taken to have made a decision under subsection (1) to refuse the application.

[Notice of decision]

5

“(3) If the Board makes a decision under subsection (1) before the eligible time, the Board must give written notice of the decision to the applicant.

[Reasons for refusal to be given]

“(4) A notice under subsection (3) relating to a refusal must set out the reasons for the refusal.

10

[When entry takes effect]

“(5) If the Board decides to grant the application, the entry of the eligible government body takes effect on:

(a) the day on which the decision is made; or

15

(b) if the applicant requests—such earlier date as the Board specifies.

[Entry may take effect on a date earlier than commencement of this section]

“(6) The Board may specify a date under paragraph (5)(b) that is earlier than the commencement of this section.

20

[Back-dated entries—Register taken to have been in existence]

“(7) If the Board specifies such an earlier date, this Part and section 73CB of the *Income Tax Assessment Act 1936* have effect as if the Register of Commercial Government Bodies had been in existence on that date.

25

Grant of application for entry on Register of Commercial Government Bodies

“39HE. The Board must not grant an application under section 39HC unless the Board is satisfied that the applicant meets the criteria set out in the commercial government bodies guidelines.

30

Removal from Register of Commercial Government Bodies

[Removal of body which does not meet criteria set out in guidelines]

“39HF.(1) The Board must remove an eligible government body from the Register of Commercial Government Bodies if the Board is satisfied that the body does not meet the criteria set out in the commercial government bodies guidelines.

35

[Notification of proposed removal]

“(2) The Board must not remove an eligible government body from the Register of Commercial Government Bodies unless the Board has:

(a) given a written notice to the body:

40

- 5
- (i) stating that the Board is considering removing the body from the Register of Commercial Government Bodies; and
 - (ii) giving the reasons for considering the removal of the body; and
- (b) invited the body to make a written submission to the Board:
- (i) within 60 days of receiving the notice; and
 - (ii) about the proposed removal; and
- 10 (c) if such a submission is made within that period—had regard to the matters raised in the submission.

[When removal takes effect]

15 “(3) If the Board decides to remove the body from the Register of Commercial Government Bodies, the removal takes effect on the day on which the notice mentioned in paragraph (2)(a) was given to the body.

[Notification of removal]

“(4) If the Board decides to remove the body from the Register of Commercial Government Bodies, the Board must give written notice of the removal to the body.”.

20 **Review of decisions by Administrative Appeals Tribunal**

111. Section 39T of the Principal Act is amended by inserting in paragraph (1)(b) “39HD, 39HF,” before “39M”.

Statements to accompany notification of decisions

25 112. Section 39U of the Principal Act is amended by inserting in subsection (3) “39HD, 39HF,” before “39M”.

PART 5—AMENDMENT OF THE PETROLEUM RESOURCE RENT TAX ASSESSMENT ACT 1987

Principal Act

30 113. In this Part, “Principal Act” means the *Petroleum Resource Rent Tax Assessment Act 1987*⁴.

Transfer of entire entitlement to assessable receipts

114. Section 48 of the Principal Act is amended:

- 35
- (a) by inserting in subparagraph (a)(i) “(other than class 2 augmented bond rate exploration expenditure or class 2 GDP factor expenditure)” after “deductible expenditure” (first occurring);
 - (b) by inserting in subparagraph (a)(i) “such” before “deductible expenditure” (second occurring);

- (c) by inserting after subparagraph (a)(i) the following subparagraph and Note:

“(ia) to have incurred, in relation to the project, any expenditure that, if the financial year in which the transaction is or was entered into had ended immediately before the transfer time, would, within the meaning of the Schedule, have been included in the incurred exploration expenditure amount in relation to the vendor, the project and the financial year or a previous financial year; and

Note: this is expenditure on which class 2 augmented bond rate exploration expenditure and class 2 GDP factor expenditure are based.”;

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

“(2) Expenditure that the purchaser, or a purchaser, is taken to have incurred by subparagraph (1)(a)(ia) is taken to have been so incurred at the time when the vendor incurred it, or is taken to have incurred it.”.

Defined terms

- 115.** Clause 1 of the Schedule to the Principal Act is amended:

(a) by omitting “exploration expenditure that the person is taken by section 48” from subparagraphs (a)(ii) and (b)(ii) of the definition of “incurred exploration expenditure amount” and substituting “expenditure that the person is taken by subparagraph 48(1)(a)(ia)”;

- (b) by inserting the following definition:

“‘finishing day’ means:

(a) in relation to a petroleum project—the first day on which there is no longer in force any production licence in relation to the project; or

(b) in relation to an exploration permit or retention lease—the day on which the permit or lease ceases to be in force.”.

Matters dealt with in this Part

- 116.** Clause 6 of the Schedule to the Principal Act is amended by adding at the end the following subclause:

“(2) For the avoidance of doubt, the assessable year may be a financial year starting after the finishing day in relation to the petroleum project.”.

Matters dealt with in this Part

- 117.** Clause 10 of the Schedule to the Principal Act is amended by adding at the end the following subclause:

“(2) For the avoidance of doubt, the assessable year may be a financial year starting after the finishing day in relation to the petroleum project.”.

Matters dealt with in this Part

118. Clause 13 of the Schedule to the Principal Act is amended by inserting after subclause (1) the following subclause:

- 5 “(1A) For the avoidance of doubt, the assessable year may, subject to subclause (2), be a financial year starting after the finishing day in relation to the exploration permit or retention lease.”.

Rule—person must have held interests in relation to transferring entity and receiving project

119. Clause 22 of the Schedule to the Principal Act is amended:

- 10 (a) by inserting in subclause (1) “(2A),” after “(2),”;
(b) by inserting after subclause (2) the following subclause:

“(2A) Subclause (1) does not require the person to have held an interest in relation to the transferring entity at a time after the finishing day in relation to the transferring entity.”.

15 **Rule—loss company and profit company to have held interests and been group companies**

120. Clause 31 of the Schedule to the Principal Act is amended:

- (a) by inserting in subclause (1) “(2A),” after “(2),”;
(b) by inserting after subclause (2) the following subclause:

20 “(2A) Subclause (1) does not require the loss company to have held an interest in relation to the transferring entity at a time after the finishing day in relation to the transferring entity.”.

25 **PART 6—AMENDMENT OF THE TAXATION
ADMINISTRATION ACT 1953**

Division 1—Principal Act

Principal Act

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

30 ***Division 2—Amendment relating to methods of payment of tax liabilities etc.***

122. After section 16 of the Principal Act the following section is inserted:

Regulations may provide for methods of payment of tax liabilities etc.

35 “16A.(1) This section applies to a liability to or of the Commonwealth arising under, or by virtue of, any of the following laws:

- (a) this Act;

(b) any other Act of which the Commissioner has the general administration;

(c) regulations under an Act covered by paragraph (a) or (b).

“(2) The regulations may make provision for and in relation to the methods by which the amount of the liability may be paid. 5

“(3) Without limiting subsection (2), the regulations may make provision for and in relation to the making of payments using:

(a) collection agents; or

(b) electronic funds transfer systems; or

(c) credit cards; or 10

(d) debit cards.”.

Division 3—Amendments relating to taxation offences

123. After section 8H of the Principal Act the following section is inserted:

Court may order payment of amount in addition to penalty 15

“8HA.(1) If:

(a) a person (the ‘**convicted person**’) is convicted before a court of an offence against section 8C, 8D or 8H in relation to a refusal or failure to do a particular thing; and

(b) the court is satisfied that the purpose of, or one of the purposes of, the refusal or failure was to facilitate the avoidance of an amount of a tax liability of the convicted person or another person; 20

the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding: 25

(c) if the offence is an offence to which subsection 8E(2) or (3) applies—3 times that amount; or

(d) in any other case—2 times that amount.

“(2) A reference in this section to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.”. 30

Court may order payment of amount in addition to penalty

124. Section 8W of the Principal Act is amended by adding at the end the following subsection: 35

“(3) A reference in this section to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.”. 40

Prosecution of taxation offences

125. Section 8ZA of the Principal Act is amended by adding at the end the following subsections:

5 “(5) In spite of anything in the preceding provisions of this section, if:

(a) a person is convicted of 2 or more offences against section 8T or 8U, or both, before the same court at the same sitting; and

10 (b) assuming that the person had only been convicted of one of those offences, that offence would have been punishable on summary conviction;

all those offences are punishable on summary conviction.

15 “(6) A reference in subsection (5) to a conviction of a person for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

“(7) A reference in subsection (5) to an offence against section 8T or 8U includes a reference to an offence against section 7 of the *Crimes Act 1914* that relates to an offence against section 8T or 8U, as the case may be.”.

20 **Prosecution may be commenced at any time**

126. Section 8ZB of the Principal Act is amended by omitting from subsection (2) “21” and substituting “15B”.

PART 7—AMENDMENT OF THE SALES TAX ASSESSMENT ACT (NO. 5) 1930

25 **Principal Act**

127. In this Part, “**Principal Act**” means the *Sales Tax Assessment Act (No. 5) 1930*.

Interpretation

30 128. Section 2A of the Principal Act is amended by adding at the end the following subsection:

35 “(3) For the purposes of the application of this Act at any time after the commencement of any of the provisions (**‘the amending provisions’**) to which subsection 2(3) of the *Customs and Excise Legislation Amendment Act 1992* applies, this Act has effect as if references to provisions of, or things happening under, the Customs Act were references to corresponding provisions of, or corresponding things happening under, the Customs Act as amended by the amending provisions.”.

**PART 8—AMENDMENT OF THE SALES TAX (EXEMPTIONS
AND CLASSIFICATIONS) ACT 1935**

Principal Act

129. In this Part, “**Principal Act**” means the *Sales Tax (Exemptions and Classifications) Act 1935*. 5

First Schedule

130. The First Schedule to the Principal Act is amended by inserting in items 70A and 80 “, or delivery into,” before “home consumption”.

**PART 9—AMENDMENT OF THE SALES TAX ASSESSMENT
ACT 1992** 10

Principal Act

131. In this Part, “**Principal Act**” means the *Sales Tax Assessment Act 1992*.

Schedule 1

132. Schedule 1 to the Principal Act is amended by omitting LE1, LE2, LE3 and LE4 from Table 2 and substituting the following:

“

LE1	the goods are taken to have been entered for home consumption under subsection 71A(6) of the Customs Act	owner (within the meaning of the Customs Act) of the goods	when the goods are taken to have been entered for home consumption
LE2	the goods are taken to have been entered for home consumption under subsection 71A(7) of the Customs Act	owner (within the meaning of the Customs Act) of the goods	when the goods are taken to have been entered for home consumption
LE3	the goods are delivered into home consumption under section 69 of the Customs Act	person to whom permission to deliver the goods was granted under section 69 of the Customs Act	when the goods are delivered into home consumption
LE4	the goods are delivered into home consumption under section 70 of the Customs Act	person to whom permission to deliver the goods was granted under section 70 of the Customs Act	when the goods are delivered into home consumption
LE4A	the goods are delivered into home consumption under section 71 of the Customs Act	person authorised under section 71 of the Customs Act to deliver the goods	when the goods are delivered into home consumption

”

PART 10—AMENDMENT OF THE SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1992

Principal Act

133. In this Part, “Principal Act” means the *Sales Tax (Exemptions and Classifications) Act 1992*. 5

Schedule 1

134. Schedule 1 to the Principal Act is amended:

(a) by inserting after Item 161 of the Table of Contents the following Item:

“161A. Livestock food”;

10

(b) by inserting in Items 119 and 145 “, or delivery into,” before “home consumption”;

(c) by inserting after Item 161 the following Item:

“Item 161A: [Livestock food]

Goods of a kind ordinarily used as food for livestock.”.

15

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, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); Nos. 20, 35, 45, 57, 58, 60, 61, 87, 119 and 135, 1990; Nos. 4, 5, 6, 48, 55, 100, 203, 208 and 216, 1991; and Nos. 3, 35, 70, 80, 81, 92, 98 and 101, 1992.

Taxation Laws Amendment (No. 5) No. 224, 1992

NOTES—continued

2. No. 82, 1953, as amended. For previous amendments, see No. 25, 1958; No. 88, 1959; Nos. 19 and 29, 1960; No. 71, 1963; No. 112, 1964; No. 105, 1965; No. 17, 1966; Nos. 39 and 86, 1967; No. 3, 1968; No. 24, 1969; No. 48, 1972; Nos. 11 and 216, 1973; No. 129, 1974; No. 119, 1975; Nos. 52, 55 and 143, 1976; No. 134, 1977; No. 87, 1978; Nos. 23 and 127, 1980; Nos. 28, 110, 143 and 154, 1981; Nos. 51 and 57, 1983; Nos. 123 and 125, 1984; Nos. 168 and 173, 1985; Nos. 49, 51 and 112, 1986; No. 165, 1989; No. 121, 1990; Nos. 5, 96 and 214, 1991; and No. 35, 1992.
3. No. 89, 1986, as amended. For previous amendments, see No. 59, 1988; No. 167, 1989; No. 35, 1990; and No. 66, 1991.
4. No. 142, 1987, as amended. For previous amendments, see No. 97, 1988; No. 60, 1990; Nos. 80 and 216, 1991; and Nos. 92 and 118, 1992.
5. 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, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); Nos. 95 and 97, 1988; Nos. 97, 105, 107, 124, 163 and 167, 1989; Nos. 20, 60, 61, 110, 119 and 136, 1990; Nos. 5, 6, 48, 100, 122 and 216, 1991; and Nos. 47, 92, 98 and 101, 1992.

*[Minister's second reading speech made in—
House of Representatives on 15 October 1992
Senate on 9 November 1992]*