Taxation Laws Amendment Act (No. 3) 1994

No. 138 of 1994

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TABLE OF PROVISIONS—*continued*

Taxation Laws Amendment Act (No. 3) 1994

No. 138 of 1994

An Act to amend the law relating to taxation

[*Assented to 28 November 1994*]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Taxation Laws Amendment Act (No. 3) 1994*.

Commencement

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

(2) Division 1, and Subdivisions B, D, E, G, J, K, L and M of Division 3, of Part 2 are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.

(3) Subdivision A of Division 12 of Part 2 commences immediately after Subdivision B of that Division.

(4) Division 1 of Part 4 (other than section 123) is taken to have commenced on 1 July 1994.

(5) Division 3 of Part 4, section 162 and paragraph 163(a) are taken to have commenced on 30 June 1994.

PART 2—AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

Division 1—Principal Act

Principal Act

3. In this Part, **"Principal Act"** means the *Income Tax Assessment Act 1936*[1].

Division 2—Amendments to introduce a reportable payments system (RPS)

Subdivision A—Object

Object

4. The object of this Division is to introduce a tax file number-based reporting system for certain payments.

Subdivision B—Insertion of RPS provisions

Insertion of new Division

5. After Division 1 of Part VI of the Principal Act the following Division is inserted:

"***Division 1AA—Reportable payments system (RPS)***

"***Subdivision A—Object and outline***

Object

"220AA. The object of this Division is to facilitate the efficient collection of tax by:

(a) providing for payers of certain payments (**'reportable payments'**) to make deductions from those payments if the payee's tax file number is not quoted; and

(b) requiring payers of reportable payments to give reports to the Commissioner about those payments.

Outline

"220AB. The following table sets out an outline of this Division:

Topic	Provision(s)
Reportable payments	
— definition	section 220AC
Deductions by payer from reportable payments	
— obligation to deduct	section 220AF
— obligation to send deductions to Commissioner	section 220AG
— receipts	section 220AH
— exemption for pensioners	section 220AP
— refunds	section 220AR
— civil penalties for breach of deduction rules	sections 220AS to 220AW
— civil protection for payers	section 220AX
— recovery by Commissioner	section 220AY
— tax credits	sections 220AZ to 220AZC
Reports by payer to Commissioner	
— statements accompanying deductions	section 220AI
— annual reports	section 220AJ
— retention requirements	section 220AK
Quotation of tax file number by payee	
— method	section 220AL
— tax file number declarations	sections 220AM to 220AO
— payer to send declaration forms to Commissioner	section 220AQ
Pensioners	
— exemption	section 220AP
— payer to send declaration forms to Commissioner	section 220AQ

"***Subdivision B—Interpretation***

Interpretation

"220AC. In this Division:

'arrangement' means any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings;

Note: This definition is only used in section 220AQ.

'exempt inter-corporate payment' means a payment made by a company (other than in the capacity of trustee) to another company (other than in the capacity of trustee) where, at the time of the payment:

(a) one of those companies is a subsidiary of the other company; or

(b) each of those companies is a subsidiary of a third company;

Note: This definition is only used in paragraph (e) of the definition of 'reportable payment'.

'government body' means the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory;

'payee' means a person who receives, or is entitled to receive, a reportable payment;

'payer' means a person who makes, or has made, a reportable payment;

'payment' has a meaning affected by section 220AD;

'pensioner exemption declaration' has the meaning given by section 220AP;

'pensioner exemption declaration form' has the meaning given by section 220AP;

'person' means any of the following:

(a) a company;

(b) a partnership;

(c) a person in a particular capacity of trustee;

(d) a government body;

(e) any other person;

Note 1: Section 220AZF sets out additional rules about partnerships.

Note 2: Section 220AZG sets out additional rules about unincorporated companies.

'reportable payment' means a payment that:

(a) is declared by the regulations to be a reportable payment for the purposes of this Division; and

(b) is assessable income; and

(c) is not a payment of salary or wages within the meaning of section 221A; and

(d) is not a prescribed payment within the meaning of section 221YHA; and

(e) is not an exempt inter-corporate payment;

Note: 'Exempt inter-corporate payment' is defined by this section.

'signed' has the meaning given by section 220AE;

'subsidiary' has the same meaning as in section 221ED;

Note: This definition is only used in paragraphs (a) and (b) of the definition of 'exempt inter-corporate payment'.

'tax file number' has the meaning given by section 202A;

'tax file number declaration' has the meaning given by section 220AM;

'tax file number declaration form' has the meaning given by section 220AM.

Money not actually paid to a person

"220AD. For the purposes of this Division, if money is not actually paid to a person but is reinvested, accumulated, capitalised or otherwise dealt with on behalf of the person, or as the person directs, the money is taken to be paid to the person when it is so reinvested, accumulated, capitalised or otherwise dealt with.

Signing of documents

Natural persons

"220AE.(1) For the purposes of this Division, a natural person is taken to have signed a document if, and only if, the document is signed by:

(a) the person; or

(b) a person declared by the regulations to be a signatory for the purposes of this subsection.

Persons other than natural persons

"(2) For the purposes of this Division, a person other than a natural person is taken to have signed a document if, and only if, the document is signed by a person declared by the regulations to be a signatory for the purposes of this subsection.

"Subdivision C—Payer of reportable payment must make deduction if payee's tax file number not quoted

Deduction from reportable payment if payee's tax file number not quoted

When section applies

"220AF.(1) This section applies if:

(a) a payer makes a reportable payment to a payee; and

(b) the payee has not quoted his or her tax file number to the payer in connection with the payment; and

(c) the payment is made on or after 1 December 1994.

Note 1: See section 220AL for the method of quoting tax file numbers.

Note 2: The making of a pensioner exemption declaration is an alternative to quotation of a tax file number—see section 220AP.

Deduction

"(2) The payer must deduct:

(a) 48.4% of the payment; or

(b) if another percentage is specified in regulations made for the purposes of this subsection—that percentage of the payment.

If working out the relevant percentage results in an amount of dollars and cents, the cents are to be disregarded.

Offence

"(3) A person (other than a government body) who contravenes this section is guilty of an offence punishable on conviction by a maximum fine of 10 penalty units.

Note: See section 220AS for an alternative civil penalty for contravening this section.

Deductions to be sent to the Commissioner

Deductions to be sent

"220AG.(1) A payer who makes one or more reportable payments in a month must send together to the Commissioner all amounts deducted under this Subdivision from the payments. The amounts must be sent in sufficient time for them to be received by the Commissioner in the ordinary course of events within:

(a) 14 days after the end of the month; or

(b) such longer period as the Commissioner allows.

Offence

"(2) A person (other than a government body) who contravenes this section is guilty of an offence punishable on conviction by imprisonment for a maximum period of 12 months. In addition, the court may order the person to pay to the Commissioner, as a penalty, an amount not greater than the total of the amounts required to be deducted under this Subdivision from the reportable payments to which the contravention relates.

Note: See section 220AT for an alternative civil penalty for contravening this section.

"***Subdivision D—Payers' reporting and record-keeping obligations***

Obligation to issue receipt for deduction

When section applies

"220AH.(1) This section applies if a payer deducts an amount under this Division from a reportable payment.

Receipt to be given

"(2) The payer must give the payee, at the time of the payment or as soon as practicable afterwards, a written receipt, invoice or similar document setting out:

(a) the payer's name and address; and
(b) the payee's name (if known to the payer); and
(c) the payee's address (if known to the payer); and
(d) the date on which the payment was made; and
(e) the amount of the payment; and
(f) the amount deducted.

Receipt to be in English and signed

"(3) A document given by a payer under subsection (2) must be:
(a) in the English language; and
(b) signed by the payer.

Penalty: 1 penalty unit.

Deductions sent to Commissioner to be accompanied by a statement

When section applies

"220AI.(1) This section applies if a payer sends an amount to the Commissioner under section 220AG.

Statement to be completed and sent to Commissioner

"(2) The payer must:
(a) before sending the amount, complete and sign a statement giving information in relation to the deductions concerned; and
(b) make a copy of the statement; and
(c) send the statement to the Commissioner with the amount.

Note: Section 220AK deals with retention of the copies.

Form of statement

"(3) The statement must be in a form approved by the Commissioner.

Penalty: 20 penalty units.

Annual report

Requirements for annual report

"220AJ.(1) A payer who makes one or more reportable payments during a financial year must:
(a) send to the Commissioner a written report setting out, in respect of each payee:
(i) the payee's tax file number (if quoted to the payer); and
(ii) if the payee's tax file number was not quoted to the payer but the payee made a pensioner exemption declaration to the payer:
(A) a statement to that effect; and
(B) the type of pension or benefit specified in the pensioner exemption declaration form concerned; and

(iii) the payee's name (if known to the payer); and

(iv) the payee's address (if known to the payer); and

(v) the total amount of the reportable payments made by the payer to the payee during the financial year; and

(vi) the total amount (if any) deducted by the payer under this Division from those payments; and

(b) make a copy of the report.

Note: Section 220AK deals with retention of the copies.

Time limit

"(2) A report under subsection (1) relating to a financial year must be given to the Commissioner within 2 months after the end of that financial year or before such later date as the Commissioner allows.

Form of report

"(3) The report must be in a form approved by the Commissioner.

Section not to apply to pre-1 December 1994 payments

"(4) This section does not apply to a reportable payment made before 1 December 1994.

Penalty: 20 penalty units.

Retention of statement and annual report

Retention of statement

"220AK.(1) A person who makes a copy of a statement under paragraph 220AI(2)(b) in relation to a particular month must retain the copy for at least 5 years after the end of the financial year in which that month occurred.

Retention of annual report

"(2) A person who makes a copy of a report under paragraph 220AJ(1)(b) in relation to a financial year must retain the copy for at least 5 years after the end of the financial year.

Penalty: 20 penalty units.

"Subdivision E—How payees can quote their tax file numbers

Method of quoting tax file number

"220AL. A payee is taken to have quoted his or her tax file number to a payer in connection with a reportable payment if a tax file number declaration made to the payer by the payee is in force when the payment is made.

Note: See subsection 220AM(2) for the definition of 'making a tax file number declaration'.

Meaning of "tax file number declaration"

Tax file number declaration form

"220AM.(1) A **'tax file number declaration form'** is a document, in a form approved by the Commissioner for the purposes of this section, that (in addition to anything else that it requires or permits) enables the person completing the form to state his or her tax file number.

Making a tax file number declaration

"(2) If a person (the **'first person'**) completes the form and gives it to another person, the first person is said to make a **'tax file number declaration'** to the other person at the time when the form is given.

Note: The first person would normally be a payee and the other person would normally be a payer.

When tax file number declaration in force

When declaration in force

"220AN.(1) A tax file number declaration made by a person (the **'first person'**) to another person (the **'second person'**) is in force at all times after it is made until any of the following happens:

(a) 29 days pass after the declaration is made without an obligation being imposed on the second person under section 220AQ in relation to the tax file number declaration form concerned;

(b) one year passes after the second person makes a reportable payment to the first person (being a payment made when the declaration is in force) without the first person again becoming entitled to receive a reportable payment from the second person;

(c) the first person makes another tax file number declaration to the second person;

(d) the Commissioner, by notice in the *Gazette*, determines that:

(i) all tax file number declarations cease to be in force; or

(ii) a specified class of tax file number declarations that includes the particular tax file number declaration ceases to be in force;

(e) the declaration ceases to be in force because of subsection (2).

Note: The first person would normally be a payee and the second person would normally be a payer.

Cancellation—no tax file number

"(2) A tax file number declaration ceases to be in force if:

(a) the Commissioner is satisfied that the tax file number stated in the declaration form:

(i) has been cancelled since the form was given; or

(ii) is for any other reason not the first person's tax file number; and

(b) the Commissioner is not satisfied that the first person has a tax file number; and

(c) the Commissioner, by written notice given to the second person and the first person:

(i) informs them accordingly; and

(ii) states that the declaration ceases to be in force on a specified day (which must not be earlier than the day on which the notice is given to the first person).

In such a case, the declaration ceases to be in force on the day specified in the notices.

Notification of decisions

"(3) If the Commissioner gives the first person a notice under subsection (2), the Commissioner must, together with the notice, give the first person a written statement of the reasons for the decision to give the notice.

Commissioner may correct tax file number set out in tax file number declaration form

"220AO.(1) If:

(a) the Commissioner is satisfied that the tax file number stated in a tax file number declaration form:

(i) has been cancelled or withdrawn since the form was given; or

(ii) is otherwise wrong; and

(b) the Commissioner is satisfied that the person who gave the form (the **'first person'**) has a tax file number;

the Commissioner may give the person to whom the declaration was made (the **'second person'**) written notice of the incorrect statement and of the correct tax file number.

Note: The first person would normally be a payee and the second person would normally be a payer.

"(2) If the Commissioner does so, the second person must, in any document under this Division requiring the first person's tax file number that the second person completes after that time (before another tax file number declaration is made by the first person to the second person), state that correct tax file number.

"Subdivision F—Making of pensioner exemption declaration to be alternative to quotation of tax file number

Making of pensioner exemption declaration to be alternative to quotation of tax file number

Pensions and benefits to which this section applies

"220AP.(1) This section applies to the following pensions and benefits:

(a) an age pension under Part 2.2 of the *Social Security Act 1991*;
(b) a disability support pension under Part 2.3 of that Act;
(c) a wife pension under Part 2.4 of that Act;
(d) a carer pension under Part 2.5 of that Act;
(e) a sole parent pension under Part 2.6 of that Act;
(f) a widow B pension under Part 2.8 of that Act;
(g) a special benefit under Part 2.15 of that Act;
(h) a special needs pension under Part 2.16 of that Act;
(i) a pension under Part III of the *Veterans' Entitlements Act 1986*.

Making of pensioner exemption declaration

"(2) For the purposes of this Division, a payee is taken to have quoted his or her tax file number to a payer in connection with a reportable payment if a pensioner exemption declaration made to the payer by the payee is in force when the payment is made. However, this rule does not apply for the purposes of section 220AJ (which deals with annual reports by payers).

Note: See subsection (4) for the definition of 'making a pensioner exemption declaration'.

Pensioner exemption declaration form

"(3) A **'pensioner exemption declaration form'** is a document, in a form approved by the Commissioner for the purposes of this section, that (in addition to anything else that it requires or permits) enables the person completing the form to state that he or she is being paid a pension or benefit.

Making a pensioner exemption declaration

"(4) If a person (the **'first person'**) completes the form and gives it to another person, the first person is said to make a **'pensioner exemption declaration'** to the other person at the time when the form is given.

Note: The first person would normally be a payee and the other person would normally be a payer.

When declaration in force

"(5) A pensioner exemption declaration made by a person (the **'first person'**) to another person (the **'second person'**) is in force at all times after it is made until any of the following happens:

(a) 29 days pass after the declaration is made without an obligation being imposed on the second person under section 220AQ in relation to the pensioner exemption declaration form concerned;
(b) one year passes after the second person makes a reportable payment to the first person (being a payment made when the declaration is in force) without the first person again becoming entitled to receive a reportable payment from the second person;

(c) the first person makes another pensioner exemption declaration to the second person;

(d) the Commissioner, by notice in the *Gazette*, determines that:

(i) all pensioner exemption declarations cease to be in force; or

(ii) a specified class of pensioner exemption declarations that includes the particular pensioner exemption declaration ceases to be in force;

(e) the first person makes a tax file number declaration to the second person;

(f) the first person ceases to be paid a pension or benefit.

Note: The first person would normally be a payee and the second person would normally be a payer.

Commissioner may tell payers and payees about cessation of pension/benefit

"(6) If a pensioner exemption declaration made by a person (the **'first person'**) to another person (the **'second person'**) ceases to be in force because of paragraph (5)(f), the Commissioner may tell the first person and the second person that the declaration has so ceased to be in force. The Commissioner may also explain the reasons for the cessation and the effect of the cessation.

Note: The first person would normally be a payee and the second person would normally be a payer.

Payees to tell payers about cessation of entitlement to pension/benefit

"(7) If a pensioner exemption declaration made by a person (the **'first person'**) to another person (the **'second person'**) ceases to be in force because of paragraph (5)(f), the first person must tell the second person, in writing, about the cessation as soon as practicable after the cessation occurs.

Penalty for contravention of this subsection: 1 penalty unit.

Note: The first person would normally be a payee and the second person would normally be a payer.

"***Subdivision G—Payer to send tax file number declaration form or pensioner exemption declaration form to Commissioner***

Obligations of payer—tax file number declaration form or pensioner exemption declaration form

Form to be sent to Commissioner—prior dealings with payee

"220AQ.(1) If:

(a) a tax file number declaration form or pensioner exemption declaration form is given by a person (the **'first person'**) to another person (the **'second person'**); and

(b) at any time during the period of 12 months ending at the time of receipt by the second person of the form, there was in existence an arrangement that gave rise, or was capable of giving rise, to the making of a reportable payment by the second person to the first person (whether on fulfilment of a condition or otherwise);

the second person must:

(c) complete the part of the form required to be completed by the second person; and

(d) sign the form; and

(e) make a copy of the form; and

(f) send the form to the Commissioner in sufficient time for it to be received by the Commissioner in the ordinary course of events within:

(i) 14 days after receipt by the second person of the form; or

(ii) such longer period as the Commissioner allows.

Note 1: The first person would normally be a payee and the second person would normally be a payer.

Note 2: Section 220AC defines 'arrangement'.

Form to be sent to Commissioner—no prior dealings with payee

"(2) If:

(a) a tax file number declaration form or pensioner exemption declaration form is given by a person (the **'first person'**) to another person (the **'second person'**); and

(b) at no time during the period of 12 months ending at the time of receipt by the second person of the form was there in existence an arrangement that gave rise, or was capable of giving rise, to the making of a reportable payment by the second person to the first person (whether on fulfilment of a condition or otherwise); and

(c) during the period of 28 days after the receipt by the second person of the form, the second person made one or more reportable payments to the first person;

the second person must:

(d) complete the part of the form required to be completed by the second person; and

(e) sign the form; and

(f) make a copy of the form; and

(g) send the form to the Commissioner in sufficient time for it to be received by the Commissioner in the ordinary course of events within:

(i) 14 days after the earliest time when any of the payments mentioned in paragraph (c) were made; or

(ii) such longer period as the Commissioner allows.

Note: Section 220AC defines 'arrangement'.

Retention of copy of form

"(3) A person who makes a copy of a form under paragraph (1)(e) or (2)(f) must retain that copy until the second 1 July after the day on which the declaration concerned ceases to be in force.

Penalty: 10 penalty units.

"***Subdivision H—Refund of deductions in special circumstances***

Commissioner may refund deductions

When section applies

"220AR.(1) This section applies if a deduction was made under this Division from a reportable payment to a person.

Application for refund

"(2) The person may apply for a refund of the whole or a part of the deduction.

Application to be in writing

"(3) The application is to be in writing and must be given to the Commissioner.

Criteria for granting application

"(4) The Commissioner must grant the application if the Commissioner is satisfied that:

(a) there are special circumstances that warrant granting the application; and

(b) it would be fair and reasonable to grant the application having regard to:

(i) the purposes of this Division; and

(ii) the nature of the act or omission that resulted in the deduction being made; and

(iii) such other matters (if any) as the Commissioner thinks fit.

No credit for refunded amounts

"(5) A person is not entitled to a credit under this Division in respect of an amount refunded under this section.

"***Subdivision I—Civil penalties for failure to make deductions from reportable payments and for failure to send deductions to the Commissioner***

Penalty for failure to make deductions from reportable payments

When section applies

"220AS.(1) This section applies if a person refuses or fails, at the time of making a reportable payment to a payee, to deduct from the payment the amount required to be deducted under this Division.

Persons other than government bodies

"(2) If the person is not a government body, the person is liable to pay to the Commissioner, by way of penalty:

(a) an amount (the **'undeducted amount'**) equal to the amount that the person refused or failed to deduct; and

(b) an amount at the rate of 16% per annum of so much of the undeducted amount as remains unpaid (this amount is computed from the end of the period within which the person would have been required to pay the amount of the deduction to the Commissioner if it were assumed that the person had deducted the amount required to be deducted under this Division).

Government bodies

"(3) If the person is a government body other than the Commonwealth, the person is liable to pay to the Commissioner, by way of penalty, an amount at the rate of 16% per annum of the amount that the person refused or failed to deduct. This penalty is payable in respect of the period:

(a) beginning at the time when the reportable payment was made; and

(b) ending on 30 June in the financial year in which the reportable payment was made.

Penalty for failure to send deductions to Commissioner

When section applies

"220AT.(1) This section applies if an amount (the **'principal amount'**) payable to the Commissioner under section 220AG by a person remains unpaid after the end of the period within which it is required to be paid.

Principal amount continues to be payable

"(2) The principal amount continues to be payable by the person to the Commissioner.

Persons other than government bodies

"(3) If the person is not a government body, the person is liable to pay to the Commissioner, by way of penalty:

(a) an amount (the **'relevant penalty amount'**) equal to 20% of the principal amount; and

(b) an amount at the rate of 16% per annum of the sum of:

(i) so much of the principal amount as remains unpaid; and

(ii) so much of the relevant penalty amount as remains unpaid;

computed from the end of that period.

Government bodies

"(4) If the person is a government body other than the Commonwealth, the person is liable to pay to the Commissioner, by way of penalty, an amount at the rate of 16% per annum on so much of the principal amount as remains unpaid, computed from the end of that period.

Commissioner may remit penalties for failure to deduct or for failure to send deductions to Commissioner

When section applies

"220AU.(1) This section applies to a penalty payable by a person under section 220AS or 220AT.

Power to remit

"(2) The Commissioner may remit the whole or a part of the penalty.

Criteria for remission—interest-based penalties

"(3) If the penalty is payable by a person under paragraph 220AS(2)(b), 220AT(3)(b) or subsection 220AT(4) in relation to another amount that has not been paid (the **'principal amount'**), the Commissioner may only remit the whole or a part of the penalty if:

(a) the Commissioner is satisfied that:

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

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

(b) the Commissioner is satisfied that:

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

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

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

(c) the Commissioner is satisfied that there are special circumstances because of which it would be fair and reasonable to remit the penalty or the part of the penalty.

Notification of decisions

"(4) If the Commissioner makes a decision:

(a) to remit part only of a penalty payable under paragraph 220AS(2)(a), subsection 220AS(3) or paragraph 220AT(3)(a); or

(b) not to remit any part of such a penalty;

the Commissioner must give written notice of the decision to the person liable to pay the penalty.

Reduction of late payment penalty where judgment debt carries interest

Principal amount

"220AV.(1) For the purposes of this section, each of the following amounts is a **'principal amount'**:

(a) an amount of the kind referred to in paragraph 220AS(2)(a) as the undeducted amount;

(b) an amount of the kind referred to in subsection 220AT(1) as the principal amount;

(c) an amount of the kind referred to in paragraph 220AT(3)(a) as the relevant penalty amount.

When section applies

"(2) This section applies if judgment is given by, or entered in, a court for the payment of:

(a) the whole or a part of a principal amount; or

(b) an amount that includes the whole or a part of a principal amount.

Principal amount still due and payable

"(3) A person's liability to a penalty (the **'interest-based penalty'**) under paragraph 220AS(2)(b), 220AT(3)(b) or subsection 220AT(4) is to be worked out on the basis that the principal amount or the part of the principal amount, as the case may be, does not cease to be due and payable only because of the giving or entering of the judgment.

Reduction of interest-based penalties

"(4) If the judgment debt carries interest, the interest-based penalty that would otherwise be payable in relation to the principal amount or the part of the principal amount, as the case may be, is to be reduced by the amount worked out using the formula:

$$\textbf{Interest} \times \frac{\textbf{Whole or part of principal amount}}{\textbf{Judgment debt}}$$

where:

'Interest' means the amount of the interest;

'Whole or part of principal amount' means the principal amount, or the part of the principal amount, as the case may be;

'Judgment debt' means the amount of the judgment debt.

Civil penalties to be alternative to prosecution for certain offences

"220AW.(1) If:

(a) apart from this subsection, an amount is payable, by way of penalty, by a person to the Commissioner under this Division because of an act or omission of the person; and

(b) a prosecution is instituted against the person for an offence against this Division constituted by the act or omission;

the amount is not payable unless and until the prosecution is withdrawn.

"(2) If:

(a) a person is liable to pay, by way of penalty, an amount (the **'penalty amount'**) to the Commissioner under this Division because of an act or omission of the person; and

(b) an amount (the **'paid amount'**) is paid, or applied by the Commissioner, in total or partial discharge of the liability; and

(c) a prosecution is instituted against the person for an offence against this Division constituted by the act or omission;

then:

(d) the paid amount is to be refunded to the person or applied by the Commissioner in total or partial discharge of a tax liability of the person (within the meaning of section 2 of the *Taxation Administration Act 1953*); and

(e) if the prosecution is withdrawn, the person again becomes liable to pay the penalty amount.

"***Subdivision J—Payers to have civil protection for making deductions***

Payers to have civil protection for making deductions

"220AX. A person is discharged from all liability to pay, or account for, a deduction to any person other than the Commissioner if:

(a) the person makes the deduction from a reportable payment; and

(b) the deduction was made, or purports to have been made, for the purposes of section 220AF.

"***Subdivision K—Recovery of amounts payable under this Division***

Recovery of amounts by Commissioner

Recoverable amount

"220AY.(1) In this section:

'recoverable amount' means any of the following amounts:

(a) an amount payable to the Commissioner under this Division by a person other than the Commonwealth;

(b) the unpaid amount of an estimate under section 222AGA that relates to a liability under this Division;

(c) a penalty payable under Subdivision E of Division 8 in relation to such an estimate;

(d) an amount that is due and payable under an agreement under section 222ALA that relates to:

(i) a liability under this Division; or

(ii) a liability to pay an estimate relating to a liability under this Division;

even if the agreement also relates to a liability that is not of a kind referred to in subparagraph (i) or (ii);

(e) a penalty payable under Subdivision B of Division 9 in relation to a company's liability under this Division;

(f) a penalty payable under Subdivision C of Division 9 in relation to an estimate relating to a company's liability under this Division;

(g) a penalty payable under Subdivision D of Division 9 in relation to a company's liability to pay an amount of the kind mentioned in paragraph (d).

Debt

"(2) A recoverable amount is a debt due to the Commonwealth.

Payable to Commissioner

"(3) A recoverable amount is payable to the Commissioner.

Recovery in court

"(4) A recoverable amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.

Criminal proceedings—ancillary order for payment

"(5) If proceedings for an offence against this Division are brought against the person by whom a recoverable amount is payable, the court before which the proceedings are brought may order the person to pay the amount to the Commissioner.

Averments

"(6) The provisions of section 8ZL of the *Taxation Administration Act 1953* (which deals with averments) apply in proceedings for the recovery of a recoverable amount in a corresponding way to the way in which they apply in relation to a prosecution for a prescribed taxation offence within the meaning of Part III of that Act.

Evidentiary certificate

"(7) In an action for the recovery of a recoverable amount, a written certificate stating that the sum specified in the certificate was, as at the date of the certificate, due by a specified person to the Commonwealth in respect of a recoverable amount is *prima facie* evidence of the matters stated in the certificate. The certificate must be signed by the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner.

Multiple amounts owing

"(8) If:

(a) 2 or more recoverable amounts are payable by a person; and

(b) an amount (the **'eligible payment'**) is paid to the Commissioner in respect of one or more of those recoverable amounts; and

(c) the sum of the recoverable amounts payable exceeds the eligible payment;

the Commissioner may:

(d) apply the eligible payment in partial discharge of the sum of the recoverable amounts payable; and

(e) recover as a debt due to the Commonwealth the amount by which the sum of the recoverable amounts payable exceeds the eligible payment.

The Commissioner may do those things in spite of any direction to the contrary by or on behalf of the person by whom the recoverable amounts are payable or the person making the eligible payment.

Application of Divisions 8 and 9

"(9) If the Commissioner applies or recovers an amount under subsection (8), the Commissioner may make a written determination about how the amount is to be taken, for the purposes of Divisions 8 and 9, to have been applied towards discharging any one or more of the recoverable amounts referred to in paragraph (8)(a). A determination has effect accordingly.

Effect of certain declarations and affidavits under Division 8

"(10) In making a statement (whether orally or in writing and whether or not under oath) for a purpose connected with proceedings to recover a recoverable amount from a person (the **'debtor'**), the maker of the statement (who may be the debtor) may, in so far as the statement relates to a question about whether the debtor has a defence, ignore the possibility that a statutory declaration relating to an estimate may be given to the Commissioner, or an affidavit relating to an estimate may be filed, under Subdivision B, C or D of Division 8.

Interpretation

"(11) An expression used in paragraphs (1)(b) to (g) has the same meaning as in Division 8.

"***Subdivision L—Tax credits for deductions from reportable payments***

Entitlement to credit—payee neither a partnership nor a trustee

"220AZ. If:

(a) any deductions have been made under this Division from reportable payments made in a year of income to a person (other than a partnership or the trustee of a trust estate); and

(b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the person in relation to the year of income;

the person is entitled to a credit of an amount equal to the deductions.

Entitlement to credit—payee a partnership

"220AZA. If:

(a) any deductions have been made under this Division from reportable payments made in a year of income to a partnership; and

(b) the return of income of the partnership for the year of income has been lodged with the Commissioner; and

(c) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, in relation to the year of income by a partner in the partnership whose individual interest in the net income or partnership loss of the partnership is wholly or partly attributable to the reportable payments;

the partner is entitled to a credit worked out using the formula:

$$\textbf{Deductions} \times \frac{\textbf{Individual interest}}{\textbf{Net income/partnership loss}}$$

where:

'Deductions' means the sum of the deductions;

'Individual interest' means so much of the individual interest as is attributable to the reportable payments;

'Net income/partnership loss' means so much of the net income or partnership loss as is attributable to the reportable payments.

Entitlement to credit—payee a trustee

When section applies

"220AZB.(1) This section applies if any deductions are made under this Division from reportable payments made during a year of income to a trustee of a trust estate.

Trusts—section 97

"(2) If:

(a) a share of the net income of the trust estate is included in the assessable income of a beneficiary in the trust estate under section 97, being a share that is wholly or partly attributable to the reportable payments; and

(b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the beneficiary in relation to the year of income;

the beneficiary is entitled to a credit equal to the amount worked out using the formula:

$$\textbf{Deductions} \times \frac{\textbf{Share of net income}}{\textbf{Net income}}$$

where:

'Deductions' means the sum of the deductions;

'Share of net income' means so much of the share of the net income of the trust estate as is attributable to the reportable payments;

'Net income' means so much of the net income of the trust estate as is attributable to the reportable payments.

Trusts—section 98

"(3) If:

(a) the trustee is liable to be assessed under section 98 in respect of a share of the net income of the trust estate to which a beneficiary is presently entitled, being a share that is wholly or partly attributable to the reportable payments; and

(b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the trustee in respect of that share;

the trustee is entitled to a credit equal to the amount worked out using the formula:

$$\textbf{Deductions} \times \frac{\textbf{Share of net income}}{\textbf{Net income}}$$

where:

'Deductions' means the sum of the deductions;

'Share of net income' means so much of the share of the net income of the trust estate as is attributable to the reportable payments;

'Net income' means so much of the net income of the trust estate as is attributable to the reportable payments.

Trusts—section 99 or 99A

"(4) If:

(a) the trustee is liable to be assessed under section 99 or 99A in respect of the net income, or a part of the net income, of the trust estate and that net income or part is wholly or partly attributable to the reportable payments; and

(b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the trustee under those sections in respect of that net income or part;

the trustee is entitled to a credit equal to the amount worked out using the formula:

$$\textbf{Deductions} \times \frac{\textbf{Part of net income}}{\textbf{Net income}}$$

where:

'Deductions' means the sum of the deductions;

'Part of net income' means so much of the net income or part of the net income in respect of which the trustee is so liable to be assessed as is attributable to the reportable payments;

'Net income' means so much of the net income of the trust estate as is attributable to the reportable payments.

Trusts—no net income

"(5) If there is no net income of the trust estate of the year of income, the trustee is entitled to a credit equal to the sum of the deductions.

Application of credits

Credit is a debt owing by the Commonwealth

"220AZC.(1) Subject to this section, the amount of the credit to which a person is entitled under this Division is a debt due and payable to that person by the Commissioner on behalf of the Commonwealth.

Application of credit—cases not involving a trustee assessed to tax

"(2) If a person is entitled to a credit under section 220AZ, 220AZA or subsection 220AZB(2), the Commissioner must:

(a) if the amount of the credit does not exceed the tax payable by the person under an assessment in relation to the year of income in which the deductions to which the credit relates were made—apply the amount of the credit in payment, or part payment, of that tax; and

(b) if the amount of the credit exceeds the tax payable—apply:

(i) so much of the amount of the credit as does not exceed the tax in payment of the tax; and

(ii) so much of the excess as does not exceed the amount of any other tax payable by the person in payment, or part payment, of that other tax.

Application of credit—trustee assessed under section 98

"(3) If the trustee of a trust estate is entitled to a credit under subsection 220AZB(3) in relation to a share of a beneficiary of the net income of the trust estate of a year of income, the Commissioner must:

(a) if the amount of the credit does not exceed the tax payable in respect of that share—apply the amount of the credit in payment, or part payment, of that tax; and

(b) if the amount of the credit exceeds the tax payable in respect of that share—apply:

(i) so much of the amount of the credit as does not exceed the tax payable in respect of that share in payment of the tax; and

(ii) so much of the excess as does not exceed the amount of any tax payable by the trustee under section 98 in respect of a share of the beneficiary of the net income of the trust estate of any other year of income in payment, or part payment, of that other tax.

Application of credit—trustee assessed under section 99 or 99A

"(4) If the trustee of a trust estate is entitled to a credit under subsection 220AZB(4) in relation to the net income or a part of the net income of the trust estate, the Commissioner must:

(a) if the amount of the credit does not exceed the tax payable under section 99 or 99A in respect of that net income or part—apply the amount of the credit in payment, or part payment, of that tax; and

(b) if the amount of the credit exceeds the tax payable under section 99 or 99A in respect of that net income or part—apply:

(i) so much of the amount of the credit as does not exceed that tax in payment of that tax; and

(ii) so much of the excess as does not exceed the amount of any tax payable by the trustee under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of any other year of income in payment, or part payment, of that other tax.

Application of credit—no net income of trust

"(5) If the trustee of a trust estate is entitled to a credit under subsection 220AZB(5) in relation to deductions made in a year of income from reportable payments made to the trustee, the Commissioner must:

(a) if the amount of the credit does not exceed the amount of any tax payable by the trustee under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of any other year of income—apply the amount of the credit in payment, or part payment, of that tax; and

(b) if the amount of the credit exceeds the amount of any tax payable by the trustee under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of any other year of income—apply so much of the amount of the credit as does not exceed that tax in payment of that tax.

Deemed payment of tax

"(6) If, under subsection (2), (3), (4) or (5), the Commissioner has applied an amount of a credit in payment of an amount of tax payable by a person, the person is taken to have paid the amount so applied in payment of the tax as at:

(a) the time at which it was so applied; or

(b) such earlier time as the Commissioner determines.

Recovery of excess credits

"(7) If the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit to which a person is entitled under this Division exceeds the amount of the credit to which the person is so entitled, the Commissioner may recover the amount of the excess as if it were income tax due and payable by the person.

Higher education contribution etc.

"(8) This section has effect subject to section 221ZY (which deals with higher education contribution and student financial supplement).

Interpretation

"(9) In this section:

(a) a reference to tax payable by a person other than a trustee is a reference to an amount payable by the person to the Commonwealth under this Act; and

(b) a reference to tax payable by the trustee of a trust estate in respect of a share of a beneficiary of the net income of the trust estate of the year of income is a reference to any amount payable by the trustee to the Commonwealth under this Act in relation to the beneficiary in relation to the year of income; and

(c) a reference to tax payable by the trustee of a trust estate under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of a year of income is a reference to any amount payable by the trustee to the Commonwealth under this Act in relation to the trust estate in relation to the year of income, other than an amount payable by the trustee in relation to a particular beneficiary.

"***Subdivision M—Miscellaneous***

Power of Commissioner to obtain information

"220AZD. Section 264 applies, for the purposes of this Division, as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

Note: Section 264 empowers the Commissioner to obtain information.

Declarations

"220AZE. A form that is approved by the Commissioner for the purposes of this Division may be required to contain a declaration by the person using the form.

Application of this Division to partnerships

"220AZF.(1) This Division applies to a partnership as if the partnership were a person, but it applies with the following changes:

(a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;

(b) the partners are jointly and severally liable to pay an amount that would be payable by the partnership;

(c) any offence against this Division that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

"(2) In a prosecution of a person for an offence that the person is taken to have committed because of paragraph (1)(c), it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the relevant act or omission; and

(b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

Application of this Division to unincorporated companies

"220AZG.(1) This Division applies to an unincorporated company as if the company were a person, but it applies with the following changes:

(a) obligations that would be imposed on the company are imposed instead on each member of the committee of management of the company, but may be discharged by any of those members;

(b) any offence against this Division that would otherwise be committed by the company is taken to have been committed by each member of the committee of management of the company.

"(2) In a prosecution of a person for an offence that the person is taken to have committed because of paragraph (1)(b), it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the relevant act or omission; and

(b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

Review of decisions

"220AZH.(1) This section applies to:

(a) a decision of the Commissioner under any of the following provisions:

(i) subsection 220AN(2);

(ii) subsection 220AO(1);

(iii) section 220AR; and

(b) a decision of the Commissioner under section 220AU (other than a decision relating to a penalty payable under subsection 220AS(3)).

"(2) A person who is dissatisfied with a decision made in relation to the person may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.".

Subdivision C—Consequential amendments

Consequential amendments of the Principal Act

6. The Principal Act is amended as set out in the Schedule.

Consequential amendments of other Acts

Crimes (Taxation Offences) Act 1980

7.(1) Section 3 of the *Crimes (Taxation Offences) Act 1980* is amended by inserting "220AG(1), 220AS(2), 220AT(3)," after "subsection" (first occurring) in paragraph (g) of the definition of "income tax" in subsection (1).

Taxation (Interest on Overpayments) Act 1983

(2) Section 3 of the *Taxation (Interest on Overpayments) Act 1983* is amended by inserting after paragraph (b) of the definition of "relevant tax" in subsection (1) the following paragraph:

"(baa) an amount payable to the Commissioner under paragraph 220AS(2)(a) or 220AT(3)(a) of the *Income Tax Assessment Act 1936*;".

Taxation Laws Amendment Act (No. 2) 1993

(3) Section 57 of the *Taxation Laws Amendment Act (No. 2) 1993* is amended by inserting "1AA or" after "Division" (second occurring) in paragraph (a) of the definition of "net tax" in subsection (5).

Division 3—Amendments relating to foreign investment funds and controlled foreign companies

Subdivision A—Amendments relating to attribution credits

Object

8. The object of this Subdivision is to ensure that FIF attribution credits do not arise for the purpose of calculating the attributable income of a CFC.

Certain provisions to be disregarded in calculating attributable income

9. Section 389 of the Principal Act is amended by omitting from paragraph (a) "and 461" and substituting ", 461 and 605".

Application

10. The amendment made by this Subdivision applies in relation to the calculation of attributable income of any eligible period ending after 30 June 1994.

Subdivision B—Amendment of trust provisions to avoid double taxation of interests in a CFC held through a CFT

Object

11. The object of this Subdivision is to ensure that double taxation does not arise from the interaction of Parts X and XI with Divisions 6 and 6AAA of Part III of the Principal Act where a taxpayer has an interest in a CFC held through a CFT.

Application of Division in respect of interests in non-resident trust estates to which Part XI applies

12. Section 96A of the Principal Act is amended:

(a) by inserting after subsection (3) the following subsections:

"(3A) If:

(a) under section 529, the assessable income of a year of income of a CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and

(b) a statutory accounting period of a CFC coincides with that notional accounting period of the FIF; and

(c) section 456 applies at the end of the statutory accounting period of the CFC to a taxpayer who is a beneficiary in the CFT; and

(d) the FIF is the same entity as the CFC;

then the beneficiary's share of the net income of the CFT of the year of income is to be calculated as if the amount of foreign investment fund income had not been included in the CFT's assessable income.

"(3B) If:

(a) under section 529, the assessable income of a year of income of a CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and

(b) each of 2 or more statutory accounting periods of a CFC occurs partly within that notional accounting period of the FIF; and

(c) section 456 applies at the end of each of these statutory accounting periods of the CFC to a taxpayer who is a beneficiary in the CFT; and

(d) the FIF is the same entity as the CFC;

then the beneficiary's share of the net income of the CFT of the year of income is to be calculated as if the amount of foreign investment fund income had not been included in the CFT's assessable income.";

(b) by inserting in subsection (5) the following definitions:

" **'CFC'** has the same meaning as in Part X;

'CFT' has the same meaning as in Part X;

'statutory accounting period' has the same meaning as in Part X.".

Attributable income of a trust estate

13. Section 102AAU of the Principal Act is amended:

(a) by omitting from sub-subparagraph (1)(c)(viii)(B) "and" and substituting "or";

(b) by adding at the end of paragraph (1)(c) the following subparagraph:

"(ix) an excluded foreign investment fund income amount (see subsections (7) and (8)); and";

(c) by adding at the end the following subsections:

"(7) For the purposes of subparagraph (1)(c)(ix), if:

(a) the non-resident trust estate concerned is a CFT; and

(b) under section 529, the assessable income of a year of income of the CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and

(c) a statutory accounting period of a CFC coincides with that notional accounting period of the FIF; and

(d) wholly or partly because of the holding of an attribution tracing interest in the CFT, section 456 applies at the end of the statutory accounting period of the CFC to the attributable taxpayer in relation to whom the attributable income is being calculated; and

(e) the FIF is the same entity as the CFC;

then the amount of foreign investment fund income is an excluded foreign investment fund income amount for the purpose of calculating the attributable income in relation to the attributable taxpayer.

"(8) For the purposes of subparagraph (1)(c)(ix), if:

(a) the non-resident trust estate concerned is a CFT; and

(b) under section 529, the assessable income of a year of income of a CFT includes an amount of foreign investment fund income that, under Part XI, accrued to the CFT from a FIF in respect of a notional accounting period of the FIF; and

(c) each of 2 or more statutory accounting periods of a CFC occurs partly within that notional accounting period of the FIF; and

(d) wholly or partly because of the holding of an attribution tracing interest in the CFT, section 456 applies at the end of each of these statutory accounting periods of the CFC to the attributable taxpayer in relation to whom the attributable income is being calculated; and

(e) the FIF is the same entity as the CFC;

then the amount of foreign investment fund income is an excluded foreign investment fund income amount for the purpose of calculating the attributable income in relation to the attributable taxpayer.

"(9) In subsections (7) and (8):

'attribution tracing interest' has the same meaning as in Part X;

'CFT' has the same meaning as in Part X;

'FIF' has the same meaning as in Part XI;

'notional accounting period' has the same meaning as in Part XI;

'statutory accounting period' has the same meaning as in Part X.".

Subdivision C—Attributable income of listed country trust estate

Object

14. The object of this Subdivision is to include foreign investment fund income accruing to a listed country trust estate in its attributable income.

Attributable income of a trust estate

15. Section 102AAU of the Principal Act is amended by omitting from paragraph (1)(b) "other than eligible designated concession income in relation to any listed country in relation to the year of income;" and substituting the following words and subparagraphs "other than:

(i) eligible designated concession income in relation to any listed country in relation to the year of income; or

(ii) amounts included under section 529 in the assessable income of the trust estate of the year of income;".

Application

16. The amendment made by this Subdivision applies to the calculation of attributable income of the 1994-95 year of income and of all later years of income.

Subdivision D—Amendment of trust provisions to avoid double taxation of FIF income accruing to a resident public unit trust

Object

17. The object of this Subdivision is to ensure that double taxation of foreign investment fund income of a resident public unit trust does not arise under subsection 96A(2) of the Principal Act.

Application of Division in respect of interests in non-resident trust estates to which Part XI applies

18. Section 96A of the Principal Act is amended by adding at the end of subsection (2) the following word and paragraph:

"; and (e) in determining under sections 99 and 99A the extent (if any) to which the trustee is to be assessed and liable to pay tax on the whole or part of the net income of the trust estate of the year of income or any later year of income, paragraphs (c) and (d) of this subsection are to be disregarded.".

Subdivision E—Amendment to avoid double taxation where interim distributions made to a CFC

Object

19. The object of this Subdivision is to repeal section 431B of the Principal Act so that there is no double taxation of Part XI amounts included in the attributable income of a CFC where an interim dividend is paid, or an interim distribution of trust income is made, to the CFC.

Repeal of section

20. Section 431B of the Principal Act is repealed.

Subdivision F—Amendments relating to corporate limited partnerships

Object

21. The object of this Subdivision is to ensure that corporate limited partnerships are treated in the same way as companies for the purposes of Parts X and XI of the Principal Act and related provisions.

"Dividend" includes distribution of corporate limited partnership

22. Section 94L of the Principal Act is amended by inserting "or to a dividend within the meaning of section 6" after "dividend".

Repeal of section and substitution of new section

23. Section 94T of the Principal Act is repealed and the following section is substituted:

Residence of corporate limited partnership

"94T. For the purposes of the income tax law, the partnership is:

(a) a resident; and

(b) a resident within the meaning of section 6; and

(c) a resident of Australia; and

(d) a resident of Australia within the meaning of section 6;

if and only if:

(e) the partnership was formed in Australia; or

(f) either:

(i) the partnership carries on business in Australia; or

(ii) the partnership's central management and control is in Australia.".

Application

24. The amendments made by this Subdivision apply to assessments in respect of income of the 1994-95 year of income and of all later years of income.

Subdivision G—Amendments relating to FIF loss deductions

Object

25. The object of this Subdivision is to ensure that a foreign investment fund loss deduction under section 532 or 533 of the Principal Act is not quarantined under section 79D or taken into account under section 160AFD of that Act.

Losses of previous years

26. Section 160AFD of the Principal Act is amended by inserting "(other than a deduction under section 532 or 533)" after "any deduction" in the definition of "foreign income deduction" in subsection (9).

Subdivision H—Expression of FIF losses in same currency as FIF attribution surpluses

Object

27. The object of this Subdivision is to ensure that, for the purposes of working out deductions under Division 17 of Part XI of the Principal Act, foreign investment fund losses are expressed in the same currency (i.e. Australian dollars) as FIF attribution surpluses.

Insertion of new section

28. After section 533 of the Principal Act the following section is inserted in Division 17 of Part XI:

Foreign investment fund losses to be expressed in Australian currency

"533A. For the purposes of section 532 or 533, if the foreign investment fund loss mentioned in that subsection is not expressed in Australian currency, it is to be converted to the corresponding amount in Australian currency in accordance with the rate of exchange applicable at the end of the notional accounting period.".

Application

29. The amendment made by this Subdivision applies to notional accounting periods ending after the commencement of the 1994-95 year of income.

Subdivision I—Expression of unapplied previous FIF and FLP losses in same currency as gross FIF and FLP income

Object

30. The object of this Subdivision is to ensure that unapplied previous foreign investment fund losses are calculated in the same currency as gross foreign investment fund income for the purposes of subsections 542(2) and 600(2) of the Principal Act.

Step 2—Calculation of foreign investment fund income

31. Section 542 of the Principal Act is amended by adding at the end the following subsection:

"(8) For the purposes of applying subsections (5), (6) and (7) in working out the amount of an unapplied previous foreign investment fund loss, if any amount that is to be taken into account under any of those subsections in relation to a notional accounting period is not expressed in the same currency as the gross foreign investment fund income mentioned in paragraph (2)(a), the amount is to be converted to the corresponding amount in that currency in accordance with the rate of exchange applicable at the end of that notional accounting period.".

Step 2—Calculation of foreign investment fund income

32. Section 600 of the Principal Act is amended by adding at the end the following subsection:

"(8) For the purposes of applying subsections (5), (6) and (7) in working out the amount of an unapplied previous foreign investment fund loss, if any amount that is to be taken into account under any of those subsections in relation to a notional accounting period is not expressed in the same currency as the gross foreign investment fund income mentioned in paragraph (2)(a), the amount is to be converted to the corresponding amount in that currency in accordance with the rate of exchange applicable at the end of that notional accounting period.".

Application

33. The amendments made by this Subdivision apply to the calculation of amounts of foreign investment fund income in respect of notional accounting periods ending after the commencement of the 1994-95 year of income.

Subdivision J—Attribution percentages under calculation method not to exceed 100%

Object

34. The object of this Subdivision is to ensure that the attribution percentages applicable to taxpayers in respect of a FIF, and hence their shares of the calculated profit of the FIF, do not exceed 100%.

How to work out attribution percentage applicable to taxpayer in respect of interest or interests in foreign company

35. Section 581 of the Principal Act is amended by adding at the end the following subsection:

"(4) If, apart from this subsection, the sum of the attribution percentages at the end of the relevant period in relation to the company of all the taxpayers to whom the operative provision applies in relation to the company in relation to the relevant period would exceed 100%, the attribution percentage of each taxpayer is the percentage worked out using the formula:

$$\frac{\text{Attribution percentage of the taxpayer concerned}}{\text{Sum of attribution percentages of all of the taxpayers to whom the operative provision applies}} \times 100\%$$

.".

Procedure to be followed

36. Section 582 of the Principal Act is amended by inserting after subsection (6) the following subsection:

"(6A) If, apart from this subsection, the sum of the attribution percentages at the end of the relevant period in relation to the trust of all the taxpayers to whom the operative provision applies in relation to the trust in relation to the relevant period would exceed 100%, the attribution percentage of each taxpayer is the percentage worked out using the formula:

$$\frac{\text{Attribution percentage of the taxpayer concerned}}{\text{Sum of attribution percentages of all of the taxpayers to whom the operative provision applies}} \times 100\%$$

.".

Subdivision K—Removal of differences between exemption under section 523 and exemption under section 511

Object

37. The object of this Subdivision is to bring the wording of sub-subparagraphs 523(b)(ii)(C) and (D) of the Principal Act into line with sub-subparagraphs 511(b)(ii)(C) and (D) of that Act.

Exemption

38.(1) Section 523 of the Principal Act is amended by adding at the end of sub-subparagraph (b)(ii)(C) "or by a wholly-owned subsidiary of the company that was principally engaged in carrying on the business of providing those services through directors or employees of that subsidiary".

(2) Section 523 of the Principal Act is amended by omitting from sub-subparagraph (b)(ii)(D) "or by a wholly-owned subsidiary of the company that was principally engaged in carrying on the business of providing those services through directors or employees of that subsidiary".

Application

39. The amendment made by subsection 38(2) applies to notional accounting periods ending after the commencement of the 1994-95 year of income.

Subdivision L—Avoidance of double taxation in respect of CFC dividends

Object

40. The object of this Subdivision is to exclude dividends from CFC measure assessability under section 458 of the Principal Act to the extent that they are paid out of amounts previously taxed under the FIF measures in that Act.

Assessability in respect of certain dividends paid by a CFC

41. Section 458 of the Principal Act is amended by omitting from the definition of the formula component **GD** in subsections (1), (3) and (5) "grossed-up amount of any attribution debit" and substituting "sum of the grossed-up amounts of any attribution debit and any FIF attribution debit".

Subdivision M—Correction of minor error

Object

42. The object of this Subdivision is to correct a minor error in Part XI of the Principal Act.

Exemption

43. Section 511 of the Principal Act is amended by omitting "subparagraph (a)(i)" and substituting "paragraph (a)".

Division 4—Amendments to provide an exemption from dividend withholding tax

Object

44. The object of this Division is to provide an exemption from dividend withholding tax for dividends paid out of certain foreign source non-portfolio dividend income of Australian resident companies.

Insertion of new heading

45. After the heading to Division 11A of Part III of the Principal Act the following heading is inserted:

"***Subdivision A—General***".

Liability to withholding tax

46. Section 128B of the Principal Act is amended by inserting after paragraph (3)(ga) the following paragraph:

"(gaa) income that consists of so much of a dividend as:

(i) remains after deducting any amount that has been franked in accordance with section 160AQF; and

(ii) does not exceed the foreign dividend account declaration amount (if any) in respect of the dividend under section 128TC;".

Certain income not included in assessable income

47. Section 128D of the Principal Act is amended by inserting "or (gaa)" after "128B(3)(ga)".

Insertion of new Subdivision

48. After section 128R of the Principal Act the following Subdivision is inserted in Division 11A:

"***Subdivision B—Foreign dividend accounts***

Object

"128S. The object of this Subdivision is to make provision for the operation of foreign dividend accounts for the purposes of the exemption from tax provided by paragraph 128B(3)(gaa).

Amount of a dividend

"128SA. For the purposes of this Subdivision, in determining the amount of a dividend paid to a resident company:

(a) subsection 6AC(2) (which increases the amount of a dividend by an amount of foreign underlying tax) is to be disregarded; and

(b) any foreign tax paid or payable by the company in respect of the dividend, where the company was or is personally liable for the tax, is to be deducted.

FDA surplus

Conditions for surplus

"128T.(1) A **'foreign dividend account surplus'** or **'FDA surplus'** exists for a resident company at a particular time if the company's total FDA credits arising before that time exceed its total FDA debits arising before that time.

Amount of surplus

"(2) The amount of the surplus is equal to the amount of the excess.

FDA credit

Conditions for credit

"128TA.(1) A **'foreign dividend account credit'** or **'FDA credit'** arises for a resident company if:

(a) a dividend that is exempt from income tax to any extent under section 23AJ is paid to the company on or after 1 July 1994; or

(b) a non-portfolio dividend (within the meaning of section 317) is paid to the company on or after 1 July 1994 and the company is, for the purposes of Division 18 (which deals with credits in respect of foreign tax), taken to have paid and to have been personally liable for foreign tax in respect of the dividend; or

(c) a dividend is paid to the company by another company that is related (within the meaning of subsection 51AE(16)) to it, where an FDA debit arises under paragraph 128TB(1)(a) for the other company in relation to the dividend.

Amount of credit

"(2) The amount of credit arising under subsection (1) is equal to:

(a) in a paragraph (1)(a) case—so much of the dividend as is exempt under section 23AJ; or

(b) in a paragraph (1)(b) case—the amount of the dividend, to the extent that it is not exempt from income tax under section 23AI or 23AK; or

(c) in a paragraph (1)(c) case—the amount of the FDA debit.

Timing of credit

"(3) The credit arises when the dividend is paid to the company.

FDA debit

Conditions for debit

"128TB.(1) A **'foreign dividend account debit'** or **'FDA debit'** arises for a resident company if:

(a) the company makes an FDA declaration under section 128TC in relation to dividends paid on a particular day; or

(b) on or after 1 July 1994, the company incurs expenditure that is not an allowable deduction of the company for any year of income, but that would be an allowable deduction to any extent if section 23AJ were disregarded; or

(c) on or after 1 July 1994, the company incurs expenditure that:

(i) is an allowable deduction of the company for a year of income; and

(ii) either relates exclusively to a dividend covered by paragraph 128TA(1)(b) or (c) or may appropriately be related to such a dividend; or

(d) there is an Australian-taxable dividend amount for the company in relation to a year of income (see subsection (2)) ending on or after 1 July 1994.

Meaning of "Australian-taxable dividend amount"

"(2) For the purposes of paragraph (1)(d), there is an **'Australian-taxable dividend amount'** in relation to a year of income for a company of an amount worked out using the formula:

$$\frac{\textbf{Co. tax rate} \times (\textbf{Grossed-up dividend amount} - \textbf{Dividend deductions}) - \textbf{Foreign tax on dividends}}{\textbf{Co. tax rate}}$$

where:

'Co. tax rate' means the general company tax rate, within the meaning of section 160APA, for the year of income;

'Grossed-up dividend amount' means the sum of the amount of:

(a) all dividends paid to the company in the year of income that are covered by paragraph 128TA(1)(b); and

(b) all amounts covered by the formula component **Foreign tax on dividends**;

'Dividend deductions' means the sum of the amounts of all FDA debits arising under paragraph 128TB(1)(c) during the year of income in relation to dividends paid to the company in the year of income that are covered by paragraph 128TA(1)(b);

'Foreign tax on dividends' means the total of all foreign tax that, for the purposes of Division 18 (which deals with credits in respect of foreign tax), the company is taken to have paid and to have been personally liable for, in respect of dividends paid to the company in the year of income that are covered by paragraph 128TA(1)(b).

Amount of debit

"(3) The amount of the debit arising under subsection (1) is:

(a) in a paragraph (1)(a) case—the sum of the FDA declaration amounts for all of the dividends to which the declaration relates; or

(b) in a paragraph (1)(b) case—so much of the expenditure as would be an allowable deduction if section 23AJ were disregarded; or

(c) in a paragraph (1)(c) case:

(i) if the dividend mentioned in that paragraph is covered by paragraph 128TA(1)(b)—the amount of the expenditure; or

(ii) if the dividend mentioned in that paragraph is covered by paragraph 128TA(1)(c)—the amount worked out using the formula:

$$\textbf{Amount of expenditure} \times \frac{\textbf{Amount of FDA debit mentioned in paragraph 128TA(1)(c)}}{\textbf{Amount of dividend}}$$

; or

(d) in a paragraph (1)(d) case—the same as the Australian-taxable dividend amount.

Timing of debit

"(4) The debit arises:

(a) in a paragraph (1)(a) case—immediately after the beginning of the day on which the dividends, to which the FDA declaration relates, are paid; or

(b) in a paragraph (1)(b) or (c) case—when the expenditure is incurred; or

(c) in a paragraph (1)(d) case—at the end of the year of income.

FDA declaration, FDA declaration percentage and FDA declaration amount

Declaration to specify a percentage for all dividends

"128TC.(1) If there is an FDA surplus for a resident company on the day on which it pays one or more dividends, the company may, before it pays the dividends, make a written declaration (a **'foreign dividend account declaration'** or **'FDA declaration'**) specifying a percentage (the **'foreign dividend account declaration percentage'** or **'FDA declaration percentage'**) in relation to all of the dividends concerned.

Limit on percentage that may be specified

"(2) The FDA declaration percentage must be such that the amount worked out using the following formula is not greater than the FDA surplus at the beginning of the day:

$$\textbf{FDA declaration percentage} \left[\textbf{Total non-resident dividends} + \left\{ \textbf{Maximum non-resident dividend percentage} \times \textbf{Total calculation value for dividend purposes of other shares} \right\} \right]$$

where:

'Total non-resident dividends' means the sum of all dividends paid on the day by the company to non-resident shareholders or companies that are related (within the meaning of subsection 51AE(16));

'Maximum non-resident dividend percentage' means the highest percentage, for any share in respect of which a dividend was paid on the day to a non-resident shareholder or to a company that is related (within the meaning of subsection 51AE(16)), worked out using the formula:

$$\frac{\textbf{Amount of the dividend}}{\textbf{Calculation value for dividend purposes of the share} \text{ (see subsection (3))}} \times \textbf{100\%}$$

'Total calculation value for dividend purposes of other shares' means the sum of the calculation value for dividend purposes (see subsection (3)) of all shares in the company existing on the day, other than those on which a dividend was paid on the day to a non-resident shareholder or to a company that is related (within the meaning of subsection 51AE(16)).

Meaning of "calculation value for dividend purposes"

"(3) In subsection (2), **'calculation value for dividend purposes'** means:

(a) in relation to a preference share—the amount (for example in the case of a redeemable preference share, the sum of the paid-up value of the share, any premium paid on the share and any other amount payable on a redemption of the share) that, under the terms on which the preference share was issued, is, for the purpose of working out the amount of a dividend to be paid on the share, to be multiplied by the rate of the dividend; or

(b) in relation to any other share—the nominal value of the share.

FDA declaration amount

"(4) The **'foreign dividend account declaration amount'** or **'FDA declaration amount'** for a particular dividend paid on the day is the product of the FDA declaration percentage and the amount of the dividend.

Where FDA surplus exceeded by declaration

"(5) If the company, in purporting to make an FDA declaration, incorrectly specifies a percentage such that the amount in the formula in subsection (2) exceeds the FDA surplus at the beginning of the day, the declaration is nevertheless valid, but (subject to subsection 128TE(1)) has effect, and is taken always to have had effect, for all purposes as if the percentage required for the amounts in the formula to equal the FDA surplus had been specified instead of the percentage actually specified.

Dividend statement

Content of statement

"128TD.(1) If a company makes an FDA declaration in relation to one or more dividends, it must, before or at the time of payment of any of the dividends to a shareholder, give to the shareholder a statement in accordance with this subsection:

(a) if the FDA declaration percentage in the FDA declaration is 100%—to the effect that, if the dividend is derived by a non-resident, the non-resident is, because of paragraph 128B(3)(gaa), not liable to pay withholding tax on the dividend; or

(b) in any other case—that specifies:

(i) the amount of the dividend on which, because of paragraph 128B(3)(gaa), a non-resident who derives the dividend is not liable to pay withholding tax; and

(ii) the amount of the dividend to which neither paragraph 128B(3)(ga) nor (gaa) applies so as to remove any liability to withholding tax of a non-resident who derives the dividend; and

(iii) any amount deducted from the dividend under section 221YL.

Inclusion in section 160AQH

"(2) The statement may be included in any statement that the company is required by section 160AQH to give to the shareholder.

Form of statement

"(3) If it is so included, the statement must be in the approved form required by section 160AQH. If it is not so included, the statement must be in a form approved in writing by the Commissioner for the purposes of this section.

Other information

"(4) If either form requires other information relating to the dividend or any matter relevant to the operation of this Division, the statement must set out that information.

Penalty for setting out incorrect amounts in dividend statement

Additional tax by way of penalty

"128TE.(1) Subject to subsection (2), if a company, purportedly under section 128TD, gives a shareholder a statement (whether or not included in a statement purportedly given under section 160AQH) that, disregarding subsection 128TC(5), is reasonably likely to cause the belief that:

(a) no withholding tax is liable to be paid on a dividend, where withholding tax is actually liable to be paid; or

(b) an amount of withholding tax is liable to be paid on a dividend, where (taking into account subsection 128TC(5)) that amount is less than is actually liable to be paid;

the company is liable to pay, by way of penalty, additional tax equal to the amount of the withholding tax, or the shortfall in the amount of the withholding tax, as the case requires.

Avoidance of double tax where Part IIIAA penalty

"(2) If:

(a) either:

(i) the company includes the statement in a statement that the company purportedly gives under section 160AQH; or

(ii) the company gives the shareholder a separate statement in relation to the dividend purportedly under section 160AQH; and

(b) the company becomes liable to pay additional tax under section 160ARY in respect of the statement purportedly given under section 160AQH;

then subsection (1) of this section applies as if the amount specified in accordance with subparagraph 128TD(1)(b)(ii) in the statement purportedly given under section 128TD were the amount of the dividend reduced by the sum of:

(c) the amount specified in accordance with subparagraph 128TD(1)(b)(i); and

(d) so much of the dividend as has been franked in accordance with section 160AQF.

Assessment

"(3) The Commissioner must make an assessment of the additional tax payable under subsection (1).

Notice of assessment

"(4) This Act does not prevent notice of the assessment being incorporated in a notice of any other assessment made in respect of the company under this Act.

Collection and recovery

"(5) In sections 170, 172, 174, 204, 206, 207, 207A, 208, 209, 214, 215, 218, 254, 258 and 259, but not in any other section of this Act, **'income tax'** or **'tax'** includes additional tax payable under subsection (1).

Company to keep records

"128TF. Section 262A applies for the purposes of this Subdivision as if:

(a) a reference to a person carrying on a business were a reference to a company; and

(b) a reference to income and expenditure were a reference to matters relevant to ascertaining whether there is an FDA surplus.".

Application

49. The amendments made by this Division apply to dividends paid by or to a company on or after 1 July 1994.

Transitional

50. If a company pays one or more dividends on a day in the period from the beginning of 1 July 1994 until the commencement of this Division, subsection 128TC(1) of the Principal Act as amended by this Division has effect as if the reference to the making of a declaration before it pays the dividends were instead a reference to the making of the declaration within 90 days after the commencement of this Division.

Division 5—Amendments relating to home child care allowance and dependant rebate

Object

51. The object of this Division is, basically:

(a) to exempt home child care allowance payments from tax; and

(b) to reduce a taxpayer's entitlement to a rebate of tax in respect of a dependent spouse if home child care allowance is paid to the spouse.

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

52. Section 23AB of the Principal Act is amended by omitting subparagraph (7)(a)(ii) and substituting the following subparagraph:

"(ii) an amount equal to 50% of the sum of the following rebates (if any) in respect of the year of income:

(A) any rebate to which the taxpayer is entitled under section 159K or 159L;

(B) any rebate to which the taxpayer is entitled under section 159J in respect of a dependant included in class 2, 5 or 6 in the table in subsection 159J(2);

(C) any rebate to which the taxpayer would, disregarding subsection 159J(1A), be entitled under section 159J in respect of a dependant included in class 3 or 4 in the table in subsection 159J(2);

(D) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) if the amendments made by Division 5 of Part 2 of the *Taxation Laws Amendment Act (No. 3) 1994* had not been made;".

Index of payments covered by Subdivision

53. Section 24AB of the Principal Act is amended by inserting after the entry in the table relating to family payment advance the following entry:

"Home child care allowance 24ABXA".

Insertion of new section

54. After section 24ABX of the Principal Act the following section is inserted:

Home child care allowance

"24ABXA. Payments of home child care allowance under Part 2.18 of the *Social Security Act 1991* are exempt.".

Rebates for residents of isolated areas

55. Section 79A of the Principal Act is amended by omitting from subsection (4) the definition of "relevant rebate amount" and substituting the following definition:

" **'relevant rebate amount'**, in relation to a taxpayer in relation to a year of income, means the sum of the following rebates (if any):

(a) any rebate to which the taxpayer is entitled in respect of the year of income under section 159K or 159L;

(b) any rebate to which the taxpayer is entitled under section 159J in respect of a dependant included in class 2, 5 or 6 in the table in subsection 159J(2);

(c) any rebate to which the taxpayer would, disregarding subsection 159J(1A), be entitled under section 159J in respect of a dependant included in class 3 or 4 in the table in subsection 159J(2);

(d) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) if the amendments made by Division 5 of Part 2 of the *Taxation Laws Amendment Act (No. 3) 1994* had not been made.".

Rebates for members of Defence Force serving overseas

56. Section 79B of the Principal Act is amended:

(a) by omitting subparagraph (2)(a)(ii) and substituting the following subparagraph:

"(ii) an amount equal to 50% of the concessional rebate amount; or";

(b) by omitting paragraph (4)(b) and substituting the following paragraph:

"(b) an amount equal to 50% of the concessional rebate amount.";

(c) by omitting subparagraph (4A)(b)(ii) and substituting the following subparagraph:

"(ii) an amount equal to 50% of the concessional rebate amount;";

(d) by inserting in subsection (6) the following definition:

" **'concessional rebate amount'**, in relation to a taxpayer in relation to a year of income, means the sum of the following rebates (if any):

(a) any rebate to which the taxpayer is entitled under section 159K or 159L in respect of the year of income;

(b) any rebate to which the taxpayer is entitled under section 159J in respect of a dependant included in class 2, 5 or 6 in the table in subsection 159J(2);

(c) any rebate to which the taxpayer would, disregarding subsection 159J(1A), be entitled under section 159J in respect of a dependant included in class 3 or 4 in the table in subsection 159J(2);

(d) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) if the amendments made by Division 5 of Part 2 of the *Taxation Laws Amendment Act (No. 3) 1994* had not been made;".

Indexation of rebate amounts in sections 159J, 159K and 159L

57. Section 159HA of the Principal Act is amended by adding at the end the following subsection:

"(8) To avoid doubt, the reference in paragraph (a) of the definition of 'indexable amount' in subsection (7) to an amount specified in subsection 159J(2) does not include a reference to the amount of $1,452 mentioned in subsection 159J(1C).".

Rebates for dependants

58. Section 159J of the Principal Act is amended:

(a) by omitting from subsection (1B) "1 or";

(b) by inserting after subsection (1B) the following subsection:

"(1C) If:

(a) apart from subsection (1A), a taxpayer would be entitled in his or her assessment in respect of income of a year of income to a rebate under this section in respect of a dependant included in class 3 or 4 in the table in subsection (2); and

(b) disregarding this subsection and subsections (3) to (6), the taxpayer is entitled in that assessment to a rebate under this section in respect of a dependant included in class 1 in that table; and

(c) the amount of the rebate mentioned in paragraph (b) is not more than $1,452;

the entitlement to a rebate under this section in respect of the dependant included in class 1 in the table is to be calculated as if the amount applicable under the table in respect of that dependant were $1,452.";

(c) by inserting after subsection (5D) the following subsection:

"(5E) If:

(a) after taking into account any reduction because of the application of any other provision of this section, a rebate is allowable to a taxpayer under this section for a year of income in respect of a dependant who is the spouse of the taxpayer; and

(b) an amount or amounts of home child care allowance (within the meaning of the *Social Security Act 1991*) were paid to the spouse at any time during the year of income;

the rebate is to be reduced or further reduced, as the case requires, by the amount, or the sum of the amounts, of the home child care allowance.";

(d) by inserting "home child care allowance," before "or a child disability allowance" in paragraph (a) of the definition of "separate net income" in subsection (6).

Uplifted provisional tax amount

59. Section 221YCAA of the Principal Act is amended:

(a) by inserting "or, if the amendments made by Division 5 of Part 2 of the *Taxation Laws Amendment Act (No. 3) 1994* had not been made, would have been" before "entitled" in subparagraph (n)(i) of the definition of "Qualifying reductions" in subsection (2);

(b) by inserting "(other than in respect of a spouse of the taxpayer)" after "section 159J" in paragraph (p) of the definition of "Qualifying reductions" in subsection (2);

(c) by inserting after paragraph (p) of the definition of "Qualifying reductions" in subsection (2) the following paragraph:

"(pa) where the taxpayer was entitled to a rebate, in the taxpayer's assessment in respect of income of the preceding year of income, under section 159J in respect of a spouse of the taxpayer:

(i) if the preceding year of income was the 1993-94 year of income and subsection 159J(1B) applied in relation to the rebate—25%; or

(ii) if the preceding year of income was the 1993-94 year of income and subsection 159J(1B) did not apply in relation to the rebate—100%; or

(iii) if the preceding year of income is the 1994-95 year of income, or any later year of income, and subsection 159J(1C) did not apply in relation to the rebate—100%;

of the amount that would have been the amount of that rebate if increases in the amounts of rebates arising out of the operation of section 159HA in relation to the current year of income had been in force and had applied to assessments in respect of the preceding year of income; and".

Provisional tax on estimated income

60. Section 221YDA of the Principal Act is amended by inserting in paragraph (1)(da) and subparagraph (2)(a)(ii) "or to which subsection 159J(1C) applies" after "other than section 159N".

Application

61.(1) The amendments made by sections 53 and 54 apply to payments made on or after 29 September 1994.

(2) Subject to section 62, the amendments made by sections 52, 55, 56, 57 and 58 apply to assessments in respect of income of the 1994-95 year of income and of all later years of income.

(3) The amendments made by section 59 apply to provisional tax (including instalments) payable in respect of income of the 1994-95 year of income and of all later years of income.

(4) The amendments made by section 60 apply to estimates or calculations of provisional tax (including instalments) payable in respect of income of the 1995-96 year of income and of all later years of income.

Transitional

62.(1) Subject to this section, the amount of rebate of tax to which a taxpayer is entitled, in his or her assessment for the 1994-95 year of income under section 159J of the *Income Tax Assessment Act 1936* in respect of a spouse included in class 1 in the table in subsection 159J(2), is worked out using the formula:

Pre-29 Sep component (old law) + **Post-28 Sep component (new law)**

where:

"Pre-29 Sep component (old law)" means the amount of any rebate in respect of the spouse to which the taxpayer would be entitled for the year of income under section 159J on the following assumptions:

(a) that the amendments made by this Division were disregarded;

(b) that references in section 159J to the year of income were instead references to the part of the year of income before 29 September 1994;

(c) that the amounts specified in subsections 159J(1B) and (2) (as affected by section 159HA, which indexes amounts) were instead only $^{90}/_{365}$ of those amounts;

(d) that the reference in subsection 159J(4) to $282 were instead a reference to $70;

"Post-28 Sep component (new law)" means the amount of any rebate in respect of the spouse to which the taxpayer would be entitled for the year of income under section 159J on the following assumptions:

(a) that the amendments in this Division (disregarding this section) were made;

(b) that references in section 159J to the year of income were instead references to the part of the year of income after 28 September 1994;

(c) that the amounts specified in subsection 159J(2) (as affected by section 159HA, which indexes amounts) were instead only $^{275}/_{365}$ of those amounts;

(d) that the reference in subsection 159J(4) to $282 were instead a reference to $212.

(2) If, disregarding the amendments made by this Division, a taxpayer is not entitled to a rebate under section 159J of the Principal Act in his or her assessment for the 1994-95 year of income in respect of a spouse included in class 1 in the table in subsection 159J(2) of that Act, the taxpayer is not entitled to any rebate in respect of the spouse in his or her assessment for the 1994-95 year of income:

(a) under subsection (1) of this section; or

(b) under section 159J of the Principal Act as amended by this Division.

Division 6—Amendments relating to provisional tax

Object

63. The object of this Division is to reduce the provisional tax uplift factor for 1994-95 from 10% to 8%.

Interpretation

64. 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:

" **'provisional tax uplift factor'**:

(a) in relation to the 1994-95 year of income—means 8%; and

(b) in relation to a later year of income—means, until the Parliament otherwise provides, 10%;".

Application

65. The amendment made by this Division applies in relation to provisional tax (including instalments) payable for the 1994-95 year of income and for all later years of income.

Division 7—Amendments relating to short-term asset sales

Subdivision A—Object of Division

Object

66. The object of this Division is to repeal section 26AAA of the Principal Act because it is redundant, and to make consequential amendments.

Subdivision B—Repeal of section 26AAA

Repeal of section

67. Section 26AAA of the Principal Act is repealed.

Subdivision C—Consequential amendments

Interpretation

68. Section 6 of the Principal Act is amended:

(a) by inserting "and" after "held by the taxpayer," in the definition of "income from personal exertion" or "income derived from personal exertion" in subsection (1);

(b) by omitting all the words from and including "and any profit" to and including "26AAA," from the definition of "income from personal exertion" or "income derived from personal exertion" in subsection (1).

Sales of securities purchased at a discount

69. Section 23J of the Principal Act is amended by omitting from subsection (3) ", 26AAA".

Money paid before 1 July 1991 on shares in management and investment companies

70. Section 77F of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of "private company" and "private trust estate";

(b) by inserting in subsection (1) the following definitions:

" **'private company'** means a company other than one whose shares are listed for quotation in the official list of a stock exchange in Australia or elsewhere;

'private trust estate' means a trust estate, other than a unit trust whose units are:

(a) listed for quotation in the official list of a stock exchange in Australia or elsewhere; or

(b) ordinarily available for subscription or purchase by the public;".

Interpretation

71. Section 124ZF of the Principal Act is amended by omitting from subsection (1) the definition of "private trust estate" and substituting the following definition:

" **'private trust estate'** means a trust estate, other than a unit trust whose units are:

(a) listed for quotation in the official list of a stock exchange in Australia or elsewhere; or

(b) ordinarily available for subscription or purchase by the public;".

Part applies in respect of disposals of assets

72. Section 160L of the Principal Act is amended by omitting paragraphs (3)(b), (4)(b) and (5)(b).

Disposal of shares or interest in trust

73. Section 160ZZT of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

"(2) For the purposes of this section:

(a) a reference to property generally or to a particular kind of property includes a reference to an estate or interest in property, or in that kind of property; and

(b) a reference to the net worth of a company or trust estate is a reference to the total value of the assets of the company or trust estate as reduced by the total liabilities of the company or trust estate; and

(c) if a share is acquired by way of subscription of capital (with or without the payment of any other consideration), it is taken to have been purchased; and

(d) if a company issues shares in itself to a person as, or as part of, the consideration for the sale of property by the person to the company, the person is taken to have purchased those shares; and

(e) if one or more persons (the **'transferors'**) transfer property, with or without consideration, to one or more other persons (the **'transferees'**) the transfer is taken to constitute:

(i) the sale of the property by the transferors; and

(ii) the purchase of the property by the transferees; and

(f) if, under a contract, land is sold or purchased, it is taken to be sold or purchased on the day the contract is made.".

Subdivision D—Application of amendments

Application

74. If an assessment would be affected by the amendments made by this Division, the amendments are to be disregarded in making the assessment.

Division 8—Amendments relating to home loan interest rebate

Object

75. The object of this Division is to repeal redundant provisions relating to rebates of tax for home loan interest payments.

Repeal of Subdivision

76. Subdivision AA of Division 17 of Part III of the Principal Act is repealed.

Amendment of assessments

77. Section 170 of the Principal Act is amended by omitting from subsection (10) "159ZJ(2B), 159ZJ(6) or 159ZNA(5), section 159ZO, 159ZP or" and substituting "section".

Provisional tax on estimated income

78. Section 221YDA of the Principal Act is amended by omitting from paragraph (1)(da) and subparagraph (2)(a)(ii) ", AA".

Application

79. If an assessment would be affected by the amendments made by this Division, the amendments are to be disregarded in making the assessment.

Division 9—Deductions for bequests of significant cultural value made to certain institutions

Object

80. The object of this Division is to allow a deduction for bequests of significant cultural value that are made to certain institutions under the Cultural Bequests Program.

Deduction for gifts, pensions etc.

81. Section 78 of the Principal Act is amended:

(a) by omitting from the table in subsection (2):

"

Gifts to The Australiana Fund, libraries, museums, or art galleries	(6)	(13), (14), (15)	(16)

",

and substituting:

"

Gifts to The Australiana Fund, libraries, museums, or art galleries	(6), (6A)	(13), (14), (15), (15A)	(16), (16A)

";

(b) by inserting in paragraph (4)(f) "(6A)," after "(6),";

(c) by inserting in paragraph (5)(f) "(6A)," after "(6),";

(d) by inserting after subsection (6) the following subsections:

Deductions for testamentary gifts of property—Cultural Bequests Program

"(6A) Subject to subsection (6F), a testamentary gift made by a taxpayer under the scheme formulated by the Australian Government and known as the Cultural Bequests Program to:

(a) The Australiana Fund; or

(b) a public library in Australia; or

(c) a public museum in Australia; or

(d) a public art gallery in Australia; or

(e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them;

is an allowable deduction if:

(f) the gift is property (other than an estate or interest in land or in a building or part of a building); and

(g) the property is given to, and accepted by, The Australiana Fund or the authority or institution concerned for inclusion in the collection, or any of the collections, maintained or being established by that Fund, authority or institution; and

(h) the Minister for Communications and the Arts has given the taxpayer a certificate under subsection (6B) approving the gift and specifying the value of the gift for the purposes of this subsection; and

(i) the value of the gift, as specified in the certificate, is $2 or more.

Gifts covered by subsection (6A)—issue of certificates

"(6B) Subject to subsections (6C) and (6E), the Minister for Communications and the Arts may, on written application by a taxpayer, give the taxpayer a certificate:

(a) approving a gift for the purposes of subsection (6A); and

(b) specifying the value of the gift for the purposes of that subsection; and

(c) containing such other information as the Commissioner, in writing, requires.

Gifts covered by subsection (6A)—approval to be in accordance with Ministerial guidelines

"(6C) A decision of the Minister for Communications and the Arts:

(a) to approve a gift for the purposes of subsection (6A); or

(b) to specify a particular value for a gift for the purposes of that subsection;

must be made in accordance with written guidelines made by that Minister under this subsection.

Gifts covered by subsection (6A)—content of guidelines

"(6D) The guidelines made under subsection (6C) may require the Minister for Communications and the Arts, in approving gifts and specifying values, to take into account:

(a) specified criteria; or

(b) recommendations of particular bodies; or

(c) any other factors.

Gifts covered by subsection (6A)—restrictions on issue of certificates

"(6E) The Minister for Communications and the Arts:

(a) must determine, in writing, an amount as the maximum approval amount for certificates given under subsection (6B) for each financial year; and

(b) must not give any certificates under that subsection in a financial year before specifying the maximum approval amount for that financial year; and

(c) must not give a certificate under that subsection if the value specified in the certificate, when added to the values specified in all certificates previously given under that subsection in that financial year, would exceed the maximum approval amount for certificates given in that financial year.

Gifts covered by subsection (6A)—assessment in which deduction allowable

"(6F) Subject to subsection (6G), a deduction to which subsection (6A) applies is allowable in the assessment of the taxpayer in respect of income of the year of income in which the taxpayer died and not otherwise.

Gifts covered by subsection (6A)—when deduction allowable in assessment of taxpayer's estate

"(6G) If:

(a) an amount (the **'section 79C amount'**) of the deduction to which subsection (6A) applies is not allowable because of section 79C in the assessment of the taxpayer in respect of income of the year of income in which the taxpayer died; and

(b) the taxpayer died before the last day of a year of income;

the section 79C amount is allowable in the assessment of the taxpayer's estate in respect of income of the remainder of that year of income.";

(e) by inserting after subsection (15) the following subsection:

Value of gift—subsection (6A)

"(15A) For the purposes of subsection (6A), the value of a gift of property is the amount specified in the certificate given by the Minister for Communications and the Arts under subsection (6B) in relation to the gift.";

(f) by inserting after subsection (16) the following subsection:

Testamentary gifts made at time of death

"(16A) To avoid doubt, a testamentary gift is taken to be made at the time of death of the taxpayer who made the gift.";

(g) by inserting after subsection (25) the following subsection:

Disallowable instruments

"(25A) The following are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*:

(a) guidelines made under subsection (6C); and

(b) determinations under paragraph (6E)(a).".

Part applies in respect of disposals of assets

82. Section 160L of the Principal Act is amended by adding at the end the following subsection:

"(9) This Part does not apply in respect of the disposal by a person of an asset under the scheme formulated by the Australian Government and known as the Cultural Bequests Program.".

Application

83. The amendments made by this Division apply to gifts made by taxpayers who die on or after 1 July 1994.

Division 10—Amendments relating to gifts

Object

84. The object of this Division is to amend section 78 of the Principal Act to correct minor technical errors.

Deductions for gifts, pensions etc.

85. Section 78 of the Principal Act is amended:

(a) by omitting "the" from item 1.2.1 of table 1 in subsection (4) and substituting "The";

(b) by inserting "or public fund" after "institution" in item 5.1.2 of table 5 in subsection (4).

Application

86. The amendments made by this Division apply in relation to:

(a) gifts and contributions made on or after 1 July 1993; and

(b) pensions, gratuities and retiring allowances paid on or after 1 July 1993.

Division 11—Partner allowance

Object

87. The object of this Division is to give to the partner allowance paid under the *Social Security Act 1991* the same tax treatment as is given to other social security allowances.

Rebate in respect of certain pensions, benefits etc.

88. Section 160AAA of the Principal Act is amended by omitting "or 2.15" from paragraph (a) of the definition of "rebatable benefit" in subsection (1) and substituting ", 2.15 or 2.15A".

Index of payments covered by Subdivision

89. Section 24AB of the Principal Act is amended by inserting in the index of payments set out in that section:

"Partner allowance	Section 24ABPA"

after:

"Newstart allowance	Section 24ABM".

Section 24ABA Interpretation—supplementary amounts

90. Section 24ABA of the Principal Act is amended by inserting "Partner allowance" immediately below "Newstart allowance".

Insertion of new section

91. After section 24ABP of the Principal Act the following section is inserted:

Partner allowance

"24ABPA.(1) The treatment of payments of partner allowance under Part 2.15A of the *Social Security Act 1991* is as follows:

(a) the supplementary amount is exempt;

(b) the balance is not exempt.

"(2) Payments under section 771NW of the *Social Security Act 1991* (which deals with bereavement payments) are exempt.

"(3) If a taxpayer derives a payment under section 771NX of the *Social Security Act 1991*:

(a) so much of the sum of that payment and other payments under the *Social Security Act 1991* derived by the taxpayer during the bereavement lump sum period as does not exceed the tax-free amount calculated using the exempt bereavement payment calculator AB in section 24ABZD is exempt; and

(b) the balance of the sum is not exempt.".

Application

92. The amendments made by this Division apply to payments received under the *Social Security Act 1991* on or after 29 September 1994.

Division 12—Amendments relating to reasonable benefits limits

Subdivision A—Certain commutation ETPs, pensions and annuities to be in excess of RBLs

Object

93. The object of this Subdivision is to provide that, where an ETP, or a residual pension or residual annuity, resulted from the commutation etc. of a pension or annuity that was in excess of a person's RBLs, the ETP, residual pension or residual annuity will be similarly determined to be in excess of the person's RBLs.

Determination of whether a benefit is in excess of recipient's RBLs

94. Section 140R of the Principal Act is amended:

(a) by omitting from subsection (1) "subsection (4) (which deals with non-quotation of tax file numbers)" and substituting "this section";

(b) by inserting after subsection (1) the following subsections:

[Application of subsection (1) in respect of commutation ETPs]

"(1A) If the ETP:

(a) was made in relation to the person as a result of the commutation or partial commutation of, or the residual capital value of, a superannuation pension or annuity; or

(b) arose from the commutation or partial commutation of a superannuation pension or annuity to which paragraph 140ZC(2)(d) applies;

the determination that the Commissioner must make is that the ETP is in excess of the person's RBLs to the extent worked out using the formula:

$$\textbf{RBL amount of the ETP} \times \left[\textbf{1 – Rebatable proportion of the superannuation pension or annuity} \right]$$

[Application of subsection (1) in respect of commutation pensions and annuities]

"(1B) If the superannuation pension or annuity mentioned in subsection (1) is a residual pension or residual annuity payable on the commutation or partial commutation of another superannuation pension or annuity, the determination that the Commissioner must make is:

(a) that the superannuation pension or annuity is in excess of the person's RBLs; and

(b) that the rebatable proportion of the superannuation pension or annuity is the same as the rebatable proportion of the other superannuation pension or annuity.".

Interim determinations

95. Section 140T of the Principal Act is amended:

(a) by omitting from subsection (1) "subsection (2) (which deals with the non-quotation of tax file numbers)" and substituting "this section";

(b) by inserting after subsection (2A) the following subsections:

[Application of subsection (1) in respect of commutation ETPs]

"(2B) If the ETP:

(a) was made in relation to the person as a result of the commutation or partial commutation of, or the residual capital value of, a superannuation pension or annuity; or

(b) arose from the commutation or partial commutation of a superannuation pension or annuity to which paragraph 140ZC(2)(d) applies;

the determination that the Commissioner must make is that the ETP is in excess of the person's RBLs to the extent worked out using the formula:

$$\textbf{RBL amount of the ETP} \times \left[\textbf{1 – Rebatable proportion of the superannuation pension or annuity}\right]$$

[Application of subsection (1) in respect of commutation pensions and annuities]

"(2C) If the superannuation pension or annuity mentioned in subsection (1) is a residual pension or residual annuity payable on the commutation or partial commutation of another superannuation pension or annuity, the determination that the Commissioner must make is:

(a) that the superannuation pension or annuity is in excess of the person's RBLs; and

(b) that the rebatable proportion of the superannuation pension or annuity is the same as the rebatable proportion of the other superannuation pension or annuity.".

Benefits which are counted towards a person's RBLs

96. Section 140ZC of the Principal Act is amended:

(a) by omitting paragraphs (2)(b) and (c) and substituting the following paragraphs:

"(b) an ETP made in relation to the person as a result of the commutation of, or the residual capital value of, a superannuation pension or annuity where the commencement day for the pension or annuity is before 1 July 1990;

(c) a residual pension or residual annuity payable on partial commutation of another superannuation pension or annuity where the commencement day for the other pension or annuity is before 1 July 1990;";

(b) by omitting paragraph (2)(e).

RBL amount—ETP paid by life assurance company or registered organisation

97. Section 140ZI of the Principal Act is amended by omitting all the words before paragraph (c) and substituting:

"140ZI. If an ETP in relation to a person is paid by a life assurance company or a registered organisation, the RBL amount of the ETP is the whole of the ETP, other than any part of the ETP that consists of:".

Application

98. The amendments made by this Subdivision apply to:

(a) ETPs paid on or after 1 July 1994; and

(b) superannuation pensions and annuities where the commencement day (within the meaning of section 140C of the Principal Act) is on or after 1 July 1994.

Subdivision B—Tax file number where interim determination

Object

99. The object of this Subdivision is to remove death benefit ETPs from the tax file number requirements of the interim determination provision (section 140T of the Principal Act).

Interim determinations

100. Section 140T of the Principal Act is amended:

(a) by omitting from subsection (2) "If" and substituting "Subject to subsection (2A), if";

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

[Exception in case of death benefit ETPs]

"(2A) Subsection (2) does not apply if:

(a) the ETP is made in relation to the recipient as a result of the death of the recipient; and

(b) the Commissioner is satisfied that the recipient has a tax file number.".

Application

101. The amendments made by this Subdivision apply to ETPs paid on or after 1 July 1994.

Subdivision C—Payer notification obligations

Object

102. The object of this Subdivision is:

(a) to remove the exemption, for trustees of superannuation funds, from giving notice under section 140M of the Principal Act in relation to ETPs equal to or less than $5,000; and

(b) to require the Insurance and Superannuation Commissioner to give notice under that section in relation to ETPs exceeding $5,000.

Payers of benefits to give certain information to Commissioner

103. Section 140M of the Principal Act is amended by omitting from sub-subparagraph (1)(a)(i)(B) "or the trustee of a superannuation fund" and substituting "or the Insurance and Superannuation Commissioner".

Application

104. The amendment made by this Subdivision applies to ETPs paid on or after 1 July 1994.

Subdivision D—Superannuation pensions and annuities not meeting standards

Object

105. The object of this Subdivision is to provide for the qualifying portions of ETPs previously received by a person to be counted in determining whether a superannuation pension or annuity that does not meet the pension and annuity standards is to be assessed against the person's lump sum RBL.

Assessment of benefits against lump sum RBL

106. Section 140ZF of the Principal Act is amended by inserting after paragraph (3)(b) the following word and paragraph:

"and (ba) the qualifying portions of any ETPs previously received by the person;".

Application

107. The amendment made by this Subdivision applies in relation to superannuation pensions and annuities where the commencement day (within the meaning of section 140C of the Principal Act) is on or after 1 July 1994.

Subdivision E—Alleviation of notice requirements

Alleviation of notice requirements

108. If, apart from this section, a payer would, only because of the application of the amendments made by this Division, be required under section 140M of the Principal Act as amended by this Act to have given a notice before the commencement of this Division, that notice is not required to be given until the end of the 28th day after the day on which this Division commences.

Division 13—Amendments relating to regional headquarters

Object

109. The object of this Division is to provide a deduction for certain expenditure incurred by approved companies in establishing a regional headquarters in Australia.

Insertion of new Subdivision

110. After Subdivision CA of Division 3 of Part III of the Principal Act the following Subdivision is inserted:

"***Subdivision CB—Regional Headquarters (RHQs)***

Object

"82C. The object of this Subdivision is to provide a deduction for certain expenditure incurred by approved companies in establishing a regional headquarters in Australia.

Deduction for setup costs of RHQ companies

"82CA. RHQ setup costs incurred on or after 1 July 1994 by an RHQ company in a year of income are an allowable deduction from the assessable income of the RHQ company of the year of income.

Interpretation

"82CB.(1) In this Subdivision:

'associated company' has the meaning given by section 82CC;

'management related services' include the following:

(a) finance and treasury services;
(b) business planning services;
(c) marketing services;
(d) accounting services;
(e) research and development services;

'RHQ company' means a company that the Treasurer, under section 82CE, has determined to be an RHQ company;

'RHQ setup costs' means expenditure (whether or not of a capital nature) incurred by an RHQ company:

(a) both:
  (i) in setting up the facilities referred to in subsection 82CD(1); and
  (ii) in the period starting 12 months before, and ending 12 months after, the company first derives assessable income from the provision of regional headquarters support from those facilities; or
(b) in reimbursing expenditure incurred by a non-resident associated company of the RHQ company if the latter expenditure would have been covered by paragraph (a) if it had instead been incurred by the RHQ company at the time when it was incurred by the associated company;

but does not include:

(c) costs incurred in connection with feasibility studies in relation to the setting up of facilities in Australia to provide regional headquarters support; or
(d) costs incurred in connection with moving facilities that provide regional headquarters support from one location in Australia to another location in Australia; or
(e) the cost of plant, equipment, land, buildings or similar items.

"(2) A company **'provides regional headquarters support'** if:

(a) the company provides to an associated company that is located in a country other than Australia; or
(b) a part of the company provides to another part of the company that is located in a country other than Australia;

any of the following:

(c) management related services; or
(d) data services; or
(e) software support services.

"(3) A reference in this section to the provision of data services to a company, or a part of a company, is a reference to:

(a) the substantial input, transmission or manipulation of data; or

(b) the production of information from data;

for, or on behalf of, that company or that part of that company.

"(4) A reference in this section to the provision of software support services to a company, or a part of a company, is a reference to the provision, to clients of that company or that part of that company, of advice and assistance in relation to computer software sold by that company or that part of that company.

Associated companies

"82CC. For the purposes of this Subdivision, a company is an **'associated company'** of another company if:

(a) either company controls at least 10% of the votes in the other company (either directly or through one or more interposed companies, partnerships or trust estates); or

(b) a third company is an associated company (including by one or more applications of this paragraph) of both of the companies.

Application to become an RHQ company

"82CD.(1) A company may, in writing, apply to the Treasurer to become an RHQ company if the company intends to establish facilities in Australia mainly for the purpose of providing regional headquarters support.

"(2) The Treasurer must publish the address to which applications must be sent.

Determination of RHQ companies

"82CE.(1) Subject to subsection (3), the Treasurer may, on application by a company under section 82CD, make a written determination that the company is an RHQ company for the purposes of this Subdivision.

"(2) The determination must:

(a) specify the day when the company commences to be an RHQ company; and

(b) contain any other information the Treasurer considers appropriate.

"(3) A determination of the Treasurer under subsection (1):

(a) may only be made if the Treasurer is satisfied that the company has the intention mentioned in subsection 82CD(1); and

(b) must be made in accordance with guidelines determined by the Treasurer under this section.

"(4) The Treasurer must determine written guidelines for the making of determinations under subsection (1). The guidelines may require the Treasurer to take into account:

(a) specified criteria; or

(b) recommendations of particular bodies; or

(c) any other factors.

"(5) Determinations made under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.".

Division 14—Australian branches of foreign banks

Object

111. The object of this Division is to enact new provisions relating to the taxation of foreign banks in respect of income derived through permanent establishments in Australia.

Repeal of section

112. Section 128M of the Principal Act is repealed.

Insertion of new Part

113. After Part IIIA of the Principal Act the following Part is inserted:

"PART IIIB—AUSTRALIAN BRANCHES OF FOREIGN BANKS

"Division 1—Preliminary

Object

"160ZZVA.(1) The object of this Part is:

(a) to assist in calculating that part of a foreign bank's taxable income that is referable to certain activities of its Australian branch; and

(b) to make it clear that withholding tax will apply to amounts that are taken by this Part to be interest paid by the branch to the bank.

"(2) For the purpose of achieving the object mentioned in subsection (1), this Part requires, in the circumstances stated in this Part and not otherwise, that the Australian branch is to be treated as if it were a separate legal entity from the bank.

Application

"160ZZVB.(1) It is the intention that, in so far as this Part is to be applied to identify amounts of income and expenditure that are taken into account in calculating that part of a foreign bank's taxable income of a year of income that is referable to certain activities of its Australian branch, the provisions of this Part are to be applied in their entirety.

"(2) If, as a result of the application of this Part:

(a) the taxable income of a year of income of a foreign bank that is attributable to activities carried on by the bank through its Australian branch is greater than the amount that would be that taxable income if this Part did not apply; or

(b) a foreign bank would be taken not to incur a loss in a year of income in respect of activities carried on by the bank through its Australian branch that it would be taken to have incurred if this Part did not apply; or

(c) the amount of a loss that a foreign bank would be taken to incur in a year of income in respect of activities carried on by the bank through its Australian branch is less than the amount of the loss that it would be taken to have incurred if this Part did not apply;

and an agreement within the meaning of the *Income Tax (International Agreements) Act 1953* that has the force of law applies in relation to the bank, the bank may elect that this Part is not to apply in the calculation of its taxable income of that year of income.

"(3) If a foreign bank makes an election as mentioned in subsection (2):

(a) this Part does not apply in the calculation of the bank's taxable income of the year of income to which the election relates and the bank may furnish returns, and is liable to pay tax, accordingly; but

(b) the election does not affect the operation of this Part in respect of the application of withholding tax to amounts that are taken by this Part to be interest paid by the branch to the bank.

Definitions

"160ZZV. In this Part, unless the contrary intention appears:

'accounting records' includes:

(a) invoices, receipts, vouchers and other documents of prime entry; and

(b) any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up;

'Australian branch', in relation to a foreign bank, means a permanent establishment in Australia through which the bank carries on banking business;

'derivative transaction' means a transaction entered into for the purpose of eliminating, reducing or altering the risk of adverse financial consequences that might result from changes in rates of interest or changes in rates of exchange between currencies, or for the purpose of making a profit from such changes, but does not include a transaction for the provision of finance or a foreign exchange transaction;

'foreign bank' means a foreign bank as defined by subsection 5(1) of the *Banking Act 1959*;

'foreign exchange transaction' means a transaction by which different currencies are exchanged;

'offshore banking unit' has the same meaning as in Division 11A of Part III;

'time of establishment', in relation to an Australian branch of a foreign bank, means the time when the bank began to carry on business through the permanent establishment in Australia that constitutes the branch.

Certain provisions to apply as if Australian branch of foreign bank were a separate legal entity

"160ZZW.(1) Subsections (2), (3), (4) and (5) apply only:

(a) for the purposes of sections 160ZZZ, 160ZZZA, 160ZZZB, 160ZZZC, 160ZZZE and 160ZZZF as they have effect in the determination under this Act of the liability of a foreign bank to tax (other than withholding tax) in respect of income derived from an Australian branch of the bank; and

(b) for the purposes of the provisions of this Act other than this Part as those provisions apply in relation to amounts that are taken by this Part to have been received from a foreign bank by its Australian branch or to have been paid to a foreign bank by its Australian branch; and

(c) for the purposes of section 160ZZZJ as it has effect in determining the liability of a foreign bank to withholding tax in respect of amounts paid to the bank by an Australian branch of the bank.

"(2) The branch and the bank are taken to be, and to have been since the time of establishment of the branch, separate legal entities.

"(3) The branch is taken to be, and to have been since the time of its establishment, a company having a share capital all the shares in which are or were beneficially owned by the bank.

"(4) The branch is taken to be a non-resident and to have been a non-resident since the time of its establishment.

"(5) For the purposes of Division 13 of Part III, the branch is taken not to be, and not to have been at any time since its establishment, a permanent establishment in Australia of the bank.

"Division 2—Provisions relating to income tax

Income of branch to have Australian source

"160ZZX. All income derived by a foreign bank through its Australian branch is taken, for the purposes of this Act, to be income derived from a source in Australia.

Deduction for foreign tax

"160ZZY. Foreign tax paid during a year of income by a foreign bank on interest received by its Australian branch from a place outside Australia is an allowable deduction for that year of income.

Notional borrowing by branch from bank

"160ZZZ.(1) If an amount has been made available by a foreign bank for use by an Australian branch of the bank and is recorded in the branch's accounting records as having been provided by the bank to the branch, that amount is taken, for the purposes of this Act, to have been borrowed by the branch from the bank when the amount became so available and to have been so borrowed in the currency in which the amount became so available.

"(2) If an amount has been made available by the branch to the bank in purported repayment of an amount that is taken, under subsection (1), to have been borrowed by the branch from the bank and the amount so made available is recorded in the branch's accounting records as having been repaid by the branch to the bank, the amount that was so taken to have been borrowed is taken, for the purposes of this Act, to have been repaid by the branch to the bank when the amount became so available and to have been so repaid in the currency in which the amount became so available.

Notional payment of interest by branch to bank

"160ZZZA.(1) If, under section 160ZZZ, an amount is taken, for the purposes of this Act, to have been borrowed (the **'notional borrowing'**) in a particular currency from a foreign bank by an Australian branch of the bank, the following provisions have effect:

(a) at any time (the **'relevant time'**) when, in respect of the notional borrowing, an amount (the **'notional amount of interest'**) is entered in the branch's accounting records as interest for a period fixed by the bank, interest is taken, for the purposes of this Act, to be incurred by the branch, paid by the branch to the bank, and derived by the bank, in respect of the notional borrowing;

(b) subject to the application of paragraph (c), the notional amount of interest is taken, for the purposes of this Act, to be the amount of interest so taken to be paid;

(c) if the interest on the notional borrowing at the relevant time was calculated at a rate of interest that exceeded the LIBOR that was applicable at the beginning of the relevant interest calculation period in relation to the notional borrowing, there is taken to have been entered in the branch's accounting records at the relevant time, in lieu of the notional amount of interest, the amount that would have been

so entered if interest on the notional borrowing for the relevant interest calculation period had been calculated at the LIBOR that was applicable at the beginning of that period.

"(2) For the purposes of this section, a reference to the LIBOR that was applicable at the beginning of the relevant interest calculation period in relation to the notional borrowing is a reference to:

(a) the LIBOR applicable at the beginning of that period in respect of advances in the currency of that borrowing for a term the number of days in which was equal to the number of days in that period; or

(b) if there was no LIBOR applicable at the beginning of that period in respect of advances in the currency of that borrowing for such a term:

(i) the LIBOR applicable at the beginning of that period in respect of advances in that currency for a term the number of days in which most nearly approximated the number of days in that period; or

(ii) if there were different LIBORs so applicable for different terms the number of days in each of which could be described as having most nearly approximated the number of days in that period—the LIBOR so applicable for the shorter of those terms.

"(3) For the purposes of this section:

(a) a reference to LIBOR, in relation to a particular time, is a reference to the rate of interest applicable at that time in relation to banks in the London inter bank market as determined by reference to the Reuter Monitor Money Rates Service or any other published source; and

(b) a reference to the relevant interest calculation period in relation to a notional borrowing from a foreign bank by an Australian branch of the bank is a reference to the period fixed by the bank for the calculation of the notional amount of interest in respect of the notional borrowing.

Deductions in respect of interest

"160ZZZB.(1) If, apart from this section, an amount would be allowable as a deduction other than an allowable OB deduction (within the meaning of Subdivision B of Division 9A of Part III) under subsection 51(1) from the assessable income of an Australian branch of a foreign bank in respect of interest incurred by the branch in respect of money borrowed by the branch, the amount that is allowable as a deduction under that subsection from that assessable income in respect of that interest is the first-mentioned amount reduced by the notional equity requirement.

"(2) In subsection (1):

'notional equity requirement' means 4% of the amount first mentioned in that subsection.

Offshore banking units

"160ZZZC. If:

(a) apart from this section, a foreign bank would be an offshore banking unit under a declaration published under subsection 128AE(2); and

(b) the foreign bank has an Australian branch;

this Act has effect as if the Australian branch were the offshore banking unit under the declaration.

Thin capitalisation

"160ZZZD. A foreign bank that carries on banking business in Australia through an Australian branch is not taken to be a foreign investor for the purposes of Division 16F of Part III in respect of income derived by the bank through that branch.

Notional derivative transactions between branch and bank

"160ZZZE. If the accounting records of an Australian branch of a foreign bank reflect a derivative transaction notionally entered into by the branch with the bank:

(a) the notional transaction is taken to be a transaction entered into by the branch with the bank; and

(b) any amount entered in the branch's accounting records as a payment or receipt in respect of the notional transaction is taken, for the purposes of this Act, to be an amount paid or received by the branch, as the case may be, in respect of the derivative transaction when the amount was so entered.

Notional foreign exchange transactions between branch and bank

"160ZZZF. If the accounting records of an Australian branch of a foreign bank reflect a foreign exchange transaction notionally entered into by the branch with the bank:

(a) the notional transaction is taken to be a transaction entered into by the branch with the bank; and

(b) any amount entered in the branch's accounting records as a payment or receipt in respect of the notional transaction is taken, for the purposes of this Act, to be an amount paid or received by the branch, as the case may be, in respect of the foreign exchange transaction when the amount was so entered.

Losses

"160ZZZG. Section 80G has effect as if an Australian branch of a foreign bank were a subsidiary of the bank and a resident of Australia.

Capital losses

"160ZZZH. Section 160ZP has effect as if an Australian branch of a foreign bank were a subsidiary of the bank and a resident of Australia.

Certain transactions to be disregarded

"160ZZZI. Any transaction entered into by a foreign bank otherwise than through its Australian branch:

(a) under which finance is provided to the bank; or

(b) that is a derivative transaction or a foreign exchange transaction;

is to be disregarded for the purpose of determining whether a deduction is allowable to the bank under this Act.

"***Division 3—Provisions relating to withholding tax***

Withholding tax on interest paid by branch to bank

"160ZZZJ.(1) If:

(a) an amount of interest is taken under section 160ZZZA to be paid to, and derived by, a foreign bank by an Australian branch of the bank; and

(b) apart from this section, sections 128B and 221YL would apply to an amount (the **'taxable amount'**) that comprises the whole or a part of the amount so taken to be paid;

the following subsections have effect.

"(2) Sections 128B and 221YL apply only to the amount worked out using the formula:

$$\frac{\text{Taxable amount } \textit{less} \text{ notional equity requirement}}{2}$$

where:

'notional equity requirement' means 4% of the taxable amount.

"(3) An amount to which section 128B applies because of subsection (2) of this section is taken, for the purposes of section 128C, to be income that was derived by the bank when the amount of interest referred to in paragraph (1)(a) is taken to have been paid to the bank.".

Keeping of records

114. Section 262A of the Principal Act is amended by inserting after subsection (1A) the following subsection:

"(1B) Without limiting subsection (1), a foreign bank (within the meaning of subsection 5(1) of the *Banking Act 1959*) must maintain accounting records in respect of, and separately account for, money used in the activities of a permanent establishment in Australia through which the bank carries on banking business.".

Application

115.(1) The repeal of section 128M of the Principal Act effected by section 113 is taken to have had effect on and after 18 June 1993.

(2) Sections 160ZZX to 160ZZZF (inclusive) and section 160ZZZI inserted in the Principal Act by this Division apply to assessments in respect of income of the first year of income commencing after 30 June 1994 and in respect of income of all later years of income.

(3) Sections 160ZZZG and 160ZZZH inserted in the Principal Act by this Division apply to assessments in respect of income of the first year of income following the year of income in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced and in respect of income of all later years of income.

(4) Section 160ZZZJ inserted in the Principal Act by this Division applies in respect of amounts of interest that are taken to be paid to a foreign bank by an Australian branch of the bank at any time after the start of the first year of income commencing after 30 June 1994.

Division 15—Amendment of assessments

Amendment of assessments

116. Section 170 of the Principal Act does not prevent the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Act.

PART 3—AMENDMENT OF THE INCOME TAX (MINING WITHHOLDING TAX) ACT 1979

Principal Act

117. In this Part, **"Principal Act"** means the *Income Tax (Mining Withholding Tax) Act 1979*[2].

Rate of tax

118. Section 6 of the Principal Act is amended by omitting "5.8%" and substituting "4%".

Application

119. The amendment made by this Part applies to mining payments made or applied on or after 30 June 1994.

PART 4—AMENDMENT OF THE SALES TAX LAW

Division 1—Amendments relating to child care

Subdivision A—Object

Object

120. The objects of this Division are:

(a) to limit the value of the exemption on the purchase or lease of luxury motor vehicles for use in providing child care; and

(b) to allow a credit to particular exempt child care bodies for certain tax borne before the bodies became exempt child care bodies.

Subdivision B—Amendment of the Sales Tax Assessment Act 1992

Principal Act

121. In this Subdivision, **"Principal Act"** means the *Sales Tax Assessment Act 1992*[3].

Luxury motor vehicle for disabled person or exempt child care body

122. Section 49 of the Principal Act is amended by omitting from subsection (1) "or 97" and substituting ", 97 or 144A".

Schedule 1

123. Schedule 1 to the Principal Act is amended by inserting after credit ground CR20 in Table 3 the following credit ground:

"

CR20A	Tax borne before claimant became an exempt child care body (**'an ECCB'**)	Claimant became an ECCB under subsection 3B(1) of the Exemptions and Classifications Act within 3 months after it first began to provide any kind of child care referred to in paragraph 3B(1)(a) of that Act. Claimant has borne tax on a tax-bearing dealing: (a) after 23 December 1993; and (b) not more than 12 months before it became an ECCB. The claimant was not entitled to quote for the dealing, but would have been if it had been an ECCB at the time of the dealing.	the tax borne	the time the claimant became an ECCB

".

Application

124. The amendment made by section 122 applies to dealings with goods after the commencement of that section.

Subdivision C—Amendment of the Sales Tax (Exemptions and Classifications) Act 1992

Principal Act

125. In this Subdivision, **"Principal Act"** means the *Sales Tax (Exemptions and Classifications) Act 1992*[4].

Schedule 1

126. Schedule 1 to the Principal Act is amended by adding at the end of Item 144A the following subitem:

"(2) Subitem (1) does not apply to motor cars or station wagons (including those known as four-wheel drive vehicles), if the taxable value of the taxable dealing concerned is more than 67.1% of the motor vehicle depreciation limit for the financial year in which the taxable dealing happens, unless the motor vehicle:

(a) is specially fitted out for transporting disabled persons seated in wheel chairs; and

(b) is not described in subitem (1) of exemption Item 96 or 97.".

Application

127. The amendments made by this Subdivision apply to dealings with goods after the commencement of this section.

Division 2—Amendments to provide a credit for export alteration goods

Object

128. The amendments made by this Division provide for sales tax credits for certain goods used in the alteration of goods that are exported.

Principal Act

129. In this Division, **"Principal Act"** means the *Sales Tax Assessment Act 1992*[3].

General definitions

130. Section 5 of the Principal Act is amended:

(a) by inserting ", 9A" after "section 9" in the definition of "Australian-used goods";

(b) by inserting the following definition:

" **'export alteration goods'** has the meaning given by section 15D;".

Insertion of new section

131. After section 9 of the Principal Act the following section is inserted:

Export alteration goods: affects meaning of "Australian-used goods"

"9A.(1) This section applies to Australian-used goods if:

(a) the export of the goods gave rise to a CR23 credit in relation to the goods or goods that became an integral part of the goods; and

(b) the goods are later imported.

"(2) In applying the sales tax law at or after the time of the importation, the goods are not taken to be Australian-used goods only because of an AOU of the goods that happened before they were exported as mentioned in paragraph (1)(a).".

Insertion of new section

132. After section 15C of the Principal Act the following section is inserted in Part 2:

Export alteration goods

"15D.(1) Goods are export alteration goods if:

(a) the goods are parts, fittings or accessories that are used by a person (**'the claimant'**) exclusively in the alteration of other goods (**'the altered goods'**); and

(b) as a result of that use, the goods become an integral part of the altered goods; and

(c) after the goods become an integral part of the altered goods, either:

(i) the altered goods are exported by another person and that person gives the claimant a declaration under subsection (2); or

(ii) the altered goods are exported by the claimant; and

(d) the goods were not used (other than in a manner covered by paragraphs (a) and (b)) in the period commencing at the end of the alteration and ending at the start of the export of the goods.

"(2) The declaration referred to in paragraph (1)(c) is a declaration that either:

(a) the altered goods; or

(b) if the claimant has used the altered goods as parts, fittings or accessories exclusively in the alteration of other goods—those other goods;

were exported by the person making the declaration and were not used (other than in a manner covered by paragraphs (1)(a) and (b)) in the period commencing at the end of the alteration and ending at the start of the export of the goods. The declaration must be in writing in a form approved by the Commissioner and must be signed by the person making the declaration.

"(3) The time when the goods become export alteration goods is the time when the claimant exports the goods, or is given the declaration, as the case requires.

"(4) In this section:

'alteration' includes repair, renovation or upgrading.".

Taxable dealing with goods imported after being exported for alteration

133. Section 42 of the Principal Act is amended by omitting from subsection (1) "This" and substituting "Subject to section 42AA, this".

Insertion of new section

134. After section 42 of the Principal Act the following section is inserted:

Export alteration goods that are re-imported

"42AA.(1) This section applies to any taxable dealing with goods to which section 9A applies.

"(2) If the taxable dealing is covered by section 42, the taxable value is the amount calculated under that section plus the amount that would have been the taxable value if the dealing had only involved the export alteration goods.

"(3) If the taxable dealing is not covered by section 42, the taxable value is the amount that would have been the taxable value if the dealing had only involved the export alteration goods.".

Schedule 1

135. Schedule 1 to the Principal Act is amended by adding at the end of Table 3 the following credit ground:

"

CR23	Tax on export alteration goods	Claimant has borne tax on export alteration goods.	the tax borne on the goods to the extent that the claimant has not passed it on	when the goods became export alteration goods

".

Application

136.(1) The amendments made by sections 130, 132 and 135 apply to goods where the alteration of the goods occurred, or occurs, on or after 1 January 1993.

(2) The amendments made by sections 131, 133 and 134 apply in relation to goods that are imported (after being exported) on or after the commencement of this Division.

Division 3—Reduction of clawback of CR9 credit

Object

137. The object of this Division is to reduce the amount of the clawback of CR9 credits to avoid double tax on parts used to repair the goods.

Principal Act

138. In this Division, **"Principal Act"** means the *Sales Tax Assessment Act 1992*[3].

Clawback of CR9 credit on later sale of defective goods

139. Section 58 of the Principal Act is amended:

(a) by omitting from subsection (2) "The amount" and substituting "Subject to subsection (2A), the amount";

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

"(2A) If the claimant has borne tax on goods that were used as raw materials in repairing the defective goods, the amount payable by the claimant is the amount calculated using the formula in subsection (2) reduced by the amount of the tax borne.".

Application

140. The amendments made by section 139 apply to amounts payable under section 58 of the Principal Act in relation to liabilities arising from sales of defective goods occurring after the commencement of this Division.

Division 4—Amendments to extend the periodic quoting provisions of the Sales Tax Assessment Act 1992

Object

141. The object of this Division is to extend the periodic quoting provisions of the *Sales Tax Assessment Act 1992*:

(a) to extend the period for which quotes may be made from 1 month to 1 year; and

(b) to allow unregistered persons to make periodic quotes based on an exemption Item; and

(c) to allow unregistered persons to accept periodic quotes.

Principal Act

142. In this Division, **"Principal Act"** means the *Sales Tax Assessment Act 1992*[3].

Periodic quoting

143. Section 85 of the Principal Act is amended:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

"(1) A person (**'the quoter'**) may make a periodic quote under this section for purchases that the quoter proposes to make from a person (**'the supplier'**) during the period, not exceeding 12 months, covered by the periodic quote.

"(2) If the quoter is a registered person and makes such a periodic quote on or before the first day of the period to which the quote relates, the quoter is taken to have quoted a registration number for

all purchases during the period from the supplier, other than purchases in respect of which the quoter has notified the supplier in accordance with subsection (3).

"(2A) If the quoter is an unregistered person and makes such a periodic quote on or before the first day of the period to which the quote relates, the quoter is taken to have quoted an exemption declaration for all purchases during the period from the supplier, other than purchases in respect of which the quoter has notified the supplier in accordance with subsection (3).";

(b) by omitting from subsection (3) "month" and substituting "period";

(c) by inserting in subsection (4) "or (2A)" after "(2)".

Manner in which quote must be made

144. Section 86 of the Principal Act is amended by omitting from subsection (1) "monthly" and substituting "periodic".

Savings

145.(1) A monthly quote made under section 85 of the Principal Act is taken to be a periodic quote under section 85 of the amended Act that covers the month concerned.

(2) In this section, **"amended Act"** means the Principal Act as amended by this Act.

Division 5—Amendments to extend the post-trial sale and lease provisions

Object

146. The amendments made by this Division extend the provisions in relation to post-trial sales and post-trial leases.

Principal Act

147. In this Division, **"Principal Act"** means the *Sales Tax Assessment Act 1992*[3].

Repeal of section and substitution of new section

148. Section 15B of the Principal Act is repealed and the following section is substituted:

Post-trial sale or post-trial lease

"15B.(1) A sale by a person (**'the claimant'**) is a post-trial sale and a lease by a person (also **'the claimant'**) is a post-trial lease if:

(a) the sale or lease occurs after one or more exempt trial-leases or exempt trial-loans in relation to the goods; and

(b) in the case of a lease—the lease is for the remainder of the statutory period; and

(c) the purchaser or lessee, at or before the time of the sale or lease, gives evidence to the claimant, in a form approved by the Commissioner, of the purchaser's or lessee's intended use of the goods during the remainder of the statutory period so as to satisfy an exemption Item; and

(d) immediately before the first exempt trial-lease or exempt trial-loan the goods were assessable goods; and

(e) in the period starting at the end of the exempt trial-lease or exempt trial-loan referred to in paragraph (d) and ending at the time of the sale or lease:

(i) the goods were not sold by the claimant; and

(ii) any AOU of the goods was an exempt trial-lease or an exempt trial-loan.

"(2) In this section:

'exempt trial-lease' means a lease of goods where, before the end of the lease, the person to whom the goods are leased gives evidence to the lessor, in a form approved by the Commissioner, that the lessee used, or intended to use, the goods during the lease so as to satisfy an exemption Item;

'exempt trial-loan' means a loan of goods where, before the end of the loan, the person to whom the goods are lent gives evidence to the lender, in a form approved by the Commissioner, that the person used, or intended to use, the goods during the loan so as to satisfy an exemption Item.

"(3) A reference in subsection (1) or (2) to a loan includes a reference to a demonstration, and, in relation to a demonstration, a reference in that subsection to use of goods by a person includes use by another person demonstrating the goods to the person.".

Application

149. The amendments made by this Division apply to sales or leases where the first, or only, exempt trial-lease or exempt trial-loan occurs after the commencement of this Division.

Division 6—Amendments relating to regional headquarters

Principal Act

150. In this Division, **"Principal Act"** means the *Sales Tax (Exemptions and Classifications) Act 1992*[4].

Object

151. The object of this Division is to provide a sales tax exemption or credit for imported computer equipment for use by an RHQ company.

Schedule 1

152. Schedule 1 to the Principal Act is amended:

(a) by inserting after Item 38 of the Table of Contents the following Item in Sub-Chapter 1.5 of Chapter 1:

"38A. Computer related equipment for RHQ company";

(b) by inserting after Item 38 the following Item in Sub-Chapter 1.5 of Chapter 1:

"Item 38A: [Computer related equipment for RHQ company]

(1) Imported goods, being computer related equipment for use by an RHQ company mainly in providing regional headquarters support, if:

(a) at all times during the 9 months before the local entry, the goods:

(i) were in existence; and

(ii) were owned or leased by:

(A) the RHQ company; or

(B) a company (**'the RHQ group company'**) that, at the time of the local entry, was a group company in relation to the RHQ company; or

(C) a company that is a group company in relation to the RHQ group company; and

(iii) were not leased or subleased to a person who is not covered by subparagraph (ii); and

(b) the goods are locally entered within 2 years after the day on which the first goods covered by this Item that are for use by the RHQ company are locally entered.

(2) In this Item:

'computer equipment' includes:

(a) equipment for networking computers; or

(b) equipment mainly used in communications between computers; or

(c) monitors;

'computer related equipment' means:

(a) computer equipment; or

(b) equipment mainly used for producing, supplying, monitoring or regulating power for computer equipment; or

(c) equipment mainly used for controlling the temperature in the area where equipment covered by paragraph (a) or (b) is situated;

'provide regional headquarters support' has the same meaning as in Subdivision CB of Division 3 of Part III of the *Income Tax Assessment Act 1936*;

'RHQ company' means:

(a) an RHQ company within the meaning of Subdivision CB of Division 3 of Part III of the *Income Tax Assessment Act 1936*; or

(b) a transitional RHQ company within the meaning of subsection 154(4) of the *Taxation Laws Amendment Act (No. 3) 1994*.".

Application

153. The amendments made by this Division apply to dealings with goods after the commencement of this Division.

Transitional

154.(1) The *Sales Tax Assessment Act 1992* applies in relation to a transitional RHQ company dealing as if the following credit ground were added at the end of Table 3 in Schedule 1 to that Act:

"

CR24	Transitional credit for a transitional RHQ company dealing	Claimant has borne tax on a transitional RHQ company dealing within the meaning of subsection 154(3) of the *Taxation Laws Amendment Act (No. 3) 1994*.	the tax borne, to the extent that the claimant has not passed it on	at the commencement of section 154 of the *Taxation Laws Amendment Act (No. 3) 1994*

".

(2) If a taxpayer is entitled to a credit for a transitional RHQ company dealing, the reference in paragraph (1)(b) of exemption Item 38A of the Principal Act as amended by this Division to the day on which the first goods covered by that Item are locally entered for use by the RHQ company concerned is a reference to the day on which the first goods that are the subject of a transitional RHQ company dealing are locally entered for use by that transitional RHQ company.

(3) A dealing with imported goods is a **"transitional RHQ company dealing"** if:

(a) the goods are computer related equipment for use by a transitional RHQ company mainly in providing regional headquarters support; and

(b) at all times during the 9 months before the local entry, the goods:

(i) were in existence; and

(ii) were owned or leased by:

(A) the transitional RHQ company; or

(B) a company (**"the RHQ group company"**) that, at the time of the local entry, was a group company in relation to the transitional RHQ company; or

(C) a company that is a group company in relation to the RHQ group company; and

(iii) were not leased or subleased to a person who is not covered by subparagraph (ii); and

(c) the dealing is after 14 December 1993 and before the commencement of this section.

(4) The Treasurer may determine that a pre-approved company, or a group company in relation to a pre-approved company, is a **"transitional RHQ company"**.

(5) The determination must:

(a) specify the day on which the company commences to be a transitional RHQ company; and

(b) contain any other information as the Treasurer considers appropriate.

(6) A company is a **"pre-approved company"** if:

(a) before 15 December 1993, the Treasurer, or another Minister, agreed in writing to provide the company with:

(i) a sales tax exemption for equipment; or

(ii) compensation for sales tax paid on equipment;

where the equipment was imported into Australia and was owned by the company for at least 9 months before importation; or

(b) on or after 15 December 1993, and before the commencement of this section, the Treasurer agreed in writing to give the company conditional approval as an RHQ company.

(7) Determinations made under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(8) In this section, **"computer related equipment"**, **"provide regional headquarters support"** and **"RHQ company"** have the same meaning as in exemption Item 38A of the Principal Act as amended by this Division.

(9) In this section:

"group company" has the same meaning as in the Principal Act as amended by this Division.

Division 7—Amendments relating to eligible repair goods

Subdivision A—Amendment of the Sales Tax Assessment Act 1992

Principal Act

155. In this Subdivision, **"Principal Act"** means the *Sales Tax Assessment Act 1992*[3].

General definitions

156. Section 5 of the Principal Act is amended by inserting the following definition:

" **'always-exempt person'** means a person whose use of goods of whatever kind is always covered by an exemption Item, regardless of the way in which the goods are used by the person;".

Eligible repair goods

157. Section 15C of the Principal Act is amended:

(a) by omitting paragraph (1)(d) and substituting the following paragraph:

"(d) the exemption user gives the claimant:

(i) a declaration that the exemption user is an always-exempt person; or

(ii) a declaration under subsection (2).";

(b) by omitting from subsection (2) "paragraph (1)(d)" and substituting "subparagraph (1)(d)(ii)";

(c) by omitting the second sentence of subsection (2);

(d) by inserting after subsection (2) the following subsection:

"(2A) A declaration under subparagraph (1)(d)(i) or subsection (2) must be in writing in a form approved by the Commissioner and signed by the exemption user.".

Schedule 1

158. Schedule 1 to the Principal Act is amended by omitting column [4] of Table 3 in relation to credit ground CR22 and substituting:

"(a) if the exemption user mentioned in section 15C is an always-exempt person—the tax borne on the goods to the extent that the claimant has not passed it on; or

(b) in any other case—the tax borne on the goods.".

Subdivision B—Amendment of the Sales Tax (Exemptions and Classifications) Act 1992

Principal Act

159. In this Subdivision, **"Principal Act"** means the *Sales Tax (Exemptions and Classifications) Act 1992*[4].

Interpretation

160. Section 3 of the Principal Act is amended by omitting from subsection (2) the definition of "always-exempt person".

Subdivision C—Application

Application

161. The amendments made by this Division apply to goods where the repair, renovation or reconditioning of the goods mentioned in subsection 15C(1) of the *Sales Tax Assessment Act 1992* as amended by this Division occurs on or after the day on which this Division commences.

Division 8—Other amendments of the Sales Tax (Exemptions and Classifications) Act 1992

Principal Act

162. In this Division, **"Principal Act"** means the *Sales Tax (Exemptions and Classifications) Act 1992*[4].

Schedule 1

163. Schedule 1 to the Principal Act is amended:

(a) by inserting in subitem 27(3) "or delivering" after "marketing";

(b) by omitting from subitem 169(2) "conduct the service" and substituting "operate the wireless transceiver".

Application

164.(1) The amendment made by paragraph 163(a) applies to dealings with goods after the commencement of that paragraph.

(2) The amendment made by paragraph 163(b) applies to dealings with goods after the commencement of that paragraph.

Transitional

165. The *Sales Tax Assessment Act 1992* applies in relation to dealings with goods after 30 June 1993 and before the commencement of this section as if the following credit ground were added at the end of Table 3 in Schedule 1 to that Act:

"

CR25	Transitional credit item for amended exemption Item 169	Claimant has borne tax on a tax-bearing dealing with goods. The claimant was not entitled to quote for the dealing, but would have been if exemption Item 169 as amended by the *Taxation Laws Amendment Act (No. 3) 1994* had been in force at the time of the dealing.	the tax borne	at the commencement of section 165 of the *Taxation Laws Amendment Act (No. 3) 1994*

".

PART 5—AMENDMENT OF THE INCOME TAX REGULATIONS

Amendment

166. Regulation 76 of the Income Tax Regulations is amended by adding at the end the following subregulation:

"(2) If:

(a) on or after 1 July 1995, an employee receives or is entitled to receive payments of salary or wages in respect of a week or part of a week in a year of income; and

(b) during that week or part of a week, the employee contributes to the maintenance of:

(i) a dependant included in class 1 in the table in subsection 159J(2) of the Act who is a resident; and

(ii) a dependant included in class 3 or 4 in that table who is a resident; and

(c) the amount that, in respect of the year of income, is taken by section 159HA of the Act to replace the amount of $1,000 in relation to the dependant included in class 1 in the table is not more than $1,452;

the employee is not entitled to have the concessional rebate applicable to the dependant included in class 1 in the table taken into account in determining the prescribed rate of deductions to be made for the purposes of section 221C of the Act, by the employee's employer, from the payments of salary or wages.".

Amendment or repeal of Income Tax Regulations

167. The amendment of the Income Tax Regulations by this Part does not prevent the amendment or repeal, by regulations, of the Income Tax Regulations as amended by this Part.

SCHEDULE

Section 6

AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936 CONSEQUENT UPON THE INTRODUCTION OF THE REPORTABLE PAYMENTS SYSTEM

PART 1

Item	Provision to be amended		Amendment
1.	Subsection Subsection Subsection Subparagraph Paragraph Subsection Paragraph	215(6)(paragraph (c) of the definition of "tax") 218(6B) (paragraph (b) and subparagraph (c)(iii) of the definition of "tax") 218(6B) (definition of "taxpayer") 222AGB(2)(e)(ii) 222AGD(1)(b) 222AGF(4)(a) 222AHE(4)(a) 222AID(4)(a) 222AIH(3)(a) 222AJB(1)(b) 222AJB(3) 222AJC(1) 222AOA(1) 222AOB(1)(a) 222AOC(a)	After "Division" (first occurring) insert "1AA,".
2.	Subparagraph	221AY(6)(a)(i) 221AZE(6)(a)(i) 221AZP(1)(b)(i)	After "Division" (second occurring) insert "1AA or".
3.	Subparagraph Subsection	221YAB(a)(vii) 221ZY(1) (definition of "relevant provision")	After "section" insert "220AZC,".
4.	Subsection	222AFA(1) 222AFA(4) 222ALA(6)	After "Divisions" insert "1AA,".
5.	Subsection	222AFA(5) 222ANA(4)	After "Sections" insert "220AY,".

PART 2

1. Subsection 221AV(2):

Before "3A" insert "1AA or".

2. Subsection 221YA(1):

Insert:

SCHEDULE—continued

" **'reportable payment'** has the same meaning as in Division 1AA;".

3. Subsection 221YC(1A):

Before "salary or wages," insert "reportable payments,".

4. Subsection 221YC(5):

Omit "Division 3A", substitute "Division 1AA or 3A from reportable payments or".

5. Paragraphs 221YCAA(2)(m) and (q):

After "160AF" insert ", 220AZ, 220AZA, 220AZB".

6. After paragraph 221YDA(1)(d):

Insert:

"(daaa) the amount of the reportable payments from which deductions have been, or will be, made in accordance with Division 1AA during that year of income;".

7. Before paragraph 221YDA(1)(e):

Insert:

"(dba) the amount of the deductions that have been, and will be, made under Division 1AA from reportable payments that have been, and will be, made to the taxpayer during the year of income;".

8. Subparagraph 221YDA(2)(b)(ii):

(a) Omit "(1)(e)" insert "(1)(dba), (e)".

(b) After "in accordance with" insert "Division 1AA,".

9. Paragraph 221YDB(1A)(b):

After "includes" (first occurring) insert "reportable payments,".

10. Subparagraphs 221YDB(1A)(b)(i), (ii) and (iii):

Omit the subparagraphs, substitute:

"(i) if the income of the taxpayer of the year of income includes reportable payments—the amount of any deductions made from those payments under Division 1AA; and

(ii) if the income of the taxpayer of the year of income includes salary or wages—the amount of any deductions made from that salary or wages under sections 221C and 221D; and

(iii) if the income of the taxpayer of the year of income includes prescribed payments—the amount of any deductions made from those payments under Division 3A.".

11. Paragraph 221YDB(1AA)(d):

Omit all the words after "reduced", substitute:

SCHEDULE—continued

"by the sum of the following amounts:

(i) if the income of the taxpayer of the year of income includes reportable payments—the amount of any deductions made from those payments under Division 1AA;

(ii) if the income of the taxpayer of the year of income includes salary or wages—the amount of any deductions made from that salary or wages under sections 221C and 221D;

(iii) if the income of the taxpayer of the year of income includes prescribed payments—the amount of any deductions made from those payments under Division 3A;".

12. Paragraph 221YDB(1ABA)(f) (subparagraph (ii) of the definition of "Relevant amount"):

Omit all the words after "reduced", substitute:

"by the sum of the following amounts:

(A) if the income of the taxpayer of the year of income includes reportable payments—the amount of any deductions made from those payments under Division 1AA;

(B) if the income of the taxpayer of the year of income includes salary or wages—the amount of any deductions made from that salary or wages under sections 221C and 221D;

(C) if the income of the taxpayer of the year of income includes prescribed payments—the amount of any deductions made from those payments under Division 3A;".

13. Heading to Division 8 of Part VI:

After "***Divisions***" insert "***1AA,***".

14. Subsection 222AFB(1) (definition of "person"):

Insert before paragraph (a):

"(aa) a person as defined in section 220AC; and".

15. Subsection 222AFB(1) (definition of "remittance provision"):

Insert before paragraph (a):

"(aa) in Division 1AA—subsection 220AG(1);".

16. Subsection 222ALB(2):

After "subsection" (first occurring) insert "220AY(9),".

17. Subsection 222ANA(1):

After "Division" (second occurring) insert "1AA,".

18. Heading to Subdivision B of Division 9 of Part VI:

After "***Division***" insert "***1AA,***".

NOTES

Income Tax Assessment Act 1936

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; Nos. 3, 35, 69, 70, 80, 81, 92, 98, 101, 118, 138, 167, 190, 191, 208, 223, 224, 227 (as amended by No. 82, 1994), 237 and 238, 1992; Nos. 7, 17, 18, 27 and 32, 1993; and Nos. 56 and 82, 1994.

Income Tax (Mining Withholding Tax) Act 1979

2. No. 28, 1979, as amended. For previous amendments, see No. 103, 1982 and No. 109, 1986.

Sales Tax Assessment Act 1992

3. No. 114, 1992, as amended. For previous amendments, see Nos. 150, 191, 210 and 224, 1992; Nos. 18, 44 and 118, 1993.

Sales Tax (Exemptions and Classifications) Act 1992

4. No. 119, 1992, as amended. For previous amendments, see Nos. 131, 150, 167 and 224, 1992; and No. 118, 1993.

NOTE ABOUT SECTION HEADING

1. On the day on which Division 1AA of Part VI of the *Income Tax Assessment Act 1936* commences, the heading to section 222AJB of that Act is altered by inserting "**1AA**," after "**Division**".

[*Minister's second reading speech made in—*
House of Representatives on 23 August 1994
Senate on 30 August 1994]