



Taxation Laws Amendment Act (No. 2) 1997

No. 95, 1997

An Act to amend the law relating to taxation

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An Act to amend the law relating to taxation

[Assented to 30 June 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 1997*.

2 Commencement

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

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- (2) Item 24 of Schedule 1 commences, or is taken to have commenced, immediately after the commencement of the *Income Tax (Consequential Amendments) Act 1997*.
 - (3) Items 9 and 10 of Schedule 3 commence immediately after item 10 of Schedule 1.
 - (4) Part 1 of Schedule 5 commences immediately after the commencement of Schedule 2.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Amendments related to net capital losses

Part 1—Amendment of the Income Tax Assessment Act 1936

1 Subsections 160ZC(1) to (4)

Repeal the subsections, substitute:

Net capital gains

- (1) This subsection sets out how to work out, for the purposes of this Part, if a net capital gain accrues to a taxpayer in respect of a year of income and, if so, the amount of that net capital gain.

Calculating net capital gains

- Step 1.* Add up all of the capital gains that accrued to the taxpayer during the year of income. The result is called the ***total capital gains***.
- Step 2.* Add up all of the capital losses incurred by the taxpayer during the year of income. The result is called the ***total capital losses***.
- Step 3.* Subtract the total capital losses from the total capital gains. (If the total capital losses exceed the total capital gains, no net capital gain accrues to the taxpayer in respect of the year of income.)
- Step 4.* If there is a balance remaining after step 3, reduce it by applying net capital losses from previous years of income. (If this reduces the balance to nil, no net capital gain accrues to the taxpayer in respect of the year of income.)
- Step 5.* If the balance is not reduced to nil in step 4, a net capital gain is taken to have accrued to the taxpayer in respect of

the year of income. The balance after step 4 is the amount of the net capital gain.

Net capital losses

- (2) For the purposes of this Part, a net capital loss is taken to have been incurred by a taxpayer in respect of a year of income if:
- (a) the sum of any capital losses incurred by the taxpayer during the year of income;
- exceeds:
- (b) the sum of any capital gains that accrued to the taxpayer during the year of income.

The net capital loss is the excess.

Note: The amount of a net capital loss may be reduced under subsection 160ZZPR(2) or 160ZZPS(2).

Applying net capital losses

- (3) In working out if a net capital gain accrues where there are 2 or more net capital losses, those losses are to be applied in the order in which the taxpayer incurred them.
- (3A) A net capital loss can be applied only to the extent that it has not already been applied.
- (3B) If all or part of a net capital loss cannot be applied in a year of income, the unapplied amount can be carried forward to be applied in the next year of income. This section sets out whether the unapplied amount of the net capital loss can be applied in the next year of income.

Example: At the start of a year of income, Patricia has net capital losses from previous years. From the year immediately before the year of income she has an available net capital loss of \$300 and from the year prior to that she has an available net capital loss of \$200. During the year of income, she accrues capital gains totalling \$1,000 and incurs capital losses totalling \$700.

The capital losses are deducted from the capital gains leaving a balance of \$300.

This balance is reduced to nil by applying the available net capital losses in the order in which they were incurred. This leaves \$200 of the loss from the previous year to be carried forward and extinguishes the net capital loss from the year before that.

There is no net capital gain or net capital loss for the year of income.

2 Subsection 160ZC(4A)

Omit all the words from and including “incurred by the taxpayer”, substitute “from an earlier year of income cannot be applied in determining whether a net capital gain accrued to the taxpayer in respect of the year of income or a later year of income”.

3 Paragraph 160ZC(4C)(a)

Omit “(the *denied loss*)”.

4 Paragraph 160ZC(4C)(a)

Omit “is not allowed to be taken into account”, substitute “cannot be applied”.

5 Paragraph 160ZC(4C)(b)

Omit “denied loss”, substitute “net capital loss”.

6 After paragraph 160ZC(4C)(c)

Insert:

; and (d) apart from the operation of subsection (4A), an amount of the net capital loss (the *denied amount*) would have been applied (if sufficient capital gains had accrued) in determining whether a net capital gain accrued to the taxpayer in the payment year;

7 Subsection 160ZC(4D)

Omit “amount of the denied loss” (wherever occurring), substitute “denied amount”.

8 Subsection 160ZC(5)

Omit all the words from and including “shall not be” to and including “next succeeding”, substitute “cannot be applied in determining whether a net capital gain accrued to the taxpayer in a later”.

9 Subsection 160ZP(7)

Omit “Subject to this section, where:”, substitute “Subsection (7AAA) applies if:”.

10 Paragraph 160ZP(7)(a)

Repeal the paragraph, substitute:

- (a) a company that is a resident (the *loss company*) is taken to have incurred a net capital loss for a year of income (the *loss year*);

11 Paragraph 160ZP(7)(b)

After “*gain year*”, insert “that is either the loss year or a later year of income”

12 After paragraph 160ZP(7)(b)

Insert:

- (baa) if the gain year is after the loss year—the net capital loss has been applied in determining whether a net capital gain accrued to the loss company in respect of the gain year or would have been so applied if sufficient capital gains had accrued to the loss company during the gain year;

13 Paragraph 160ZP(7)(c)

Repeal the paragraph, substitute:

- (c) the loss company and the gain company agree that the whole or a part of the net capital loss (the *transferred amount*) will be transferred from the loss company to the gain company;

14 Subsection 160ZP(7)

Omit all the words after paragraph (e).

15 After subsection 160ZP(7)

Insert:

(7AAA) If this subsection applies:

- (a) the net capital loss of the loss company for the loss year is reduced by the transferred amount; and
- (b) for the purposes of the application of this Part in determining whether a net capital gain accrued to the gain company in respect of the gain year, the transferred amount is taken to be:
 - (i) if the gain year is the same year of income as the loss year and paragraph 160Z(9)(b) does not apply to the

- gain company in relation to that year—a capital loss incurred by the gain company during the gain year; or
- (ii) if the gain year is a year of income after the loss year—a net capital loss for the gain company for the loss year.

16 Subsection 160ZP(7A)

Omit “stating that the whole or a part of a net capital loss should be treated as a capital loss incurred by the gain company during the gain year”, substitute “transferring the whole or a part of a capital loss to the gain company”.

17 Subsection 160ZP(8)

Repeal the subsection, substitute:

Maximum that can be transferred

- (8) The maximum amount transferred cannot exceed the amount obtained by deducting:
- (a) any amount that has been, or will be, transferred under an agreement previously made under paragraph (7)(c) by any company transferring the whole or a part of a net capital loss to the gain company in the gain year;
- from:
- (b) the net capital gain that accrued, or would but for the operation of this section have accrued, to the gain company in respect of the gain year.
- (8A) If the gain year is a year of income after the loss year, the maximum amount transferred can also not exceed the amount mentioned in subsection 160ZC(3B) as the unapplied amount that can be carried forward to be applied in the year of income after the gain year.

Effect of specifying more than the maximum

- (8B) If the amount specified in an agreement exceeds the maximum amount that the loss company can transfer to the gain company in the gain year, only that maximum amount is taken to have been transferred.

- (8C) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

Order in which losses are transferred

- (8D) Where 2 or more net capital losses of the loss company are able to be transferred under this section, those net capital losses may be transferred only in the order in which they were incurred.

18 Subsections 160ZP(11) and (12)

Omit “(7)”, substitute “(7AAA)”.

19 Subsections 160ZP(11) and (12)

After “a capital loss”, insert “, or a net capital loss,”.

20 Subsection 160ZP(15)

After “the capital loss”, insert “, or the net capital loss,”.

21 Schedule 2C (paragraph 245-125(a))

Repeal the paragraph, substitute:

- (a) a net capital loss (if any) that:
 - (i) is taken under section 160ZC, for the purposes of Part IIIA, to have been incurred by the debtor in respect of a year of income earlier than the forgiveness year of income; and
 - (ii) would, apart from this Subdivision, be applied in determining whether a net capital gain accrued to the debtor in respect of the forgiveness year of income if sufficient capital gains accrued in that year; or

22 Application

- (1) The amendments made by items 1 to 8 and 21 apply in determining net capital gains and net capital losses for the 1996-97 year of income and all later years of income.
- (2) In determining a taxpayer’s net capital gain for those years:

- (a) the taxpayer's net capital loss for the 1995-96 year of income is to be worked out disregarding the amendments made by those items; and
 - (b) the taxpayer is taken (other than for the purposes of paragraph (a)) not to have incurred a net capital loss for any year of income before the 1995-96 year of income.
- (3) The amendments made by items 9 to 20 apply to transfers of net capital losses where the gain year is the 1996-97 year of income or a later year of income.

**Part 2—Amendment of the Taxation Laws
Amendment Act (No. 1) 1997**

23 Item 4 of Schedule 5

Repeal the item.

**Part 3—Amendment of the Income Tax
(Consequential Amendments) Act 1997**

24 Item 238 of Schedule 1

Repeal the item, substitute:

238 Subsection 160ZC(5)

Omit everything after “year of income” (second occurring), substitute “if, had the net capital loss been a tax loss, Subdivision 165-A or 175-A of the *Income Tax Assessment Act 1997* would have prevented the taxpayer from deducting it in that later income year.”.

Schedule 2—Amendment of the Income Tax Assessment Act 1936: Withholding tax avoidance

1 Subsection 128A(1) (definition of *interest*)

Repeal the definition.

2 Subsection 128A(1AA) (at the end of the definition of *income*)

Add “and a dividend.”.

3 After subsection 128A(1AA)

Insert:

(1AB) For the purposes of this Division:

interest includes an amount, other than an amount referred to in subsection 26C(1):

- (a) that is in the nature of interest; or
- (b) to the extent that it could reasonably be regarded as having been converted into a form that is in substitution for interest; or
- (c) to the extent that it could reasonably be regarded as having been received in exchange for interest in connection with a washing arrangement.

washing arrangement means an arrangement under which the title to a security is transferred to a resident shortly before an interest payment is made where the sole or dominant purpose of the arrangement is to reduce the amount of withholding tax payable by a person.

(1AC) An example of an amount in the nature of interest is an amount representing a discount on a security.

(1AD) An example of an amount in substitution for interest is a lump sum payment made instead of payments of interest.

(1AE) For the purposes of this Division, if a lender assigns a loan, or the right to interest under a loan, any payment from the borrower to the

assignee that represents an amount that would have been interest if the assignment had not taken place is taken to be a payment of interest.

- (1AF) For the purposes of this Division, if a person acquires a security, or the right to interest under a security, any payment from the issuer of the security to that person that represents an amount that would have been interest if the acquisition had not taken place is taken to be a payment of interest.

4 Paragraph 128AB(4)(b)

Omit “128A(1)”, substitute “128A(1AB)”.

5 After section 128AE

Insert:

128AF Payments through interposed entities

- (1) This section applies if:
- (a) a payment received by a non-resident through one or more interposed companies, partnerships, trusts or other persons is attributable to an amount of dividends, interest or royalties paid by a resident; and
 - (b) one or more of the interposed companies, partnerships, trusts or other persons is exempt from tax.
- (2) If this section applies, the amount of dividends, interest or royalties paid by a resident is taken, for the purposes of this Division, to have been paid by the resident directly to the non-resident.
- (3) For the purposes of this section, a person is exempt from tax if, at the time at which the payment was received by the non-resident, all income of the person was exempt from tax.

6 After subsection 128B(2B)

Insert:

- (2C) Subject to subsection (3), where income:
- (a) is derived, or derived in part, by a person (the *recipient*) to whom this section applies in carrying on business in a

country outside Australia at or through a permanent establishment of the person in that country; and

(b) consists of a royalty that:

- (i) is paid to the recipient by another person (the *payer*) to whom this section applies and is not an outgoing wholly incurred by the payer in carrying on business in a country outside Australia at or through a permanent establishment of the payer in that country; or
- (ii) is paid to the recipient by one or more persons (the *non-resident payers*), each of whom is not a resident, and is, or is in part, an outgoing incurred by the non-resident payers in carrying on business in Australia at or through a permanent establishment of the non-resident payers in Australia;

this section also applies to that income or to the part of that income mentioned in paragraph (a).

7 After subsection 128B(9)

Insert:

(9A) For the purposes of subparagraphs (2B)(b)(i) and (2C)(b)(i), where:

- (a) a royalty is paid, to a person by another person, being a person to whom this section applies, carrying on business in a country outside Australia; and
- (b) the royalty, or a part of the royalty:
 - (i) is a royalty incurred by the other person in gaining or producing income that is derived by the other person otherwise than in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country or is a royalty incurred by the other person for the purpose of gaining or producing income to be so derived; or
 - (ii) is a royalty incurred by the other person in carrying on business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the other person otherwise than in so carrying on business at or through a permanent establishment of the other person in a country outside Australia;

the royalty or the part of the royalty, as the case may be, is not an outgoing incurred by the other person in carrying on business in a country outside Australia at or through a permanent establishment of the other person in that country.

(9B) For the purposes of subparagraphs (2B)(b)(ii) and (2C)(b)(ii), where:

- (a) a royalty is paid to a person by another person or other persons (the *licensee*), being:
 - (i) another person who is or was carrying on business in Australia and is not or was not a resident; or
 - (ii) other persons who are or were carrying on business in Australia and each of whom is not or was not a resident; and
- (b) the royalty or a part of the royalty:
 - (i) is a royalty incurred by the licensee in gaining or producing income that is derived by the licensee in carrying on business in Australia at or through a permanent establishment of the licensee in Australia or is a royalty incurred by the licensee for the purpose of gaining or producing income to be so derived; or
 - (ii) is a royalty incurred by the licensee in carrying on a business for the purpose of gaining or producing income and is reasonably attributable to income that is derived, or may be derived, by the licensee in so carrying on business at or through a permanent establishment of the licensee in Australia;

the royalty or the part of the royalty, as the case may be, is an outgoing incurred by the licensee in carrying on business in Australia at or through a permanent establishment of the licensee in Australia.

8 Subsection 128B(11)

After “(2A)”, insert “or (2C)”.

9 Section 128D

After “(2A)”, insert “or (2C)”.

10 Section 159GZA (definition of *interest*)

Omit “128A(1)”, substitute “128A(1AB)”.

11 Section 159GZY (definition of *interest*)

Omit “128A(1)”, substitute “128A(1AB)”.

12 After section 177C

Insert:

177CA Withholding tax avoidance

- (1) This section applies in relation to a particular amount if a taxpayer is not liable to pay withholding tax on an amount where that taxpayer would have, or could reasonably be expected to have, been liable to pay withholding tax on the amount if a scheme had not been entered into or carried out.
- (2) For the purposes of this Part, if this section applies in relation to an amount, the taxpayer is taken to have obtained a tax benefit in connection with the scheme of an amount equal to the amount mentioned in subsection (1).

13 After subsection 177F(2)

Insert:

- (2A) Where a tax benefit that is covered by section 177CA has been obtained, or would but for this section be obtained, by a taxpayer in connection with a scheme to which this Part applies:
 - (a) the Commissioner may determine that the taxpayer is subject to withholding tax under section 128B on the whole or a part of that amount; and
 - (b) if the Commissioner makes such a determination, he or she must take such action as he or she considers necessary to give effect to that determination.
- (2B) A determination under subsection (2A) must be in writing.
- (2C) Notice of the determination must be given to the taxpayer and to the person who paid the amount.
- (2D) More than one determination may be included in the same notice.

- (2E) A failure to comply with subsection (2C) does not affect the validity of a determination.
- (2F) If the Commissioner makes a determination under subsection (2A), the amount that the Commissioner determines is taken to be subject to withholding tax is taken to have been subject to withholding tax at all times by virtue of such provision of section 128B as the Commissioner determines.
- (2G) If the taxpayer is dissatisfied with a determination under subsection (2A), the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

14 Subsection 177F(3)

After “subsection (1)”, insert “or (2A)”.

15 After subsection 221YQ(1)

Insert:

- (1A) To avoid doubt, this section applies in relation to an amount that the Commissioner, under subsection 177F(2A), determines to be subject to withholding tax as if the amount were subject to withholding tax at the time the amount was paid.

16 After section 221YQ

Insert:

221YQA Liability of payer where Part IVA applies

- (1) Where:
- (a) the Commissioner has calculated the withholding tax that a taxpayer is liable to pay in relation to an amount paid by another person (the *payer*); and
 - (b) in calculating the withholding tax, a determination or determinations made by the Commissioner under subsection 177F(2A) was or were taken into account;
- the payer is liable to pay to the Commissioner an amount equal to the amount of additional tax that the taxpayer is liable to pay, by way of penalty, under subsection 226(1A) in relation to the amount.

- (2) Where the payer has paid to the Commissioner an amount payable by virtue of subsection (1), the payer may recover an amount equal to that amount from the taxpayer liable to pay the additional tax to which that amount relates.
- (3) Where an amount payable under subsection (1) has been paid to the Commissioner, the taxpayer liable to pay the additional tax to which the amount relates is entitled to a credit equal to that amount.
- (4) Where the payer has paid to the Commissioner an amount payable by virtue of subsection (1) and the additional tax or any part of the additional tax to which the amount relates is remitted by the Commissioner:
 - (a) any credit under subsection (3) that relates to the amount shall be reduced by an amount equal to the additional tax that is remitted; and
 - (b) the Commissioner must pay to the payer an amount equal to the additional tax that is remitted.

17 After subsection 226(1)

Insert:

- (1A) Where:
 - (a) the Commissioner has calculated the withholding tax that a taxpayer is liable to pay in relation to an amount; and
 - (b) in calculating the withholding tax, a determination or determinations made by the Commissioner under subsection 177F(2A) was or were taken into account; and
 - (c) either:
 - (i) the taxpayer would have been liable to no withholding tax in relation to the amount if no determination had been made under subsection 177F(2A) in relation to the amount; or
 - (ii) the amount of withholding tax (the *amount of claimed tax*) for which the taxpayer would, but for this section, have been liable if no determination had been made under subsection 177F(2A) in relation to the amount is less than the amount of tax referred to in paragraph (a);

the taxpayer is liable to pay, by way of penalty, additional tax equal to:

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

18 Subsection 226(2)

Omit “subsection (1)”, substitute “this section”.

19 Application

The amendments made by this Schedule apply to payments made after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

20 Transitional—regulations

The first regulations made after the commencement of this item for the purposes of section 221YL of the *Income Tax Assessment Act 1936* may be expressed:

- (a) to have been in effect at all relevant times before the date of notification of the regulations; or
- (b) to apply in relation to a period of any part of which occurred before the date of notification of the regulations; or
- (c) to take effect from:
 - (i) a specified date; or
 - (ii) a specified time on a specified date;before the date of notification of the regulations.

Schedule 3—Amendments in respect of the taxation of dual resident companies

Part 1—Amendments of the Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

prescribed dual resident means a company that satisfies either of the following conditions:

- (a) the first condition is that:
 - (i) the company is a resident of Australia within the meaning of subsection 6(1); and
 - (ii) there is an agreement (within the meaning of the *International Tax Agreements Act 1953*) in force in respect of a foreign country; and
 - (iii) the agreement contains a provision that is expressed to apply where, apart from the provision, the company would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and
 - (iv) that provision has the effect that the company is, for the purposes of the agreement, a resident solely of the foreign country;
- (b) the alternative condition is that the company:
 - (i) is a resident of Australia within the meaning of subsection 6(1) for no other reason than that it carries on business in Australia and has its central management and control in Australia; and
 - (ii) it is also a resident of another country; and
 - (iii) its central management and control is in another country.

2 After subsection 46F(2)

Insert:

(2A) A shareholder that is a prescribed dual resident is not entitled to, and is not to be allowed, a rebate under section 46 or 46A in respect of the unfranked part of a dividend paid to the shareholder.

(2B) A shareholder is not entitled to, and is not to be allowed, a rebate under section 46 or 46A in respect of the unfranked part of a dividend paid by a prescribed dual resident to the shareholder.

Note: The heading to section 46F is altered by inserting “**or to or by prescribed dual resident**” after “**private company**”.

3 Paragraph 80G(6)(a)

After “resident company”, insert “other than a prescribed dual resident”.

4 Paragraph 80G(6)(b)

After “resident company”, insert “other than a prescribed dual resident”.

5 Subsection 159GT(6)

After “non-resident” (wherever occurring), insert “or a prescribed dual resident”.

6 Subsection 159GZE(1)

After “a non-resident” (wherever occurring), insert “or a prescribed dual resident”.

7 Subsection 159GZE(1)

After “the non-resident”, insert “or the prescribed dual resident”.

8 Section 159GZZA

After “non-resident”, insert “or a prescribed dual resident”.

9 Paragraph 160ZP(7)(a)

After “resident company”, insert “other than a prescribed dual resident”.

10 Paragraph 160ZP(7)(b)

After “resident company”, insert “other than a prescribed dual resident”.

11 Subparagraph 160ZZO(1)(a)(i)

After “Australia” (first occurring), insert “, other than a prescribed dual resident,”.

12 Subparagraph 160ZZO(1)(a)(i)

After “Australia” (second occurring), insert “, other than a prescribed dual resident”.

13 Subparagraph 160ZZO(1)(a)(ii)

After “Australia” (second occurring), insert “, other than a prescribed dual resident”.

14 Application

- (1) The amendment made by item 1 of this Schedule applies to assessments in respect of the year of income in which 1 July 1997 occurs and of all later years of income.
 - (2) The amendment made by item 2 of this Schedule applies in relation to dividends paid or received by a prescribed dual resident on or after 1 July 1997.
 - (3) The amendment made by item 3 of this Schedule applies in relation to the year of income for the loss company in which 1 July 1997 occurred and all later years of income.
 - (4) The amendment made by item 4 of this Schedule applies in relation to the year of income for the income company in which 1 July 1997 occurred and all later years of income.
 - (5) The amendments made by items 5 to 8 of this Schedule apply in relation to interest incurred or accrued on or after 1 July 1997.
 - (6) The amendment made by item 9 of this Schedule applies in relation to the year of income for the loss company in which 1 July 1997 occurred and all later years of income.
 - (7) The amendment made by item 10 of this Schedule applies in relation to the year of income for the gain company in which 1 July 1997 occurred and all later years of income.
 - (8) The amendments made by items 11 to 13 of this Schedule apply in relation to asset transfers undertaken on or after 1 July 1997.
-

Part 2—Amendments of the Income Tax Assessment Act 1997

15 Paragraph 170-35(1)(a)

After “resident”, insert “and not a *prescribed dual resident”.

16 Paragraph 170-40(1)(a)

After “resident”, insert “and not a *prescribed dual resident”.

17 Section 995-1

Insert:

prescribed dual resident has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

18 Application

The amendment made by item 9 of this Schedule applies in relation to the year of income for the loss company in which 1 July 1997 occurred and all later years of income.

Schedule 4—Removal of standard superannuation contribution limit

Income Tax Assessment Act 1936

1 Subsection 82AAC(2)

Omit “Subject to subsection (2D) (which deals with elective deduction limits), the”, substitute “The”.

2 Subsections 82AAC(2D) to 82AAC(2H) (inclusive)

Repeal the subsections.

3 Application

The amendments made by this Schedule apply to assessments in respect of the year of income after the year in which 20 August 1996 occurs and of all later years of income.

4 Transitional

If a taxpayer elects that subsection 82AAC(2D) of the *Income Tax Assessment Act 1936* is to apply for the year of income in which 20 August 1996 occurs:

- (a) the total deductions allowed under subsection 82AAC(1) of that Act for contributions made by the taxpayer, or by the taxpayer and one or more of the associates of the taxpayer in respect of a particular employee, must not exceed the greater of:
 - (i) the amounts contributed at or before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; and
 - (ii) the employee’s deduction limit for that year of income; and
- (b) the total deductions allowed under subsection 82AAC(1) of that Act for contributions made by the taxpayer, or by the taxpayer and one or more of the associates of the taxpayer in respect of all the employees, must not exceed the elective deduction limit worked out under subsection 82AAC(2D) for that year of income.

Schedule 5—Interest withholding tax and related provisions

Part 1—Interest paid by companies on bearer debentures

Income Tax Assessment Act 1936

1 Section 125

Repeal the section.

2 Subsection 126(1)

Repeal the subsection, substitute:

(1) If:

- (a) a company pays or credits an amount of interest in respect of a debenture payable to bearer; and
- (b) the interest is not, to any extent, subject to withholding tax under Division 11A; and
- (c) none of sections 128EA, 128F, 128G, 128GA and 128GB applies to the interest; and
- (d) the interest is not interest that, because of section 159GZZZZE (which deals with infrastructure borrowings), is not included in assessable income; and
- (e) the company does not give the Commissioner the name and address of the holder of the debenture;

the company is liable to pay income tax, as imposed by the *Income Tax (Bearer Debentures) Act 1971*, on the amount paid or credited, or, if the company makes a deduction under subsection (2), the amount that otherwise would have been paid or credited.

(1A) Subsection (1) does not affect any other liability of the company to pay income tax.

3 Subsection 126(3)

Omit “(not being a non-resident who, but for subparagraph 128B(3)(h)(iii), would be liable to pay withholding tax upon the interest)”.

4 Subsection 127(2)

Repeal the subsection.

Note: The heading to section 127 of the *Income Tax Assessment Act 1936* is altered by omitting “**Rebate or refund of**” and substituting “**Credit for**”.

5 Subparagraph 128B(3)(h)(iii)

Repeal the subparagraph.

6 Before subsection 128B(10)

Insert:

(9C) If:

- (a) apart from this subsection, tax would be payable under subsection 126(1) on an amount of interest paid to a person; and
- (b) section 128F would apply to the interest, assuming that paragraph (1)(e) of that section had not been enacted;

then:

- (c) despite anything else in this section or section 128E, the interest is taken, for the purposes of this Division, to be income derived by the person and to be income to which this section applies; and

Note: As a result of this paragraph, the interest will not be subject to tax under subsection 126(1): see paragraph 126(1)(b).

- (d) in addition to the effect of any credit arising under subsection 221YS(1) in respect of the interest, the total tax payable by the person, other than under this section, is reduced by the amount of any tax payable under this section on the interest; and
- (e) tax paid under this section on the interest is not an allowable deduction.

7 Section 128D

Omit “(2A) or (2C)”, substitute “(2A), (2C) or (9C)”.

8 Section 128D

Omit “subparagraph 128B(3)(h)(iii)”.

9 Paragraph 202EE(1)(d)

Omit “subparagraph 128B(3)(h)(iii) or (iv)”, substitute “subparagraph 128B(3)(h)(iv)”.

Income Tax (Bearer Debentures) Act 1971

10 Section 6

Repeal the section, substitute:

6 Rate of tax

The rate of tax imposed by this Act on an amount of interest is 47%.

11 Application

The amendments made by this Part apply to interest paid or credited after the commencement of this Part.

Part 2—Interest withholding tax exemption under section 128F

Income Tax Assessment Act 1936

12 Section 128F

Repeal the section, substitute:

128F Division does not apply to interest on certain debentures issued on overseas capital markets

Interest to which this section applies

- (1) This section applies to interest paid by a company in respect of a debenture if:
 - (a) the company was a resident of Australia when it issued the debenture; and
 - (b) the company is a resident of Australia when the interest is paid; and
 - (c) the company issued the debenture outside Australia for the purpose of raising finance outside Australia; and
 - (d) the interest is paid outside Australia; and
 - (e) the issue of the debenture satisfies the public offer test set out in subsection (3) or (4).

Tax not payable

- (2) Tax is not payable under this Division in respect of interest to which this section applies.

Public offer test

- (3) For the purposes of subsection (1), the issue of a debenture by a company *satisfies the public offer test* if the issue resulted from the debenture being offered for issue:
 - (a) to at least 10 persons each of whom:

- (i) was carrying on a business of providing finance, or investing or dealing in securities, in the course of operating in financial markets; and
 - (ii) was not known, or suspected, by the company to be an associate (see subsection (9)) of any of the other persons covered by this paragraph; or
- (b) to at least 100 persons whom it was reasonable for the company to have regarded as either:
- (i) having acquired debentures in the past; or
 - (ii) being likely to be interested in acquiring debentures; or
- (c) as a result of being accepted for listing on a stock exchange outside Australia, where the company had previously entered into an agreement with a dealer, manager or underwriter, in relation to the placement of debentures, requiring the company to seek such listing; or
- (d) as a result of negotiations being initiated publicly in electronic form, or in another form, that was used by financial markets for dealing in debentures; or
- (e) to a dealer, manager or underwriter, in relation to the placement of debentures, who, under an agreement with the company, offered the debenture for sale within 30 days in a way covered by any of paragraphs (a) to (d).

Global bonds

- (4) The issue of a debenture by a company also **satisfies the public offer test** if the debenture is a global bond (see subsection (10)).

Issues that always fail the public offer test

- (5) The issue of a debenture by a company does not **satisfy the public offer test** if, at the time of the issue, the company knew, or had reasonable grounds to suspect that the debenture, or an interest in the debenture, was being, or would later be, acquired either directly or indirectly by:
- (a) a resident of Australia; or
 - (b) an associate of the company;
- other than in the capacity of a dealer, manager or underwriter in relation to the placement of the debenture.

No exemption for interest paid to known associate of company

- (6) This section does not apply to interest paid by the company to an associate of the company, if, at the time of the payment, the company knows, or has reasonable grounds to suspect, that the person is such an associate.

Australian public bodies are treated as Australian resident companies

- (7) This section applies in relation to a debenture issued by:
- (a) an authority of the Commonwealth; or
 - (b) a State or an authority of a State;
- as if the authority or State were a company and a resident of Australia.

Debentures issued through certain non-resident subsidiaries can also get the exemption

- (8) If:
- (a) a company (the **parent company**) beneficially owns all of the issued shares in the capital of a company (the **subsidiary**) that is not a resident of Australia; and
 - (b) the subsidiary's only business is raising finance for the purposes of the parent company; and
 - (c) the subsidiary raises finance in a country specified in the regulations (but not Australia) by issuing a debenture in that country; and
 - (d) when the debenture is issued, the subsidiary is treated as a resident of that country for the purposes of the tax law (see subsection (9)) of the country; and
 - (e) the interest on the debenture is payable outside Australia;
- then this section has effect as if:
- (f) the parent company had raised the finance and issued the debenture; and
 - (g) the interest payable by the parent company to the subsidiary in respect of the finance were interest in respect of the debenture and were paid outside Australia.

Definitions

(9) In this section:

associate has the same meaning as in Division 16F, except that subparagraphs 159GZC(1)(a)(ii), (1)(b)(i) and (1)(d)(i) must be disregarded.

clearing house means a person who operates a facility that is used by financial markets for investing in or dealing in securities.

debenture, without affecting its meaning elsewhere in this Act, includes a promissory note or a bill of exchange (in addition to the things mentioned in the definition of **debenture** in subsection 6(1)).

global bond has the meaning given by subsection (10).

tax law, in relation to a country other than Australia, means:

- (a) if the country has federal foreign tax—the law of the country that imposes the federal foreign tax; or
- (b) in any other case—the law of the country that imposes foreign tax.

Global bond

(10) A debenture issued by a company is a **global bond** if:

- (a) it describes itself as a global bond or a global note; and
- (b) it is issued to a clearing house (see subsection (9)) or to a person as trustee or agent for, or otherwise on behalf of, one or more clearing houses; and
- (c) in connection with the issue, the clearing house or houses:
 - (i) confer rights in relation to the debenture on other persons; and
 - (ii) record the existence of the rights; and
- (d) before the issue:
 - (i) the company; or
 - (ii) a dealer, manager or underwriter, in relation to the placement of debentures, on behalf of the company; announces that, as a result of the issue, such rights will be able to be created; and

- (e) the announcement is made in a way or ways covered by any of paragraphs (3)(a) to (e) (reading a reference in those paragraphs to “debenture” as if it were a reference to such a right, and a reference to the “company” as if it included a reference to the dealer, manager or underwriter); and
- (f) under the terms of the debenture, interests in the debenture are able to be surrendered, whether or not in particular circumstances, in exchange for other debentures issued by the company that are not themselves global bonds.

13 Section 159GZL

Omit all the words before paragraph (b), substitute:

If:

- (a) because of subsection 128F(8), section 128F has effect as if interest payable by a resident company in respect of finance provided to it by a non-resident company were interest in respect of a debenture issued by the non-resident company in raising finance outside Australia; and

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

14 Subsection 23(2)

Omit “128F(1)(a) and (b) of the *Income Tax Assessment Act 1936*”, substitute “(1)(a) and (b) of section 128F of the *Income Tax Assessment Act 1936* (being that section in the form that applies under item 16 of Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 1997*)”.

15 Application of amendments to post-1995 debentures

The amendments made by this Part apply in respect of a debenture issued on or after 1 January 1996.

16 Transitional—continued application of old law to pre-commencement debentures

Without limiting item 15, if:

- (a) a debenture was issued on or after 1 January 1996 but before the commencement of this Part; and

- (b) assuming section 128F of the *Income Tax Assessment Act 1936* had not been amended by this Part, that section would apply in respect of interest paid in respect of the debenture;

then:

- (c) that section applies in respect of the interest as if the section had not been so amended; and
- (d) section 159GZL of that Act applies in respect of the interest as if it had not been amended by this Part.

**Part 3—Denial of deduction for non-payment on
account of interest withholding tax**

Income Tax Assessment Act 1936

17 Paragraph 221YRA(1)(a)

Omit “, not being a resident,”.

18 Application

The amendment made by this Part applies to interest paid on or after
1 January 1996.

Part 4—Australian branches of foreign banks: definition of interest

Income Tax Assessment Act 1936

19 Section 160ZZV

Insert:

interest has the same meaning as in Division 11A of Part III.

20 Paragraph 160ZZZA(1)(c)

Omit “calculated” (first occurring).

21 Application

The amendments made by this Part, so far as they affect section 160ZZY of the *Income Tax Assessment Act 1936*, apply to foreign tax paid after the commencement of this Part.

Schedule 6—Amendment of the Income Tax Assessment Act 1936: leases of luxury cars

Part 1—Insertion of new Schedule 2E

1 Before Schedule 3

Insert:

Schedule 2E—Leases of luxury cars

Division 42A—Leases of luxury cars

Table of Subdivisions

Guide to Division 42A

- 42A-A Notional sale of car, and notional loan, to lessee
- 42A-B Amounts to be included in lessor's assessable income
- 42A-C Deductions allowable to lessee
- 42A-D Adjustments if total amount assessed to lessor differs from amount of finance charge
- 42A-E What happens when the lease expires
- 42A-F What happens if the lease is terminated before the end of the lease term
- 42A-G Interpretation

Guide to Division 42A

42A-1 What this Division is about

This Division provides for leases of luxury cars to be treated as notional sale and loan transactions.

The lessor under such a lease is taken to have notionally sold the car to the lessee and made a loan to the lessee to finance the cost of the notional acquisition of the car.

The lessor's assessable income of a year of income in which any part of the lease term falls is to include a proportion of the finance charge for the notional loan.

A proportion of the finance charge for the notional loan is allowable as a deduction to the lessee for a year of income to the extent that the lease payments made for the year of income would have been deductible.

As the lessee is taken to be the owner of the car, the lessee is the person entitled to any deductions for depreciation in accordance with the rules applying under this Act to the owners of luxury cars.

Subdivision 42A-A—Notional sale of car, and notional loan, to lessee

Guide to Subdivision 42A-A

42A-5 What this Subdivision is about

This Subdivision:

- (a) sets out the circumstances in which a leased car that is a luxury car is taken to be sold by the lessor to the lessee; and
- (b) provides that the lease is taken to constitute a loan by the lessor to the lessee to finance the cost of the acquisition of the car.

Table of sections

Operative provisions

- 42A-10 Application of this Division
- 42A-15 Notional sale of car by lessor and notional acquisition of car by lessee
- 42A-20 Consideration for notional sale, cost of notional acquisition, and depreciated value, of car
- 42A-25 Notional loan by lessor to lessee

Operative provisions

42A-10 Application of this Division

- (1) This Division applies to a motor car:
 - (a) that is a leased car; and
 - (b) that is a luxury car; and
 - (c) that is not trading stock of the lessee; and
 - (d) the lease of which was granted after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996.
- (2) If:

- (a) a lease of a car was granted before the time referred to in paragraph (1)(d); and
 - (b) an extension of the lease was granted after that time, whether the extension took effect before or after that time;
- the extension is taken for the purposes of that paragraph to be a new lease granted after that time.
- (3) This Division has effect for the purposes of this Act other than Division 11A of Part III.

42A-15 Notional sale of car by lessor and notional acquisition of car by lessee

- (1) The car is taken to have been disposed of by the lessor by way of sale to the lessee, and to have been acquired by the lessee, at the start of the lease term.
- (2) The lessee is taken to be the owner of the car until the lease term ends or the lease is terminated before that time, as the case may be.
- (3) However, the lessee ceases to be taken to be the owner of the car if:
 - (a) the lessee enters into, in respect of the car, an arrangement of a kind mentioned in paragraph (b) of the definition of *lease* in section 42A-115; and
 - (b) this Division applies to the car in respect of that arrangement.

42A-20 Consideration for notional sale, cost of notional acquisition, and depreciated value, of car

- (1) The consideration for the sale of the car by the lessor, and the cost of the acquisition of the car by the lessee, are each taken to have been:
 - (a) if the lease states an amount as the cost or value of the car for the purposes of the lease and the lessor and the lessee were dealing with each other at arm's length in connection with the lease—the amount so stated; or
 - (b) otherwise—the amount that could reasonably have been expected to have been paid by the lessee for the purchase of the car if:

- (i) the lessor had actually sold the car to the lessee when the lease was granted; and
 - (ii) the lessor and lessee were dealing with each other at arm's length in connection with the sale.
- (2) If:
- (a) the lease is an arrangement of a kind referred to in paragraph (b) of the definition of *lease* in section 42A-115; and
 - (b) the lessee is an associate of the lessor;
- the cost of the car for the purpose of calculating its depreciated value at the time (the *acquisition time*) when it is taken to have been acquired by the lessee is taken, for the purposes of the application of this Act to the lessee, to be the sum of:
- (c) the amount that would have been the depreciated value of the car at the acquisition time for the purposes of the application of this Act to the lessor if the lessor were not taken under this Division to have disposed of the car; and
 - (d) any amount that is included in the lessor's assessable income under subsection 59(2) because the lessor is taken to have disposed of the car.

42A-25 Notional loan by lessor to lessee

- (1) On the grant of the lease, the lessor is taken to have made a loan (the *notional loan*) to the lessee:
 - (a) for a period equal to the lease term; and
 - (b) of an amount (the *notional loan principal*) equal to the consideration for the sale of the car less any amount paid, or credited by the lessor as having been paid, by the lessee to the lessor, at or before the start of the lease term, for the cost of the car; and
 - (c) subject to payment of a charge (the *finance charge*).
- (2) The notional loan principal is taken to be repaid, and the finance charge is taken to be paid, by the making of the lease payments.

Subdivision 42A-B—Amounts to be included in lessor’s assessable income

Guide to Subdivision 42A-B

42A-30 What this Subdivision is about

This Subdivision provides for the inclusion in the lessor’s assessable income of:

- (a) amounts (accrual amounts) on account of the finance charge for the notional loan that the lessor is taken to have made to the lessee; and
- (b) any profit made by the lessor:
 - (i) on the notional sale of the car to the lessee; or
 - (ii) on a sale of the car after any notional re-acquisition of the car by the lessor.

Table of sections

Operative provisions

42A-35 Amounts to be included in lessor’s assessable income

42A-40 Lease payments not to be included in lessor’s assessable income

Operative provisions

42A-35 Amounts to be included in lessor’s assessable income

Accrual amounts

- (1) The lessor’s assessable income of a year of income includes:
 - (a) if an accrual period for the notional loan that the lessor is taken under this Division to have made to the lessee occurs wholly during that year of income—the accrual amount for that accrual period; and

- (b) if part of an accrual period for that notional loan occurs during that year of income—so much of the accrual amount for that accrual period as may appropriately be related to that year of income in accordance with generally accepted accounting principles.

Profit on notional sale

- (2) If the consideration for the sale of the car by the lessor that is taken under this Division to have been made exceeds the cost of the acquisition of the car by the lessor, the excess is included in the lessor's assessable income of the year of income in which the sale is taken to have occurred.

Profit on actual sale after notional re-acquisition

- (3) If:
 - (a) the lessor is taken under this Division to have re-acquired the car from the lessee; and
 - (b) the lessor afterwards sells the car; and
 - (c) the consideration for the sale exceeds the cost of the re-acquisition;the excess is included in the lessor's assessable income of the year of income in which the sale occurred.

42A-40 Lease payments not to be included in lessor's assessable income

The lease payments that the lessor receives, or is entitled to receive, under the lease are not to be included in the lessor's assessable income of any year of income, but they are taken into account in calculating accrual amounts that are included in the lessor's assessable income under section 42A-35.

Subdivision 42A-C—Deductions allowable to lessee

Guide to Subdivision 42A-C

42A-45 What this Subdivision is about

This Subdivision provides that the lessee may, in certain circumstances, be entitled to deductions for the finance charge for the notional loan that the lessor is taken to have made to the lessee.

Table of sections

Operative provisions

- 42A-50 Extent to which deductions are allowable to lessee
42A-55 Lease payments not to be allowable deductions

Operative provisions

42A-50 Extent to which deductions are allowable to lessee

- (1) If an accrual period for the notional loan that the lessor is taken under this Division to have made to the lessee occurs wholly during a year of income of the lessee, the accrual amount for that accrual period is allowable as a deduction to the lessee for that year of income.
- (2) If part of an accrual period for that notional loan occurs during a year of income of the lessee, so much of the accrual amount for that accrual period as may appropriately be related to that year of income in accordance with generally accepted accounting principles is allowable as a deduction to the lessee for that year of income.
- (3) An accrual amount, or part of an accrual amount, for an accrual period is allowable as a deduction under subsection (1) or (2) to the lessee for a year of income of the lessee only to the extent that the lease payments made for that year of income would, apart from this Division, be allowable as deductions to the lessee for that year of income.

42A-55 Lease payments not to be allowable deductions

The lease payments that the lessee makes under the lease are not allowable as deductions to the lessee for any year of income, but they are taken into account in calculating accrual amounts that are allowable as deductions under section 42A-50.

Subdivision 42A-D—Adjustments if total amount assessed to lessor differs from amount of finance charge

Guide to Subdivision 42A-D

42A-60 What this Subdivision is about

This Subdivision provides for adjustments if the sum of the amounts included in the lessor's assessable income are greater or less than the finance charge, worked out at the end of the lease term, for the notional loan.

Table of sections

Operative provisions

42A-65	Adjustments for lessor
42A-70	Adjustments for lessee

Operative provisions

42A-65 Adjustments for lessor

- (1) This section applies at the following times (*adjustment times*):
 - (a) the end of the lease term;
 - (b) if the lease is terminated before that time—when the termination takes place;
 - (c) if the lease term is extended—when the extension takes effect;
 - (d) if the lease is renewed—when the renewal takes effect.
- (2) If the sum of all amounts (whether lease payments, a termination amount or any other payments) that were paid or payable to the

lessor under the lease exceeds the amount worked out using the formula in subsection (4), the excess is included in the lessor's assessable income of the year of income in which the relevant adjustment time occurs.

Note: Subsection 42A-80(9) deems the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.

- (3) If the amount worked out using the formula in subsection (4) exceeds the sum of all amounts (whether lease payments, a termination amount or any other payments) that were paid or payable to the lessor under the lease, the excess is allowable as a deduction to the lessor for the year of income in which the relevant adjustment time occurs.

Note: Subsection 42A-80(9) deems the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.

- (4) The formula for the purposes of subsections (2) and (3) is:

Notional loan principal + Assessed accrual amounts

where:

notional loan principal means the notional loan principal for the notional loan that is taken under this Division to have been granted by the lessor to the lessee.

assessed accrual amounts means the sum of the accrual amounts that have been or are to be included in the lessor's assessable income of any year of income.

42A-70 Adjustments for lessee

- (1) If:

- (a) an amount is included in the lessor's assessable income of a year of income under subsection 42A-65(2); or
- (b) an amount would have been so included if the lessor had been subject to tax on assessable income;

a corresponding amount is allowable as a deduction to the lessee for the lessee's year of income.

- (2) If:

- (a) an amount is allowable as a deduction to the lessor for a year of income under subsection 42A-65(3); or
 - (b) an amount would have been so allowable if the lessor had been subject to tax on assessable income;
- a corresponding amount is included in the lessee's assessable income of the lessee's year of income.
- (3) An amount is not to be allowed as a deduction to the lessee for any year of income under subsection (1), or to be included in the lessee's assessable income of any year of income under subsection (2), except to the extent (if any) that the lease payments made would, apart from this Division, be allowable as deductions to the lessee.

Subdivision 42A-E—What happens when the lease expires

Guide to Subdivision 42A-E

42A-75 What this Subdivision is about

This Subdivision sets out what happens at the end of the lease term. The situations dealt with are:

- (a) the lease is extended or renewed;
- (b) the lessee buys the car;
- (c) the lessee ceases to have the right to use the car.

Table of sections

Operative provisions

- 42A-80 What happens if the lease term is extended or the lease is renewed
- 42A-85 What happens if an amount is paid by or on behalf of the lessee to acquire the car
- 42A-90 What happens if the lessee ceases to have the right to use the car

Operative provisions

42A-80 What happens if the lease term is extended or the lease is renewed

- (1) If, after the end of the lease term, the lessee continues to have the right to use the car because the term is extended or the lease is renewed, the following provisions have effect.
- (2) The lessee is taken to continue to be the owner of the car until:
 - (a) the end of the period of extension; or
 - (b) the end of the lease term of the renewed lease;as the case may be.
- (3) However, the lessee ceases to be the owner of the car if:
 - (a) the lessee enters into, in respect of the car, an arrangement of a kind mentioned in paragraph (b) of the definition of *lease* in section 42A-115; and
 - (b) this Division applies to the car in respect of that arrangement.
- (4) The notional loan that is taken under this Division to have been made because of the grant of the previous lease is taken to have been repaid and Subdivision 42A-D applies.
- (5) The lessor is taken to have made a loan (the *notional loan*) to the lessee:
 - (a) for the period of the extension of the lease term or the period of the renewed lease, as the case may be; and
 - (b) of an amount (the *notional loan principal*) equal to the amount worked out under subsection (7); and
 - (c) subject to the payment of a charge (the *finance charge*).
- (6) The notional loan principal is taken to be repaid, and the finance charge is taken to be paid, by the making of the lease payments under the lease as extended or under the renewed lease, as the case may be.
- (7) The notional loan principal is:
 - (a) if the lease as extended or renewed states an amount as the cost or value of the car for the purposes of the extension or

- renewal and the lessor and the lessee were dealing with each other at arm's length in connection with the extension or renewal—the amount so stated; or
- (b) otherwise—the amount that could reasonably have been expected to have been paid by the lessee for the purchase of the car if:
 - (i) the lessor had actually sold the car to the lessee when the lease was extended or renewed; and
 - (ii) the lessor and lessee were dealing with each other at arm's length in connection with the sale.
- (8) In determining whether subsection (1) applies to the lessee, any period after the end of the lease term and before the extension or renewal is granted during which the lessee did not have the right to use the car is disregarded if the extension or renewal:
- (a) has effect from the time immediately after the end of that term; or
 - (b) would otherwise result in substantial continuity of the leasing of the car to the lessee.
- (9) The amount of the notional loan is taken, for the purposes of section 42A-65, to be a termination amount paid to the lessor under the previous lease.

42A-85 What happens if an amount is paid by or on behalf of the lessee to acquire the car

If, at the end of the lease term or any extension of that term, an amount is paid to the lessor by, or on behalf of, the lessee to acquire the car, the following provisions have effect:

- (a) the amount paid is not included in the lessor's assessable income;
- (b) a deduction is not allowable to the lessee because of the payment;
- (c) the lessee is taken to continue to be the owner of the car until the lessee disposes of it;
- (d) the transfer to the lessee of legal title to the car is not taken to be a disposal of the car by the lessor.

42A-90 What happens if the lessee ceases to have the right to use the car

- (1) If, at the end of the lease term:
 - (a) the lessee ceases to have the right to use the car because the term is not extended and the lease is not renewed; and
 - (b) no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car;the following provisions have effect.
- (2) The car is taken to have been disposed of by the lessee by way of sale to the lessor, and to have been acquired by the lessor, at the end of the lease term.
- (3) The consideration for the sale of the car by the lessee, and the cost of the acquisition of the car by the lessor, are each taken to have been:
 - (a) the amount worked out in accordance with subsection (6); or
 - (b) if it is not practicable to work out an amount in accordance with that subsection—the market value of the car at the end of the lease term.
- (4) If the car is afterwards acquired by an associate of the lessee, the cost of the car for the purpose of calculating its depreciated value at the time of the acquisition for the purposes of the application of this Act to the associate is taken to be whichever is the lesser of:
 - (a) the sum of:
 - (i) the amount that would have been the depreciated value of the car at that time for the purposes of the application of this Act to the lessee if the lessee were not taken under this Division to have disposed of the car; and
 - (ii) any amount that is included in the lessee's assessable income under subsection 59(2) because the lessee is taken to have disposed of the car; or
 - (b) the cost of the acquisition of the car by the associate.
- (5) For the purposes of paragraph (1)(a), the lessee is not taken to have ceased to have the right to use the car if:
 - (a) the lease term is extended, or the lease is renewed, at a time after, but not immediately after, the end of that term with effect from the time immediately after the end of that term; or

- (b) the extension or renewal would otherwise result in substantial continuity of the leasing of the car to the lessee.
- (6) For the purposes of paragraph (3)(a), the amount of the consideration for the sale, and of the cost of the acquisition, is the amount worked out using the formula:

Balance of notional loan – Payable amount + Refundable amount
where:

balance of notional loan means the sum of:

- (a) the outstanding notional loan principal at the end of the lease term; and
- (b) any amounts payable by the lessee for the notional loan that were not paid at or before that time; and
- (c) any amounts (other than the payable amount) payable by the lessee because of the expiry of the lease.

payable amount means the amount (if any) payable to the lessor by the lessee because the value of the car at the end of the lease term was less than the balance of notional loan.

refundable amount means the amount (if any) payable to the lessee by the lessor because the value of the car at the end of the lease term was more than the balance of notional loan.

Subdivision 42A-F—What happens if the lease is terminated before the end of the lease term

Guide to Subdivision 42A-F

42A-95 What this Subdivision is about

This Subdivision sets out what happens if the lease is terminated before the end of the lease term.

The situations covered are:

- (a) the lessee buys the car;
- (b) the lessee ceases to have the right to use the car.

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Operative provisions

42A-100 What happens if an amount is paid by or on behalf of the lessee to acquire the car

If, on the termination of the lease before the end of the lease term, an amount is paid to the lessor by, or on behalf of, the lessee to acquire the car, the following provisions have effect:

- (a) the amount paid is not included in the lessor's assessable income;
- (b) a deduction is not allowable to the lessee because of the payment;
- (c) the lessee is taken to continue to be the owner of the car until the lessee disposes of it;
- (d) the transfer to the lessee of legal title to the car is not taken to be a disposal of the car by the lessor.

42A-105 What happens if the lessee ceases to have the right to use the car

- (1) If, on the termination of the lease before the end of the lease term, no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car, the following provisions have effect.
- (2) The car is taken to have been disposed of by the lessee by way of sale to the lessor, and to have been acquired by the lessor, on the termination of the lease.
- (3) The consideration for the sale of the car by the lessee, and the cost of the acquisition of the car by the lessor, are each taken to have been:
 - (a) the amount worked out in accordance with subsection (5); or

- (b) if it is not practicable to work out an amount in accordance with that subsection—the market value of the car on the termination of the lease.
- (4) If the car is afterwards acquired by an associate of the lessee, the cost of the car for the purpose of calculating its depreciated value at the time of the acquisition for the purposes of the application of this Act to the associate is taken to be whichever is the lesser of:
- (a) the sum of:
 - (i) the amount that would have been the depreciated value of the car at that time for the purposes of the application of this Act to the lessee if the lessee were not taken under this Division to have disposed of the car; and
 - (ii) any amount that is included in the lessee's assessable income under subsection 59(2) because the lessee is taken under this Division to have disposed of the car; or
 - (b) the cost of the acquisition of the car by the associate.
- (5) For the purposes of paragraph (3)(a), the amount of the consideration for the sale, and of the cost of the acquisition, is the amount worked out using the formula:

Balance of notional loan – Payable amount + Refundable amount
where:

balance of notional loan means the sum of:

- (a) the outstanding notional loan principal at the termination of the lease; and
- (b) any amounts payable by the lessee for the notional loan that were not paid at or before that time; and
- (c) any amounts (other than the payable amount) payable by the lessee because of the termination of the lease.

payable amount means the amount (if any) payable to the lessor by the lessee because the value of the car at the termination of the lease was less than the balance of notional loan at that time.

refundable amount means the amount (if any) payable to the lessee by the lessor because the value of the car at the termination of the lease was more than the balance of notional loan at that time.

Subdivision 42A-G—Interpretation

Guide to Subdivision 42A-G

42A-110 What this Subdivision is about

This Subdivision explains the meanings of various expressions used in this Division.

Table of sections

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42A-120	Luxury car
42A-125	Consecutive short-term hiring agreements
42A-130	Finance charge
42A-135	Lease payment periods
42A-140	Accrual periods and accrual amounts
42A-145	Outstanding notional loan principal
42A-150	Implicit interest rate

Operative provisions

42A-115 General definitions

In this Division, unless the contrary intention appears:

accrual amount has the meaning given by section 42A-140.

accrual period has the meaning given by section 42A-140.

associate has the meaning given by section 318 but, in addition:

- (a) a person and any employer of the person are taken to be associates; and
- (b) a person and any employee of the person are taken to be associates.

extension of the lease term of a lease means (except in subsection 42A-10(2)) extension of the term on the same terms and conditions as applied under the lease before the extension.

finance charge means the finance charge referred to in section 42A-25 or 42A-80, as the case may be, as worked out under section 42A-130.

hire purchase agreement means:

- (a) an agreement for letting property on hire under which the hirer has an option to buy the property where:
 - (i) title in the property does not pass to the hirer until the option is exercised; and
 - (ii) amounts paid under the agreement are taken into account in working out the amount payable on the exercise of the option; or
- (b) an agreement to buy property by instalments, where title in the property does not pass to the hirer until the final instalment is paid.

implicit interest rate has the meaning given by section 42A-150.

lease of a motor car means:

- (a) any arrangement to let the car on hire under which a right to use the car is granted by the owner to another person for a monetary or other consideration; and
- (b) any arrangement to let the car on hire under which a right to use the car, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person for a monetary or other consideration;

and includes a renewal of such an arrangement, but does not include a short-term hiring agreement or a hire purchase agreement.

leased car means a motor car of which a lease has been granted.

lease payment means an amount that the lessee under a lease of a motor car is required to pay for the rental or hire of the car but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment for rental or hire on time; or
- (b) a termination amount.

lease payment period has the meaning given by section 42A-135.

lease term of a lease means the period:

- (a) starting on the day as from which the lease has effect; and
- (b) ending on the day on which the lease is to cease to have effect or, if the lease is of indefinite duration, on the day on which it would be reasonable to conclude, having regard to the terms and conditions of the lease, that the lease will cease to have effect.

lessee of a leased car means the person to whom the right to use the car was granted under the arrangement constituting the lease.

lessor of a leased car means the person by whom the right to use the car was granted under the arrangement constituting the lease.

luxury car has the meaning given by section 42A-120.

motor car or **car** means a unit of property referred to in subsection 57AF(1).

notional loan has the meaning given by section 42A-25 or subsection 42A-80(5), as the case may be.

notional loan principal of a notional loan means the amount that was the notional loan principal under section 42A-25 or subsection 42A-80(5), as the case may be, of the notional loan at the time as at which that loan is taken under this Division to have been granted.

outstanding notional loan principal has the meaning given by section 42A-145.

right to use a car includes the right to possess the car.

short-term hiring agreement means, subject to section 42A-125, an agreement for taking a unit of property on hire where the agreement is of a kind ordinarily entered into by persons taking property on hire intermittently as the occasion requires on an hourly, daily, weekly, monthly or other short-term basis.

termination amount means an amount payable on the expiry, or termination before expiry, of a lease of a motor car and includes:

- (a) if, on the expiry or termination, the lessee acquires the car from the lessor—an amount payable to the lessor for the acquisition; or

- (b) otherwise—the value of the car at the time of the expiry or termination.

42A-120 Luxury car

A leased car is a *luxury car* for the purposes of this Division if, had the car:

- (a) been bought from the owner, at the first time when the owner granted a lease of the car, by the person who is the lessee for a price equal to the amount applying under paragraph 42A-20(1)(a) or (b), as the case may be; and
- (b) been first used by that person for any purpose in the financial year in which that time occurred;

the cost of the car, for the purpose of calculating the depreciation allowable to that person for the car, would have been reduced because of the operation of section 57AF.

42A-125 Consecutive short-term hiring agreements

(1) If:

- (a) 2 or more consecutive agreements have been or are entered into for the hiring of the same motor car; and
- (b) the total of the periods for which the car was hired under the agreements exceeds 6 months; and
- (c) the car was or is let on hire under the agreements by the same person or by persons who were associates of each other; and
- (d) the car was or is taken on hire under the agreements by the same person or by persons who were associates of each other; and
- (e) each agreement would, apart from this section, be a short-term hiring agreement;

each agreement is taken to have been or to be a lease of the car.

- (2) For the purposes of paragraph (1)(a), if an agreement takes effect after, but not immediately after, a previous agreement ceased to have effect, the agreements are taken to be *consecutive* if the effect of the agreements is to result in substantial continuity of the hiring of the car by the same person or by persons who were associates of each other.

42A-130 Finance charge

For the purposes of this Division, the *finance charge* for a notional loan that the lessor, under a lease of a motor car, is taken to have made to the lessee is the amount worked out using the formula:

Total lease payments + Other payments – Notional loan principal
where:

total lease payments means the sum of the lease payments under the lease.

other payments means the sum of the amounts (other than lease payments) that are required under the lease to be paid and includes any termination amount.

notional loan principal means the notional loan principal of the notional loan that the lessor is taken under this Division to have made to the lessee.

42A-135 Lease payment periods

- (1) A *lease payment period* for a lease of a motor car, is a period for which a lease payment, under the lease, is allocated or expressed to be payable.
- (2) However, if a period (the *excessive period*) referred to in subsection (1) exceeds 6 months, the excessive period is not a lease payment period but each of the following parts of the excessive period is a separate lease payment period:
 - (a) the part of the excessive period beginning at the start of that period and ending 6 months later;
 - (b) each part (a *later part*) of the excessive period:
 - (i) beginning immediately after a part of the excessive period that is a lease payment period under paragraph (a) or under a previous application of this paragraph; and
 - (ii) ending 6 months after the start of that later part or at the end of the excessive period, whichever first occurs.

42A-140 Accrual periods and accrual amounts

- (1) The *accrual periods* for a notional loan that the lessor, under a lease of a motor car, is taken under this Division to have made to the lessee are the lease payment periods under the lease.
- (2) The *accrual amount* for an accrual period for such a notional loan is the part of the finance charge that relates to the accrual period and is worked out using the formula:

$$\text{Outstanding notional loan principal} \times \text{Implicit interest rate}$$

where:

outstanding notional loan principal means the outstanding notional loan principal at the start of the accrual period.

implicit interest rate means the implicit interest rate under the lease for the accrual period.

42A-145 Outstanding notional loan principal

The *outstanding notional loan principal* at a particular time (the *relevant time*) of a notional loan that the lessor, under a lease of a motor car, is taken under this Division to have made to the lessee is the amount worked out using the formula:

$$\text{Notional loan principal} + \text{Previous accrual amounts} - \text{Previous lease payments}$$

where:

notional loan principal means the notional loan principal of the notional loan.

previous accrual amounts means the sum of the accrual amounts for accrual periods that occurred before the relevant time.

previous lease payments means the sum of the lease payments that the lessee paid or was required to pay under the lease at or before the relevant time.

42A-150 Implicit interest rate

- (1) The *implicit interest rate*, under a lease of a motor car, for an accrual period for the notional loan that the lessor is taken under this Division to have made to the lessee, is the rate of compound interest for the accrual period at which the sum of:
 - (a) the present value of the lease payments; and
 - (b) the present values of any other amounts that are required under the lease to be paid by the lessee; and
 - (c) the present values of any termination amounts;equals the notional loan principal.
- (2) However, if an amount referred to in paragraph (1)(a), (b) or (c) is not known at the start of the term of the lease:
 - (a) if a reasonable estimate of the amount can be made at that time—such an estimate is to be made and is to be used for the purposes of the application of subsection (1) for each year of income of the lessor; or
 - (b) otherwise—an estimate of the amount is to be made at the end of each year of income of the lessor for the purposes of the application of subsection (1) to the lessor for that year of income.

Part 2—Consequential amendments

2 After subsection 63(1A)

Insert:

- (1B) If any debts relating to lease payments that have, or will, become liable to be made under a lease of a motor car to which Division 42A in Schedule 2E applies are written off as bad debts by a taxpayer, the maximum amount that the taxpayer can deduct under subsection (1) for those debts is the amount of the finance charge for the notional loan that the taxpayer is taken under that Division to have made to the lessee.

- (1C) Expressions used in subsection (1B) that are defined in Division 42A in Schedule 2E have the same meanings as in that Division.

*[Minister's second reading speech made in—
House of Representatives on 13 February 1997
Senate on 16 June 1997]*

(8/97)

I HEREBY CERTIFY that the above is a fair print of the Taxation Laws Amendment Bill (No. 2) 1997 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
1997