

INCOME TAX ASSESSMENT AMENDMENT ACT (No. 3) 1976

No. 205 of 1976

An Act to amend the Law relating to Income Tax.

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

Short title,
&c.

1. (1) This Act may be cited as the *Income Tax Assessment Amendment Act (No. 3) 1976*.¹

(2) The *Income Tax Assessment Act 1936*² is in this Act referred to as the Principal Act.

Commence-
ment.

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

(2) Section 37 shall be deemed to have come into operation on 20 June 1975.

Interpret-
ation.

3. (1) Section 6 of the Principal Act is amended—

(a) by inserting in the definition of “income from personal exertion” or “income derived from personal exertion” in sub-section (1), after the words “any amount received as a bounty or subsidy in carrying on a business,”, the words “any amount that is included in the assessable income of the taxpayer by reason of section 159GD,”; and

(b) by omitting sub-paragraph (iii) of paragraph (a) of the definition of “resident” or “resident of Australia” in sub-section (1) and substituting the following sub-paragraph:—

“(iii) who is an eligible employee for the purposes of the *Superannuation Act 1976* or is the spouse or a child under 16 years of age of such a person; and”.

(2) Notwithstanding the amendment made by paragraph (1) (b), the definition of “resident” or “resident of Australia” in sub-section 6 (1) of the Principal Act continues to have effect for the purpose of determining whether a person was a resident of Australia at a time before 1 July 1976.

Exemptions.

4. (1) Section 23 of the Principal Act is amended by inserting after paragraph (eb) the following paragraph:—

“(ec) income derived by The Thalidomide Foundation Limited as trustee of the trust known as The Thalidomide Foundation,

being income derived for the benefit of persons under the age of 25 years;”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1974 and in respect of income of all subsequent years of income.

(3) Nothing in section 170 of the Principal Act as amended by this Act prevents the amendment of an assessment made before the commencement of this section for the purpose of giving effect to paragraph 23 (ec) of the Principal Act as so amended.

5. Section 24AA of the Principal Act is repealed and the following section substituted:—

“24AA. Sub-paragraphs (vi) and (vii) of paragraph (c) of section 23, and section 160ABA, do not apply in relation to income derived during a visit to Australia unless the visit commenced on or before 30 June 1973, or commenced after that date in pursuance of a contract to make the visit entered into on or before 14 May 1973, and—

Income of
visiting
experts.

- (a) the income was derived in a year of income earlier than the year of income that commenced on 1 July 1976;
- (b) the first year of the visit commenced on or before 10 June 1976 and the income was derived in that first year of the visit;
- (c) in the case of income of a kind referred to in sub-paragraph (vii) of paragraph (c) of section 23—the income was derived in the second year of the visit and a certificate has been given in relation to that second year of the visit in accordance with that sub-paragraph, being a certificate given before 10 June 1976 or given on or after that date in pursuance of an application for the certificate lodged on or before that date; or
- (d) in the case of income of a kind referred to in section 160ABA—the income was derived in the second, third or fourth year of the visit and a certificate has been given in relation to the year of the visit in which the income was derived in accordance with paragraph (b) of sub-section (2) of that section, being a certificate given before 10 June 1976 or given on or after that date in pursuance of an application for the certificate lodged on or before that date.”.

6. Section 79C of the Principal Act is amended by omitting the words “or Division 16B” and substituting the words “, Division 16B or Division 16C”.

Limitation
on certain
deductions.

7. Section 95 of the Principal Act is amended by inserting after the words “concessional deductions” the words “and deductions under Division 16C”.

Net income
of trust
estate.

8. After section 97 of the Principal Act the following section is inserted:—

Certain beneficiaries deemed not to be under legal disability.

“97A. (1) Where a beneficiary who is presently entitled to a share of the income of an eligible trust estate derived during the year of income of the beneficiary but is under a legal disability is deemed by sub-section (2) of section 159GB to have made a deposit during the period that is the relevant period in relation to that year of income, this Division applies in relation to that beneficiary in relation to that year of income as if the beneficiary were not under any legal disability.

“(2) In this section—

‘deposit’ has the same meaning as in Division 16C;

‘eligible trust estate’ has the same meaning as in section 159GB;

‘relevant period’ has the same meaning as in Division 16C.”.

Retention allowance.

9. (1) Section 105B of the Principal Act is amended by omitting from paragraph (a) the figures “50” and substituting the figures “60”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1975 and in respect of income of all subsequent years of income.

Repeal of sections 106, 106A, 106B, 106C and 106D.

10. (1) Sections 106, 106A, 106B, 106C and 106D of the Principal Act are repealed.

(2) The repeals effected by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1976 and in respect of income of all subsequent years of income to the intent that no excess distribution is to be taken to be made by a company for the year of income that commenced on 1 July 1976 or any subsequent year of income and any amount of an excess distribution made by a company for the year of income that commenced on 1 July 1975 is not to be deemed to be a dividend paid by the company during the period that is the prescribed period in relation to the year of income that commenced on 1 July 1976.

Purchase of mining or prospecting right or information.

11. Section 122B of the Principal Act is amended by inserting in paragraph (a) of sub-section (2), before the words “residual capital expenditure”, the words “residual previous capital expenditure or the”.

Residual previous capital expenditure.

12. Section 122C of the Principal Act is amended—

(a) by inserting in sub-section (1), after the word “residual” (first occurring), the word “previous”;

(b) by omitting the word “and” at the end of paragraph (a) of sub-section (1);

(c) by omitting paragraph (b) of sub-section (1) and substituting the following paragraphs:—

“(b) the amount of allowable capital expenditure (other than allowable capital expenditure to which paragraph (ba) applies) incurred by the taxpayer—

(i) after the year of income that ended on 30 June 1967;

(ii) on or before 17 August 1976; and

(iii) before the end of the year of income; and

“(ba) any amount of allowable capital expenditure that is deemed by sub-section (2) to have been incurred by the taxpayer in the year of income or in a preceding year of income,”;

(d) by omitting paragraph (d) of sub-section (1) and substituting the following paragraph:—

“(d) the sum of so much of any amounts specified in notices duly given to the Commissioner under section 122B in relation to the acquisition from the taxpayer, during the year of income or a preceding year of income, of a mining or prospecting right or mining or prospecting information as is attributable to expenditure that would, but for this paragraph, be included in the residual previous capital expenditure of the taxpayer as at the end of the year of income.”; and

(e) by inserting in sub-section (2), before the words “before the termination of use”, the words “on or before 17 August 1976 and”.

13. Section 122D of the Principal Act is amended—

(a) by inserting after the word “residual” (wherever occurring) the word “previous”; and

(b) by inserting in sub-section (3), after the words “or under section”, the figures and word “122DB or”.

Deduction of residual previous capital expenditure.

14. After section 122D of the Principal Act the following sections are inserted:—

“122DA. (1) For the purposes of this Division, but subject to sub-section (2), the residual capital expenditure of a taxpayer as at the end of a year of income (in this section referred to as ‘the year of income’) shall be ascertained by deducting from the amount of allowable capital expenditure incurred by the taxpayer after 17 August 1976 and before the end of the year of income the sum of—

Residual capital expenditure.

(a) any part of that allowable capital expenditure that—

(i) has been allowed or is allowable as a deduction under section 122DB from the assessable income of a year of income preceding the year of income; or

(ii) was incurred on property (not being property in respect of which a notice has been duly given to the Commissioner under section 122B by the taxpayer and a person who acquired the property from the taxpayer)—

(A) that has been disposed of, lost or destroyed; or

(B) the use of which by the taxpayer for prescribed purposes has been otherwise terminated,

and has not been allowed and is not allowable as a deduction from the assessable income of any year of income that ended before the year of income in which the disposal, loss, destruction or termination of use took place; and

(b) so much of any amounts specified in notices duly given to the Commissioner under section 122B in relation to the acquisition from the taxpayer, during the year of income or a preceding year of income, of a mining or prospecting right or mining or prospecting information as is attributable to expenditure that would, but for this paragraph, be included in the residual capital expenditure of the taxpayer as at the end of the year of income.

“(2) Where property referred to in clause (B) of sub-paragraph (ii) of paragraph (a) of sub-section (1) has come into use for purposes for which allowable capital expenditure may be incurred, so much of the capital expenditure incurred by the taxpayer on that property after 17 August 1976 and before the termination of use as the Commissioner determines shall, for the purposes of this section, be deemed to have been incurred, in the year of income in which the property so came into use, for the purposes for which the property so came into use.

Deduction of
residual
capital
expenditure.

“122DB. (1) Where, as at the end of the year of income there is, in relation to a taxpayer, an amount of residual capital expenditure, an amount ascertained in accordance with this section is an allowable deduction.

“(2) Subject to sub-section (3), the deduction allowable is the amount ascertained by dividing the amount of residual capital expenditure referred to in sub-section (1) by—

(a) a number equal to the number of whole years in the estimated life of the mine or proposed mine on the mining property, or, if there is more than one such mine, of the mine that has the longer or longest estimated life, as at the end of the year of income; or

(b) 5,

whichever number is the less.

“(3) Unless the taxpayer makes an election under sub-section (4) in relation to the year of income, the amount, or the total of the amounts, of the deduction or deductions allowable under this section shall not exceed

an amount equal to so much of the assessable income of the year of income as remains after deducting all allowable deductions, other than deductions allowable under this section or under section 122J, and, where the total of the amounts of 2 or more deductions that would be allowable under this section but for this sub-section exceeds the maximum amount determined in accordance with this sub-section, those deductions shall be reduced respectively by amounts proportionate to those deductions and equal in total to the excess.

“(4) A taxpayer may elect, in relation to a year of income specified in the election, that sub-section (3) shall not apply in respect of the taxpayer.

“(5) Where, having regard to the information in his possession, the Commissioner is not satisfied that the estimated life of a mine or a proposed mine as made by the taxpayer is a reasonable estimate, the estimated life shall, for the purposes of sub-section (2), be taken to be such period as the Commissioner considers reasonable.”.

15. Section 122M of the Principal Act is amended by inserting in sub-paragraph (iii) of paragraph (b), after the figures and letter “122D”, the figures and letters “, 122DB”. Elections.

16. Section 122N of the Principal Act is amended by inserting in sub-section (3), after the figures and letter “122D,”, the words “sub-section (3) of section 122DB”. Deductions not allowable under other provisions.

17. Section 123 of the Principal Act is amended— Interpretation

(a) by inserting in sub-section (1), before the definition of “petroleum”, the following definition:—

“ ‘housing and welfare facilities’ means—

- (a) residential accommodation;
- (b) health, education, recreational or other similar facilities;
- (c) facilities for the provision of meals; and
- (d) works carried out directly in connexion with residential accommodation or in connexion with facilities of a kind mentioned in paragraph (b) or (c), including works for the provision of water, light, power, access or communications;”;

(b) by inserting after sub-section (1) the following sub-section:—

“(1A) In this Division, a reference to a railway, road, pipeline or other facility shall be read as including a reference to a port facility or other facility for ships.”; and

(c) by omitting from sub-section (2) the words “but as not including a reference to expenditure in respect of railway rolling stock,

road vehicles, ships or port facilities or other facilities for ships” and substituting the following words and paragraphs:—

“but as not including a reference to expenditure in respect of—

(d) railway rolling stock, road vehicles or ships; or

(e) housing and welfare facilities, or works for the provision of water, light or power, in connexion with a port facility or other facility for ships”.

**Application
of Division.**

18. Section 123A of the Principal Act is amended—

- (a) by inserting in sub-section (1), after the words “acquired for use”, the words “in Australia”;
- (b) by inserting in sub-section (1A), after the words “acquired for use”, the words “in Australia”; and
- (c) by inserting after sub-section (1B) the following sub-sections:—

“(1C) This Division does not apply, in relation to a taxpayer, to capital expenditure incurred by the taxpayer on, or by way of contribution to capital expenditure of another person on, a port facility or other facility for ships unless—

- (a) the expenditure was or is incurred after 17 August 1976; and
- (b) the expenditure has not been allowed, and will not be allowable, as a deduction, and has not been, and will not be, taken into account in ascertaining the amount of an allowable deduction, from the assessable income of the taxpayer of any year of income under any provision of this Act other than a provision of this Division.

“(1D) In determining whether paragraph (b) of sub-section (1C) applies in relation to capital expenditure incurred by a taxpayer, the provisions of sub-section (1) of section 123E shall be disregarded.”.

**Deduction of
expenditure.**

19. Section 123B of the Principal Act is amended—

- (a) by omitting from sub-section (1) the word “Where” and substituting the words “Subject to sections 123BA and 123BB, where”;
- (b) by omitting from the end of sub-paragraph (i) of paragraph (a) of sub-section (1) the word “or”;
- (c) by inserting after sub-paragraph (ii) of paragraph (a) of sub-section (1) the following word and sub-paragraph:—

“; or (iii) was or is incurred after 17 August 1976”; and

- (d) by inserting in paragraph (b) of sub-section (1), after the words “after 17 September 1974”, the words “and on or before 17 August 1976”.

20. Section 123BA of the Principal Act is amended by omitting from sub-section (1) the words “paragraph (a) of sub-section (1)” and substituting the words “sub-paragraph (i) or (ii) of paragraph (a) of sub-section (1)”.

Election in relation to certain expenditure.

21. After section 123BA of the Principal Act the following section is inserted:—

“123BB. (1) Where, after 17 August 1976, a taxpayer has incurred or incurs capital expenditure to which this Division applies, the taxpayer may, subject to this section, elect that this section shall apply in respect of that expenditure.

Election in relation to expenditure incurred after 17 August 1976.

“(2) An election under this section shall be made in writing signed by or on behalf of the taxpayer and shall be delivered to the Commissioner on or before the last day for the furnishing of the taxpayer’s return of income of the first year of income in which the facility in respect of which the expenditure was or is incurred was, after the incurring of the expenditure, used primarily and principally for a purpose referred to in section 123A, or within such further time as the Commissioner allows.

“(3) Where an election is made under this section in relation to any expenditure, paragraph (a) of sub-section (1) of section 123B does not apply in relation to that expenditure but, subject to sub-section (2) of that section, that expenditure shall be deemed to be expenditure to which paragraph (b) of that sub-section applies.”.

22. Section 124AB of the Principal Act is amended by inserting in paragraph (a) of sub-section (3), before the words “residual capital expenditure”, the words “residual previous capital expenditure or the”.

Purchase of prospecting or mining rights or information.

23. Section 124AC of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:—

Residual previous capital expenditure.

“(1) For the purposes of this Division, but subject to the succeeding provisions of this section, the residual previous capital expenditure of a taxpayer as at the end of a year of income (in this section referred to as the ‘relevant year of income’) shall be ascertained by deducting from the sum of—

- (a) the amount of allowable capital expenditure (other than allowable capital expenditure to which paragraph (b) applies) incurred by the taxpayer on or before 17 August 1976 and before the end of the relevant year of income; and

- (b) any amount of allowable capital expenditure that is deemed by sub-section (2) to have been incurred by the taxpayer in the relevant year of income or in a preceding year of income,

the following amounts:—

- (c) any part of the expenditure included in that sum that—
 - (i) has been allowed or is allowable as a deduction under section 124AD from the assessable income of a year of income preceding the relevant year of income; or
 - (ii) was incurred on property (not being property in respect of which a notice has been duly given to the Commissioner under section 124AB by the taxpayer and a person who acquired the last-mentioned property from the taxpayer) that has been disposed of, lost or destroyed or the use of which by the taxpayer for the purposes of carrying on prescribed petroleum operations has been otherwise terminated, and has not been allowed and is not allowable as a deduction from the assessable income of any year of income that ended before the year of income in which the disposal, loss, destruction or termination of use took place;
- (d) the sum of so much of any amounts specified in notices duly given to the Commissioner under section 124AB in relation to the acquisition from the taxpayer, during the relevant year of income or a preceding year of income, of a petroleum prospecting or mining right or petroleum prospecting or mining information as is attributable to expenditure that would, but for this paragraph, be included in the residual previous capital expenditure of the taxpayer as at the end of the relevant year of income; and
- (e) the amounts of subsidy received by the taxpayer in respect of expenditure incurred after 17 September 1974 (other than expenditure incurred before 1 July 1976 in pursuance of a contract made on or before 17 September 1974, being a contract under which property was to be acquired by, or work was to be performed for, the taxpayer) being amounts received before or during the relevant year of income under agreements entered into under an Act relating to the search for petroleum, reduced by any amounts of such subsidy repaid by the taxpayer before or during the relevant year of income.

“(2) Where—

- (a) on or before 17 August 1976—

- (i) the taxpayer incurred allowable capital expenditure on property the use of which by the taxpayer for the purposes of carrying on prescribed petroleum operations has, before the relevant year of income, been terminated; or

- (ii) the taxpayer, otherwise than in carrying on prescribed petroleum operations, incurred expenditure of a capital nature on property, being expenditure that would have been allowable capital expenditure if it had been incurred in carrying on such operations; and

- (b) the property has, after 17 September 1974, come into use by the taxpayer for purposes for which allowable capital expenditure may be incurred,

so much of that expenditure as the Commissioner determines shall be deemed to have been incurred by the taxpayer in respect of that property, during the year of income in which the property so came into use by the taxpayer, for the purposes for which the property so came into use.”.

24. Section 124AD of the Principal Act is amended—

- (a) by inserting after the word “residual” (wherever occurring) the word “previous”;
- (b) by inserting in sub-section (2), after the words “petroleum field”, the words “or proposed petroleum field”;
- (c) by inserting in sub-section (3), after the words “otherwise than under this section”, the word and figures, “, section 124ADB”;
- and
- (d) by inserting in sub-section (4), after the words “under this section” (wherever occurring), the word and figures “, section 124ADB”.

Deduction of residual previous capital expenditure.

25. After section 124AD of the Principal Act the following sections are inserted:—

“124ADA. (1) For the purposes of this Division, but subject to the succeeding provisions of this section, the residual capital expenditure of a taxpayer as at the end of a year of income (in this section referred to as the ‘relevant year of income’) shall be ascertained by deducting from the sum of—

Residual capital expenditure.

- (a) the amount of allowable capital expenditure (other than allowable capital expenditure to which paragraph (b) applies) incurred by the taxpayer after 17 August 1976 and before the end of the relevant year of income; and
- (b) any amount of allowable capital expenditure that is deemed by sub-section (2) to have been incurred by the taxpayer in the relevant year of income or in a preceding year of income,

the following amounts:—

- (c) any part of the expenditure included in that sum that—
 - (i) has been allowed or is allowable as a deduction under section 124ADB from the assessable income of a year of income preceding the relevant year of income; or

- (ii) was incurred on property (not being property in respect of which a notice has been duly given to the Commissioner under section 124AB by the taxpayer and a person who acquired the last-mentioned property from the taxpayer) that has been disposed of, lost or destroyed or the use of which by the taxpayer for the purposes of carrying on prescribed petroleum operations has been otherwise terminated, and has not been allowed and is not allowable as a deduction from the assessable income of any year of income that ended before the year of income in which the disposal, loss, destruction or termination of use took place; and
- (d) the sum of so much of any amounts specified in notices duly given to the Commissioner under section 124AB in relation to the acquisition from the taxpayer, during the relevant year of income or a preceding year of income, of a petroleum prospecting or mining right or petroleum prospecting or mining information as is attributable to expenditure that would, but for this paragraph, be included in the residual capital expenditure of the taxpayer as at the end of the relevant year of income.

“(2) Where—

(a) after 17 August 1976—

- (i) the taxpayer has incurred allowable capital expenditure on property the use of which by the taxpayer for the purposes of carrying on prescribed petroleum operations has, before the relevant year of income, been terminated; or
- (ii) the taxpayer has, otherwise than in carrying on prescribed petroleum operations, incurred expenditure of a capital nature on property, being expenditure that would have been allowable capital expenditure if it had been incurred in carrying on such operations; and
- (b) the property has come into use by the taxpayer for purposes for which allowable capital expenditure may be incurred,

so much of that expenditure as the Commissioner determines shall be deemed to have been incurred by the taxpayer, in respect of that property, during the year of income in which the property so came into use by the taxpayer for the purposes for which the property so came into use.

“(3) Nothing contained in section 122N prejudices the operation of sub-section (2).

Deduction of
residual
capital
expenditure.

“124ADB. (1) Where, as at the end of the year of income, there is, in relation to a taxpayer, an amount of residual capital expenditure, an amount ascertained in accordance with this section is an allowable deduction.

“(2) Subject to sub-section (3), the deduction allowable is the amount ascertained by dividing the amount of residual capital expenditure referred to in sub-section (1) by a number equal to the number of whole years in the estimated life of the petroleum field or proposed petroleum field as at the end of the year of income or by 5, whichever number is the less.

“(3) The amount of the deduction, or the total of the amounts of the deductions, allowable under this section shall not exceed an amount equal to so much of the assessable income of the taxpayer of the year of income as remains after deducting from that assessable income all deductions allowable otherwise than under this section and section 124AH in respect of that assessable income and, where the total of the amounts of 2 or more deductions that would be allowable under this section but for this sub-section exceeds the maximum amount determined in accordance with this sub-section, those deductions shall be reduced respectively by amounts proportionate to those deductions and equal in total to the excess.

“(4) Where, having regard to the information in his possession, the Commissioner is not satisfied that the estimated life of a petroleum field or proposed petroleum field as made by the taxpayer is a reasonable estimate, the estimated life shall, for the purposes of sub-section (2), be taken to be such period as the Commissioner considers reasonable.”.

26. Section 124AF of the Principal Act is amended by inserting after the figures and letters “124AD” (wherever occurring) the figures and letters “, 124ADB”.

Deductions of unrecouped previous capital expenditure.

27. Section 124AH of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:—

Exploration and prospecting expenditure.

“(2) A deduction is not allowable under this section in any year of income in respect of expenditure incurred on or before 17 August 1976 (including expenditure incurred on or before that date that is deemed, by virtue of sub-section (4), to be incurred during that year of income) unless, in the year of income, the taxpayer derives assessable income from petroleum, and the amount of the deduction in respect of that expenditure shall not exceed the amount remaining after deducting from that assessable income from petroleum all allowable deductions (other than deductions under this section) in respect of that assessable income.”;

- (b) by inserting in sub-section (3), after the figures and letters “124AD,”, the figures and letters “124ADB,”;

- (c) by omitting sub-section (4) and substituting the following sub-sections:—

“(4) Where the amount of the expenditure of the kind referred to in sub-section (1) that was incurred during the year of income, being expenditure incurred on or before 17 August 1976 (including any expenditure incurred on or before that date that is deemed to have been incurred during the year of income by any previous application or applications of this sub-section), exceeds the amount of the deduction allowable under this section in respect of that expenditure in respect of the year of income, the excess amount shall, for the purposes of sub-section (1), be deemed to have been incurred by the taxpayer during the first subsequent year of income in which the taxpayer derives assessable income from petroleum.

“(4A) The amount of the deduction allowable under this section in respect of expenditure incurred during the year of income, being expenditure incurred after 17 August 1976, shall not exceed an amount equal to so much of the assessable income of the year of income as remains after deducting all allowable deductions, other than deductions allowable under this section in respect of expenditure incurred after that date.

“(4B) Where the amount of the expenditure of the kind referred to in sub-section (1) that was incurred during the year of income, being expenditure incurred after 17 August 1976 (including any expenditure incurred after that date that is deemed to have been incurred during the year of income by any previous application or applications of this sub-section), exceeds the amount of the deduction allowable under this section in respect of that expenditure in respect of the year of income, the excess amount shall, for the purposes of sub-section (1), be deemed to have been incurred by the taxpayer during the first subsequent year of income in which the taxpayer derives assessable income.

“(4C) A deduction is not allowable under this section in respect of expenditure incurred during the year of income, being expenditure incurred after 17 August 1976, unless—

- (a) the Commissioner is satisfied that, during the year of income, the taxpayer carried on, or proposed to carry on, prescribed petroleum operations; or
- (b) the Commissioner is satisfied that—
 - (i) during the year of income, the taxpayer carried on a business of, or a business that included, exploration or prospecting in Australia for the purpose of discovering petroleum; and

- (ii) the expenditure was necessarily incurred in carrying on that business.”;
- (d) by inserting in sub-section (5), after the words “in sub-section (4)”, the word and figure “or (4B)”; and
- (e) by omitting from paragraph (a) of sub-section (5) the words “under sub-section (4)” and substituting the words “under that sub-section”.

28. Section 124AM of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:—

Disposal,
loss,
destruction
or
termination
of use of
property.

“(4) The amount of the deduction, or the sum of the amounts of the deductions, allowable under sub-section (3) in respect of the year of income in relation to property—

- (a) that was disposed of, lost or destroyed on or before 17 August 1976; or
- (b) the use of which by the taxpayer for the purposes mentioned in sub-section (1) was otherwise terminated on or before that date,

shall not exceed the amount remaining after deducting from the assessable income from petroleum derived by the taxpayer in the year of income all deductions allowable otherwise than under this Division in respect of that assessable income.”.

29. Section 124AN of the Principal Act is amended—

Double
deductions.

- (a) by inserting in sub-section (2), after the word and figures “section 122C”, the words “or sub-section (2) of section 122DA”; and
- (b) by omitting from sub-section (3) the words “sub-section (1) of section 124AF, sub-section (2) of section 124AH” and substituting the words “sub-section (3) of section 124ADB, sub-section (1) of section 124AF, sub-section (2) or (4A) of section 124AH”.

30. Section 124AR of the Principal Act is amended by inserting in the definition of “prescribed deduction” in sub-section (1), after the figures and letters “124AD,”, the figures and letters “124ADB,”.

Reduction of
allowable
deductions
where
declarations
lodged under
section 77D.

31. Section 159 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Interpretation.

“(5) For the purposes of sub-section (4)—

- (a) a reference to stock that has been redeemed shall be construed as including a reference to stock that is deemed by section 27A of the *Loan (Drought Bonds) Act 1969* to have been redeemed; and

- (b) an amount equal to the amount of that stock shall be deemed to have been included in the assessable income of the year of income of the taxpayer who held the stock and to have been so included under section 159B for the reason that stock included in the original parcel has become redeemable.”.

Deductions
in respect of
Drought
Bonds.

32. Section 159A of the Principal Act is amended by adding at the end of sub-section (10) the words “other than deductions under Division 16C”.

Other
redemptions
—liability of
holder to pay
income tax
equal to tax
saved.

33. Section 159C of the Principal Act is amended by inserting after sub-section (3) the following sub-section:—

“(3A) This section does not apply in respect of stock that, by virtue of section 27A of the *Loan (Drought Bonds) Act* 1969, is deemed to have been redeemed.”.

34. After section 159G of the Principal Act the following Division is inserted:—

“Division 16C—Income Equalization Deposits

Interpret-
ation.

“159GA. (1) In this Division, unless the contrary intention appears—

‘conversion deposit’ means a deposit that is deemed to have been made by virtue of section 12 of the *Loan (Income Equalization Deposits) Act* 1976;

‘deposit’ means a deposit made in pursuance of the *Loan (Income Equalization Deposits) Act* 1976 and includes a conversion deposit;

‘depositor’, in relation to a deposit, means the person who made, or is deemed by virtue of section 159GB to have made, the deposit;

‘drought bonds’ means stock issued under the name of Drought Bonds in pursuance of the *Loan (Drought Bonds) Act* 1969;

‘gross receipts from primary production’, in relation to a taxpayer in relation to a year of income, means—

- (a) so much of the assessable income of the taxpayer of that year of income as was derived from the carrying on by him in Australia of a business of primary production, other than amounts in respect of trading stock on hand or amounts derived by the taxpayer in the capacity of a trustee;
- (b) if the taxpayer is a partner in a partnership (in addition to any amount included in his gross receipts from primary production by virtue of paragraph (a) by reason of the carrying on by him of a business otherwise than as a partner or by virtue of paragraph (c))—

- (i) in the case where the whole of the assessable income of the partnership, calculated as if the partnership were a taxpayer, of that year of income was derived from the carrying on in Australia of a business of primary production—the amount that bears the same proportion to an amount that would, in accordance with paragraph (a), be the gross receipts from primary production of the partnership, in relation to that year of income, if the partnership were a taxpayer as the individual interest of the partner in the net income of the partnership, or in the partnership loss, in respect of that year of income bears to that net income or partnership loss, as the case may be; or
- (ii) in any other case—so much of an amount that would, in accordance with paragraph (a), be the gross receipts from primary production of the partnership, in relation to that year of income, if the partnership were a taxpayer as the Commissioner considers reasonable; and
- (c) if the taxpayer is a beneficiary presently entitled to a share of the net income of a trust estate (being income that includes income derived by the trust estate from the carrying on by the trustee in Australia of a business of primary production), in addition to any amount included in his gross receipts from primary production by virtue of paragraph (a) or (b), so much as the Commissioner considers reasonable of the amount that would in accordance with paragraph (a) or (b), or of the sum of the amounts that would in accordance with those paragraphs, be the gross receipts from primary production of the trust estate, in relation to that year of income, if the trust estate were a taxpayer;

‘relevant period’ means—

- (a) in relation to the year of income that ended on 30 June 1976—the period commencing on the date of commencement of the *Loan (Income Equalization Deposits) Act* 1976 and ending on 31 January 1977;
- (b) in relation to the year of income that ends on 30 June 1977—the period commencing on 1 February 1977 and ending 2 months after the end of the year of income; and
- (c) in relation to any subsequent year of income—the period of 12 months ending 2 months after the end of the year of income.

“(2) For the purposes of the definition of ‘gross receipts from primary production’ in sub-section (1), the assessable income of a taxpayer

of a year of income in relation to which any of the following provisions of this Act is applicable in relation to the taxpayer, namely, section 26B, section 26BA, section 36, section 36AAA and section 36AA, shall be taken to be the amount that would have been that assessable income if none of those provisions was so applicable.

“(3) For the purposes of this Division—

- (a) an unrecouped deduction shall be deemed to exist in respect of a deposit made by a taxpayer if a deduction has been allowed or is allowable to the taxpayer under this Division in respect of the deposit and the amount of the deduction exceeds the amount, or the sum of the amounts, included in the assessable income of the taxpayer of any year of income in pursuance of this Division by reason that any part or parts of the deposit has or have become repayable; and
- (b) the amount of the unrecouped deduction shall be deemed to be the amount of the excess referred to in paragraph (a).

“(4) For the purposes of sub-section (3), a deduction equal to the amount of any conversion deposit that is deemed to have been made by a taxpayer shall be deemed to have been allowed to the taxpayer under this Division in respect of the deposit.

Beneficiary
in trust
estate.

“159GB. (1) For the purposes of this Division, a beneficiary who is presently entitled to a share of the income derived by a trust estate during a year of income of the beneficiary shall be deemed to have carried on in Australia a business of primary production during the whole or a part of that year of income if—

- (a) during the whole or a part of that year of income the trustee of the trust estate carried on in Australia a business of primary production in his capacity as trustee of that trust estate; and
- (b) the share of that income of the trust estate to which the beneficiary is presently entitled includes a share of so much of the income of the trust estate as is derived from that business of primary production.

“(2) Where—

- (a) a trustee of an eligible trust estate has, during the period that is the relevant period in relation to a year of income of a beneficiary who was presently entitled to a share of the income derived by the trust estate during that year of income but was under a legal disability, made a deposit on behalf of the beneficiary; and
- (b) the beneficiary is deemed, by virtue of sub-section (1) in its application in relation to that trust estate, to have carried on in Australia a business of primary production during the whole or a part of that year of income,

then, for the purposes of this Division, the deposit shall be deemed to have been made by the beneficiary and not by the trustee and shall be

deemed to have been so made by the beneficiary at the time when it was made by the trustee.

“(3) For the purposes of this section, a trust estate is an eligible trust estate if the trust resulted from—

- (a) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
- (b) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate.

“159GC. (1) Deductions are allowable in accordance with this section in relation to deposits made in pursuance of the *Loan (Income Equalization Deposits) Act 1976*.

Deductions
in respect of
Income
Equalization
Deposits.

“(2) Subject to the succeeding provisions of this section, a deduction is allowable under this section to a taxpayer in respect of a year of income of the amount of any deposit, or of the sum of the amounts of any deposits, made by the taxpayer during the period that is the relevant period in relation to that year of income if, during the whole or a part of that year of income, the taxpayer carried on in Australia a business of primary production.

“(3) The reference in sub-section (2) to a deposit made by the taxpayer during the period that is the relevant period in relation to a year of income does not include a reference to—

- (a) a conversion deposit; or
- (b) a deposit or a part of a deposit that has become or becomes repayable as a result of—
 - (i) a declaration made under section 16 of the *Loan (Income Equalization Deposits) Act 1976* in pursuance of a request made under that section not later than the last day of that period; or
 - (ii) a declaration made under section 20 of that Act in consequence of the taxpayer having died, become bankrupt or, being a company, commencing to be wound up, not later than that day.

“(4) The deduction allowable to a taxpayer under this section in respect of a year of income shall not exceed—

- (a) if a deduction is allowable to the taxpayer in respect of that year of income under section 159A—the amount (if any) by which 40 per centum of the gross receipts from primary production of the taxpayer in respect of that year of income exceeds the deduction allowable to the taxpayer in respect of that year of income under that section; or

- (b) in any other case—40 per centum of those gross receipts from primary production.

“(5) The deduction allowable to a taxpayer under this section in respect of a year of income shall not exceed—

- (a) in a case to which paragraph (b) does not apply—\$100,000; or
- (b) if, at the end of the period that is the relevant period in relation to that year of income—

- (i) an unrecouped deduction exists or unrecouped deductions exist in respect of any conversion deposit or conversion deposits made by the taxpayer before the commencement of, or during, that period or in respect of any other deposit or deposits made by the taxpayer before the commencement of that period; or

- (ii) an unrecouped deduction exists or unrecouped deductions exist under Division 16B in respect of drought bonds issued to the taxpayer,

the amount by which \$100,000 exceeds the unrecouped deduction or the sum of the unrecouped deductions referred to in subparagraphs (i) and (ii).

“(6) The deduction allowable to a taxpayer under this section in respect of a year of income shall not exceed the amount remaining after deducting from the taxable income of the taxpayer in respect of that year of income so much of that taxable income as is derived from income from property.

“(7) The reference in sub-section (6) to the taxable income of the taxpayer in respect of a year of income is a reference to the amount that, apart from any deduction under this Division, would be that taxable income.

“(8) Where a deduction calculated in accordance with the preceding provisions of this section would be less than \$100, no deduction is allowable.

“(9) Where a deduction calculated in accordance with the preceding provisions of this section would be more than \$100 but would not be a multiple of \$100, the deduction allowable is \$100 plus \$100 for each complete \$100 by which the deduction, as so calculated, would exceed \$100.

“(10) In the application of this section in a case where, by reason of sub-section (4), (5), (6) or (9), a deduction otherwise allowable in respect of 2 or more deposits cannot be allowed in full, amounts in respect of those deposits shall be included in the deduction in the order in which the deposits were made until the maximum deduction allowable is reached.

“159GD. (1) Where—

(a) the whole or a part of a deposit has become repayable—

- (i) as a result of a declaration made under section 16 of the *Loan (Income Equalization Deposits) Act 1976* in pursuance of a request made under that section; or
- (ii) in consequence of a request made under section 17 of that Act; and

(b) immediately before the request was made there was an unrecouped deduction in respect of the deposit,

there shall be included in the assessable income of the depositor of the year of income in which the request was made—

- (c) where the whole of the deposit, or so much of the deposit as has not previously become repayable, has become repayable in consequence of the request—an amount equal to the amount of the unrecouped deduction; or
- (d) where part only of the deposit, or of so much of the deposit as has not previously become repayable, has become repayable in consequence of the request—the amount by which the amount of the unrecouped deduction exceeds so much of the deposit as has not become repayable.

Unrecouped deduction included in assessable income on deposit becoming repayable.

“(2) Where—

- (a) the whole or a part of a deposit has become repayable as a result of a declaration made under section 20 of the *Loan (Income Equalization Deposits) Act 1976* in consequence of the depositor having died, become bankrupt or, being a company, commencing to be wound up, after the end of the relevant period in which the deposit was made; and
- (b) immediately before the depositor died, became bankrupt or commenced to be wound up, as the case may be, there was an unrecouped deduction in respect of the deposit,

there shall be included in the assessable income of the depositor of the year of income in which the depositor died, became bankrupt or commenced to be wound up an amount equal to the amount of the unrecouped deduction.

“(3) Section 101A does not apply in relation to any amount received by the trustee of the estate of a deceased person being an amount consisting of a deposit or a part of a deposit made by the deceased person that has become repayable.”.

35. (1) Section 170 of the Principal Act is amended—

- (a) by inserting in sub-section (10), after the figures and letters “124AQ,” the words “Division 16C of Part III,”; and
- (b) by omitting from sub-section (13) the words “, section 105AAA or section 106C” and substituting the words “ or section 105AAA”.

Amendment of assessments.

(2) The amendment made by paragraph (1) (b) applies to assessments in respect of income of the year of income that commenced on 1 July 1976 and in respect of income of all subsequent years of income.

Interpretation.

36. Section 221YA of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5) For the purposes of the application of the definition of ‘provisional income’ in sub-section (1) in relation to a year of income of a taxpayer whose taxable income of the next preceding year of income, by virtue of the application of any of the provisions of Division 16C of Part III, was greater or less than it would have been but for the application of that Division, the taxable income of the taxpayer of that next preceding year of income shall be deemed to be the amount that would have been that taxable income but for the application of that Division.”.

Amendments of *Income Tax Assessment Act 1975*.

37. (1) Section 34 of the *Income Tax Assessment Act 1975*³ is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) The amendment made by sub-section (1) applies in respect of expenditure incurred by a taxpayer on or after Papua New Guinea independence day other than—

- (a) expenditure incurred before 1 July 1976 in pursuance of a contract made before 22 May 1975, being a contract under which property was to be acquired by, or work was to be performed for, the taxpayer;
- (b) expenditure (not being expenditure referred to in paragraph (a)) incurred before 1 July 1978 on exploration or prospecting for minerals in pursuance of an authority, licence, permit or right to explore or prospect for minerals granted to the taxpayer by the Government of Papua New Guinea before Papua New Guinea independence day; or
- (c) expenditure (not being expenditure referred to in paragraph (a) or (b)) incurred before 1 July 1978 on exploration or prospecting for minerals in pursuance of an authority, licence, permit or right to explore or prospect for minerals granted to a person other than the taxpayer by the Government of Papua New Guinea before Papua New Guinea independence day, being exploration or prospecting for minerals in pursuance of—
 - (i) an agreement entered into before Papua New Guinea independence day between the taxpayer and that other person; or
 - (ii) an agreement entered into on or after Papua New Guinea independence day and before 1 July 1976 between the taxpayer and the Government of Papua New Guinea, being an agreement entered into in pursuance of arrangements made in writing with the Government of

Papua New Guinea before Papua New Guinea independence day.”.

(2) Section 36 of the *Income Tax Assessment Act* 1975 is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) The amendment made by sub-section (1) applies in respect of expenditure incurred by a taxpayer on or after Papua New Guinea independence day other than—

- (a) expenditure incurred before 1 July 1976 in pursuance of a contract made before 22 May 1975, being a contract under which property was to be acquired by, or work was to be performed for, the taxpayer;
- (b) expenditure (not being expenditure referred to in paragraph (a)) incurred before 1 July 1978 on exploration or prospecting for petroleum in pursuance of an authority, licence, permit or right to explore or prospect for petroleum granted to the taxpayer by the Government of Papua New Guinea before Papua New Guinea independence day; or
- (c) expenditure (not being expenditure referred to in paragraph (a) or (b)) incurred before 1 July 1978 on exploration or prospecting for petroleum in pursuance of an authority, licence, permit or right to explore or prospect for petroleum granted to a person other than the taxpayer by the Government of Papua New Guinea before Papua New Guinea independence day, being exploration or prospecting for petroleum in pursuance of—
 - (i) an agreement entered into before Papua New Guinea independence day between the taxpayer and that other person; or
 - (ii) an agreement entered into on or after Papua New Guinea independence day and before 1 July 1976 between the taxpayer and the Government of Papua New Guinea, being an agreement entered into in pursuance of arrangements made in writing with the Government of Papua New Guinea before Papua New Guinea independence day.”.

NOTES

1. Act No. 205, 1976; assented to 20 December 1976.
2. Act No. 27, 1936, as amended. For previous amendments *see* Act 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,

NOTES—continued

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, 60, 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; and Nos. 50, 53, 56 and 98, 1976.

3. Act No. 80, 1975.