

INCOME TAX ASSESSMENT AMENDMENT ACT 1978

No. 57 of 1978

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 1978*.¹

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

Commence-
ment

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

3. (1) After section 6B of the Principal Act the following section is inserted:

Cost of
shares issued
in
satisfaction
of dividend

“6BA. (1) Where—

- (a) a dividend (including an amount debited against an amount standing to the credit of a share premium account) is payable to a taxpayer by a company in respect of shares (in this section referred to as the ‘original shares’) in the company;
- (b) the company issues other shares (in this section referred to as the ‘bonus shares’) to the taxpayer; and
- (c) the amount of the dividend payable to the taxpayer is applied by the company, in whole or in part, in payment or part payment of the moneys payable by the taxpayer in respect of the bonus shares or the dividend is otherwise satisfied, in whole or in part, by the issue of the bonus shares,

then the following provisions of this section have effect for the purposes of this Act other than section 26AAC and sub-section (23) of section 79.

“(2) Subject to sub-section (4), any part of the dividend that is applied by the company in payment or part payment of the moneys payable by the taxpayer in respect of the bonus shares or is otherwise satisfied by the issue of the bonus shares shall not be treated as being an amount paid or payable by the taxpayer in respect of the bonus shares or as in any other way constituting any part of the cost to the taxpayer of the bonus shares.

“(3) Subject to sub-section (4), in determining—

- (a) where any of the original shares or any of the bonus shares are articles of trading stock of the taxpayer and the taxpayer elects, under sub-section (1) of section 31, in respect of all or any of the shares that are articles of trading stock, to adopt the cost price of those shares as being the value of those articles of trading stock—the value of those articles of trading stock; and
- (b) where any of the original shares or any of the bonus shares are not articles of trading stock of the taxpayer—the amount of any profit or loss arising on the sale or disposal of any of those shares,

any amounts paid or payable by the taxpayer in respect of the original shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) shall be deemed to have been paid or to be payable by the taxpayer in respect of the original shares and the bonus shares in such proportions as the Commissioner considers appropriate in the circumstances.

“(4) Sub-sections (2) and (3) do not apply—

- (a) in the case of a taxpayer being a person other than a company or being a company that is a non-resident but not being a trustee of a trust estate—to the extent (if any) that a part of the dividend that is applied by the company in payment or part payment of the moneys payable by the taxpayer in respect of the bonus shares or is otherwise satisfied by the issue of the bonus shares has been or will be included in the assessable income of the taxpayer of any year of income, either directly or through any interposed partnerships or trusts; or
- (b) in the case of a taxpayer being a trustee of a trust estate—to the extent (if any) that a part of the dividend that is applied by the company in payment or part payment of the moneys payable by the taxpayer in respect of the bonus shares or is otherwise satisfied by the issue of the bonus shares has been or will be included in the net income of the trust estate in respect of which the trustee is liable to be assessed and to pay tax.”.

(2) Section 6BA of the *Income Tax Assessment Act* 1936 applies in every case where the bonus shares referred to in that section were or are allotted after 16 August 1977.

4. (1) Section 23 of the Principal Act is amended by omitting paragraph (z) and substituting the following paragraph: Exemptions

“(z) income derived by way of a scholarship (other than a scholarship referred to in paragraph (zaa)), bursary or other educational allowance by a student receiving full-time education at a school, college or university, but not including—

- (i) an amount received by the student from a person or authority upon condition that the student will (or will, if

required) render, or continue to render, services to that person or authority;

- (ii) an amount received under the scheme known as the National Employment and Training System; or
- (iii) an amount received under the scheme known as the Former Regular Servicemen's Vocational Training Scheme;”.

(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 1977 and in respect of income of all subsequent years of income.

Assessable
income from
property
purchased
and sold
within 12
months

5. (1) Section 26AAA of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (7) “a dividend” (last occurring) and substituting “an amount”; and
- (b) by omitting from sub-section (7) “, and as part of the transaction by which,”.

(2) The amendments made by this section apply in relation to shares allotted by a company after 16 August 1977 in satisfaction of a dividend payable in respect of other shares in the company.

Disposal of
trading stock

6. Section 36 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(9) Notwithstanding sub-section (8), the value for the purposes of this section of any prescribed property disposed of by the taxpayer after 7 April 1978 shall, if the Commissioner so determines, be such value as the Commissioner considers reasonable, having regard to—

- (a) the cost to the taxpayer of the property;
- (b) if, in any agreement entered into in connexion with the disposal of the property, an amount was specified as the value of the property or as the consideration received or receivable in respect of the disposal—the amount so specified;
- (c) if, before the property was disposed of, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not intended to be so enforceable) was entered into, or an understanding was reached, as a result of which, at any time after the disposal took place, there has been, or there could reasonably be expected to be, a substantial reduction in the value of the property—that agreement, arrangement or understanding;
- (d) if the disposal of the property by the taxpayer or the acquisition of the property by the person or persons who acquired the property arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the transaction,

operation, undertaking, scheme or arrangement had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the transaction, operation, undertaking, scheme or arrangement had not been entered into or carried out—that transaction, operation, undertaking, scheme or arrangement;

- (e) if the disposal of the property by the taxpayer or the acquisition of the property by the person or persons who acquired the property arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner is satisfied was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping—that transaction, operation, undertaking, scheme or arrangement; and
- (f) any other matters that the Commissioner considers relevant.

“(10) In sub-section (9), ‘prescribed property’ means—

- (a) a share or stock in the capital of a company;
- (b) a debenture, note or other security issued in respect of a loan to a company; or
- (c) any other chose in action.”.

7. (1) Section 46A of the Principal Act is amended—

- (a) by inserting in paragraph (c) of sub-section (3) “(if any)” after “right”; and
- (b) by inserting after sub-section (12) the following sub-sections:

Rebate on
dividends
paid as part
of dividend
stripping
operation

“(12A) For the purposes of sub-section (10), the Commissioner may be satisfied that it is reasonable to attribute to dividends paid to a shareholder in respect of shares in a company deductions that have been allowed or are allowable to the shareholder under this Act in relation to a year of income notwithstanding that those deductions relate to the acquisition of shares in the company other than the shares in respect of which the dividend was paid.

“(12B) Unless the contrary intention appears, a reference in this section to a share shall be read as including a reference to—

- (a) an interest in a share; and
- (b) a right or option (including a contingent right or option) to acquire a share or an interest in a share.”.

(2) The amendments made by sub-section (1) apply in relation to dividends paid after 7 April 1978 other than dividends declared on or before that date.

(3) For the purposes of sub-section (2)—

- (a) where an amount that is paid or credited is, or any assets that are distributed are, for the purposes of the *Income Tax Assessment Act* 1936, deemed to be a dividend paid by a company, that dividend shall be taken to have been declared at the time when the amount was in fact paid or credited, or the assets were in fact distributed, as the case may be; and
- (b) where, by virtue of a provision of the constituent document of a company, a dividend may become payable by the company without having been declared, any such dividend that has become payable shall be taken to have been declared at the time when it became payable.

8. After section 46A of the Principal Act the following section is inserted:

Rebate not
allowable in
certain
circum-
stances

“46B. (1) Where—

- (a) a dividend (in this section referred to as the ‘relevant dividend’) was paid after 7 April 1978 to a shareholder (in this section referred to as the ‘relevant shareholder’) in respect of shares in a company (in this section referred to as the ‘relevant company’);
- (b) before the time when the relevant dividend was paid, another person (in this section referred to as the ‘associated shareholder’) acquired shares (in this section referred to as the ‘associated shares’) in the relevant company or in another company that was, at the time of acquisition or at any time after the time of acquisition and before the time when the relevant dividend was paid, related to the relevant company;
- (c) the associated shares were acquired by the associated shareholder as trading stock or in such circumstances that any profit that would arise on a disposal of the shares would, in whole or in part, be included in the assessable income of the associated shareholder or any loss that would arise from a disposal of the shares would, in whole or in part, be allowable as a deduction, to the associated shareholder; and
- (d) the Commissioner is satisfied that—
 - (i) the payment of the relevant dividend to the relevant shareholder and the acquisition of the associated shares by the associated shareholder arose out of, or were made in the course of, a transaction, operation, undertaking, scheme or arrangement; and
 - (ii) that transaction, operation, undertaking, scheme or arrangement was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping,

then, notwithstanding sections 46 and 46A, the relevant shareholder is not entitled to, and shall not be allowed, a rebate under section 46 or 46A in respect of the relevant dividend.

“(2) For the purposes of paragraph (b) of sub-section (1), a company shall be taken to be related to the relevant company at any time, if, and only if, at that time, a reduction in the value of shares in the relevant company could reasonably be expected to result in a reduction in the value of shares in the first-mentioned company.

“(3) Unless the contrary intention appears, a reference in this section to a share shall be read as including a reference to—

- (a) an interest in a share; and
- (b) a right or option (including a contingent right or option) to acquire a share or an interest in a share.

“(4) For the purposes of this section, a person who acquires shares in pursuance of an agreement shall be taken to have acquired the shares at the time when the agreement was entered into.

“(5) The reference in sub-section (4) to an agreement shall be read as including a reference to an agreement that is not enforceable by legal proceedings, whether or not it was intended to be so enforceable.

“(6) For the purposes of this section, an arrangement or understanding, whether formal or informal and whether express or implied, shall be deemed to be an agreement.

“(7) The reference in sub-section (1) to a dividend that was paid after 7 April 1978 shall be read as not including a reference to a dividend that was declared on or before that date.

“(8) For the purposes of sub-section (7)—

- (a) where an amount that is paid or credited is, or any assets that are distributed are, for the purposes of this Act, deemed to be a dividend paid by a company, that dividend shall be taken to have been declared at the time when the amount was in fact paid or credited, or the assets were in fact distributed, as the case may be; and
- (b) where, by virtue of a provision of the constituent document of a company, a dividend may become payable by the company without having been declared, any such dividend that has become payable shall be taken to have been declared at the time when it became payable.

“(9) Notwithstanding anything in any other provision of this Act—

- (a) the Commissioner may amend an assessment for the purpose of giving effect to this section if the amendment is made within 3 years after the date on which the tax became due and payable under the assessment; and
- (b) in addition, the Commissioner may at any time amend an assessment for the purpose of taking into account an acquisition of shares by a person that, by virtue of sub-section (4), is

deemed to have taken place before the end of the year of income to which the assessment relates,

but nothing in this sub-section limits the power of the Commissioner to amend an assessment in accordance with any other provision of this Act.”.

9. After section 52 of the Principal Act the following section is inserted:

Certain
expenditure
disregarded
in
ascertaining
taxable
income

“52A. (1) Notwithstanding section 51, losses or outgoings consisting of expenditure incurred by a taxpayer in the purchase or acquisition, after 7 April 1978, of any prescribed property as trading stock of the taxpayer shall, if the Commissioner considers that it would be unreasonable that a deduction be allowable to the taxpayer in respect of the whole of those losses or outgoings, be allowable as a deduction to the taxpayer to the extent only that the Commissioner considers that it is reasonable in the circumstances that a deduction be allowable to the taxpayer in respect of those losses or outgoings.

“(2) Where—

- (a) expenditure incurred by a taxpayer in the purchase or acquisition, after 7 April 1978, of any prescribed property that was purchased or acquired in the carrying on or carrying out of any profit-making undertaking or scheme would, but for this sub-section, be taken into account for the purpose of ascertaining whether any profit arose, or any loss was incurred, from the carrying on or carrying out of the undertaking or scheme and for the purpose of ascertaining the amount of any such profit or loss; and
- (b) the Commissioner considers that it would be unreasonable that the whole of that expenditure be taken into account for those purposes,

that expenditure shall be taken into account for those purposes to the extent only that the Commissioner considers that it is reasonable in the circumstances that the expenditure be taken into account for those purposes.

“(3) In forming an opinion for the purposes of sub-section (1) as to the extent to which it is reasonable that a deduction be allowable to a taxpayer in respect of expenditure incurred in the purchase or acquisition of prescribed property or in forming an opinion for the purposes of sub-section (2) as to the extent to which it is reasonable that expenditure incurred by a taxpayer in the purchase or acquisition of prescribed property should be taken into account for the purposes referred to in sub-section (2)—

- (a) the Commissioner shall have regard to the circumstances in which, and the person or persons from whom, the taxpayer obtained moneys—

- (i) that were expended by the taxpayer in purchasing or acquiring the prescribed property; or
 - (ii) that, in the opinion of the Commissioner, were obtained by, or paid to, the taxpayer to enable the taxpayer to expend moneys in purchasing or acquiring the prescribed property;
- (b) if the taxpayer borrowed from another person (in this paragraph referred to as the 'lender') moneys that were expended by the taxpayer in purchasing or acquiring the prescribed property or moneys that, in the opinion of the Commissioner, were obtained by, or paid to, the taxpayer to enable the taxpayer to expend moneys in purchasing or acquiring the prescribed property—the Commissioner shall have regard to—
 - (i) the circumstances in which, and the terms and conditions on which, the taxpayer borrowed those moneys from the lender; and
 - (ii) whether, in the opinion of the Commissioner, the taxpayer and the lender were dealing with each other at arm's length in connexion with the borrowing of those moneys by the taxpayer;
- (c) if, either before or after the purchase or acquisition of the prescribed property by the taxpayer, an agreement or arrangement (whether or not enforceable by legal proceedings and whether or not intended to be so enforceable) was entered into, or an understanding was reached, as a result of which there has been, or there could reasonably be expected to be, a substantial reduction in the value of the prescribed property—the Commissioner shall have regard to that agreement, arrangement or understanding;
- (d) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that a person who, if the transaction, operation, undertaking, scheme or arrangement, had not been entered into or carried out, would have been liable to pay income tax in respect of a year of income would not be liable to pay income tax in respect of that year of income or would be liable to pay less income tax in respect of that year of income than that person would have been liable to pay if the transaction, operation, undertaking, scheme or arrangement had not been entered into or carried out—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

(e) if the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner is satisfied was by way of dividend stripping or was similar to a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping—the Commissioner shall have regard to that transaction, operation, undertaking, scheme or arrangement;

(f) if—

(i) the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement under which, or in the course of which, money was to be paid, or other property was to be transferred or made available by a person other than the taxpayer, whether before or after the purchase or acquisition of the prescribed property, to the taxpayer, to the taxpayer and a person or persons other than the taxpayer or to a person or persons other than the taxpayer; and

(ii) the Commissioner is satisfied that the amount of money so to be paid, or the value of the property so to be transferred or made available, as the case may be, was to be not less than, or not substantially less than, the amount expended by the taxpayer in the purchase or acquisition of the prescribed property,

the Commissioner shall have regard to the fact that the purchase or acquisition of the prescribed property by the taxpayer arose out of, or was made in the course of such a transaction, operation, undertaking, scheme or arrangement; and

(g) the Commissioner shall have regard to any other matters that he considers relevant.

“(4) In this section, ‘prescribed property’ means—

(a) a share or stock in the capital of a company;

(b) a debenture, note or other security issued in respect of a loan to a company; or

(c) any other chose in action.

“(5) For the purposes of this section, a person to whom prescribed property is issued or allotted by a company shall be taken to have acquired that prescribed property.

“(6) The reference in paragraph (b) of sub-section (3) to terms and conditions shall be read as including a reference to implied terms and conditions and to terms and conditions that are not enforceable by legal proceedings whether or not they were intended to be so enforceable.

“(7) Where, by virtue of the application of the preceding provisions of this section, the amount (in this sub-section referred to as the ‘relevant amount’) of the deduction that is allowable to a taxpayer in respect of losses or outgoings incurred by the taxpayer in the purchase or acquisition of prescribed property is less than the amount of those losses and outgoings, the cost or cost price of that prescribed property shall, for the purposes of the application of Subdivision B of Division 2 of Part III in relation to that property in relation to the taxpayer, be taken to be an amount that is the same as the relevant amount.”.

10. Section 62A of the Principal Act is amended by inserting in sub-section (1) “granted on or before 7 April 1978” after “franchise” (first occurring). Expenditure pursuant to franchise

11. (1) Section 78 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (xxvi) of paragraph (a) of sub-section (1) “the Northern Territory National Trust” and substituting “The National Trust of Australia (Northern Territory), the National Trust of Australia (A.C.T.)”;
- (b) by inserting after sub-paragraph (xlv) of paragraph (a) of sub-section (1) the following sub-paragraph:

“; (xlv) The Australiana Fund,”;
- (c) by inserting after paragraph (a) of sub-section (1) the following paragraph:

“(aa) gifts (not being testamentary gifts) of the value of \$2 and upwards of property (other than money or an estate or interest in land or in a building or part of a building) made by the taxpayer in the year of income to The Australiana Fund, to a public Library, public museum or public art gallery in Australia or to an institution in Australia consisting of a public library, a public museum and a public art gallery or of any two of them, being property that is given to, and accepted by, The Australiana Fund or the authority or institution concerned for inclusion in the collection, or any of the collections, maintained or being established by that Fund, authority or institution;”;
- (d) by inserting after sub-section (1) the following sub-section:

“(1A) A gift of property is not an allowable deduction under paragraph (a) of sub-section (1) if the gift is an allowable deduction under paragraph (aa) of that sub-section.”;
- (e) by inserting “of paragraph (a)” after “purposes” in sub-section (2); and
- (f) by inserting after sub-section (6) the following sub-sections:

Gifts, calls on afforestation shares, pensions, &c.

“(6A) A gift of property is not an allowable deduction under paragraph (aa) of sub-section (1) unless the gift was or is made on or after 1 January 1978 and on or before 31 December 1980.

“(6B) Subject to sub-section (6C), a gift of property is not an allowable deduction under paragraph (aa) of sub-section (1) unless the person by whom the gift was made furnishes to the Commissioner with the return (or, if more than one return is furnished, the first return) of income of the person in respect of the year of income during which the gift was made, or within such further period as the Commissioner allows, not less than two valuations in writing stating the amount that, in the opinion of the person making the valuation, was—

- (a) the value of the property at the time when the gift was made; or
- (b) if the valuation was made not earlier than 30 days (or such longer period as the Commissioner allows) before, and not later than 30 days (or such longer period as the Commissioner allows) after, the day on which the gift was made—the value of the property at the time when the valuation was made,

being valuations by persons each of whom was, at the time when the valuation was made by him, an approved valuer in relation to a class of property in which the property is included.

“(6C) Sub-section (6B) does not apply in relation to a gift of property where paragraph (b) of sub-section (6E) applies for the purpose of determining the value of that gift.

“(6D) For the purposes of sub-section (6B), a person shall be taken to be an approved valuer in relation to a particular class of property at a particular time if, and only if, his name was included at that time in a register of approved valuers maintained by the Department of Home Affairs for the purposes of this sub-section and the entry in that register in relation to him stated that he was an approved valuer for the purpose of valuing property of that class.

“(6E) For the purposes of paragraph (aa) of sub-section (1), the value of a gift of property shall, subject to sub-section (6F), be taken to be—

- (a) in a case to which paragraph (b) of this sub-section does not apply—
 - (i) if the Commissioner is of the opinion that an amount equal to the average of the values specified in the valuations furnished to him in accordance with sub-section (6B) in relation to the

property fairly represents the value of the property as at the time when the gift was made—that amount; or

- (ii) if the Commissioner is not of that opinion—the amount that the Commissioner considers was the value of the property as at that time; or

(b) in the case where—

- (i) if the person who made the gift had sold the property instead of making the gift, any profits or proceeds arising from the sale would, otherwise than by reason of section 26AAA, have been included in the assessable income of that person; and
- (ii) the making of the gift does not result in an amount being included in the assessable income of that person,

the amount paid by that person for the property or, if the property was created or produced by that person, an amount equal to so much of the cost of creating or producing the property as would have been allowed as a deduction to the person under this Act if the property had been sold by him.

“(6F) If, in the case of a gift of property referred to in paragraph (aa) of sub-section (1)—

- (a) the terms and conditions on which the gift is made are such that the Fund, authority or institution to which the gift is made does not receive immediate custody and control of the property, does not have the unconditional right to retain custody and control of the property in perpetuity or does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property; or
- (b) the Commissioner is satisfied that the custody, control or use of the property by the Fund, authority or institution to which the gift is made is affected by any agreement entered into in association with the making or receipt of the gift,

the value of the gift shall, for the purposes of that paragraph, be taken to be the value ascertained in accordance with sub-section (6E) reduced by such amount as the Commissioner considers appropriate in the circumstances having regard to the effect on the value of the gift of those terms and conditions or of that agreement.

“(6G) A reference in sub-section (6F) to an agreement shall be read as including a reference to any agreement, arrangement

or understanding, whether formal or informal or express or implied, and whether or not enforceable by legal proceedings (whether or not the agreement, arrangement or understanding was intended to be so enforceable).”;

“(6H) Where—

- (a) a person owns property jointly with another person or other persons;
- (b) the owners make a gift of the property; and
- (c) if the property had been owned by the first-mentioned person alone, and the gift had been made by him, the gift would have been an allowable deduction under paragraph (aa) of sub-section (1),

the first-mentioned person is entitled to a deduction of so much of the amount of the deduction that would have been allowable as mentioned in paragraph (c) as the Commissioner considers reasonable having regard to the interest of that person in the property.”.

(2) The amendment made by paragraph (1) (a) applies in relation to gifts made—

- (a) in the case of gifts made to The National Trust of Australia (Northern Territory)—on or after 16 November 1976; and
- (b) in the case of gifts made to the National Trust of Australia (A.C.T.)—on or after 20 December 1976.

(3) Nothing in section 170 of the *Income Tax Assessment Act* 1936 prevents the amendment of an assessment made before the commencement of this Act for the purpose of giving effect to the amendment made by paragraph (1) (a) as it applies by virtue of sub-section (2).

12. After section 78 of the Principal Act the following section is inserted:

Certain gifts
not to be
allowable
deductions

“78A. (1) In this section—

‘agreement’ includes any agreement, arrangement or understanding, whether formal or informal or express or implied, and whether or not enforceable by legal proceedings (whether or not the agreement, arrangement or understanding was intended to be so enforceable);

‘associate’, in relation to the donor of a gift, means—

- (a) in the case of a donor being a natural person—
 - (i) a relative of the donor;
 - (ii) a partner of the donor;
 - (iii) if a partner of the donor is a natural person—the spouse of that partner;
 - (iv) a trustee of a trust estate where the donor or a person who is an associate of the donor by virtue

of sub-paragraph (i), (ii), (iii) or (v) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or

(v) a company where—

- (A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the donor, of a person who is an associate of the donor by virtue of sub-paragraph (i), (ii), (iii) or (iv) or of a company that is an associate of the donor by virtue of another application of this sub-paragraph; or
- (B) the donor is, the persons who are associates of the donor by virtue of sub-paragraphs (i), (ii), (iii) and (iv) are, or the donor and the persons who are associates of the donor by virtue of those paragraphs are, in a position to cast, or control the casting of, more than 50 per centum of the maximum number of votes that might be cast at a general meeting of the company; or

(b) in the case of a donor being a company—

- (i) a partner of the donor company;
- (ii) if a partner of the donor company is a natural person—the spouse of that partner;
- (iii) another person where—

- (A) the donor company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, whether those directions, instructions or wishes are communicated directly to the donor company or its directors, or through any interposed companies; or
- (B) that person is, or that person and the persons who, if that person were the donor, would be associates of that person by virtue of paragraph (a) or by virtue of another sub-paragraph of this paragraph are, in a position to cast, or control the casting of, more than 50 per centum of the

maximum number of votes that might be cast at a general meeting of the donor company;

- (iv) a trustee of a trust estate where the donor company or a person who is an associate of the donor company by virtue of sub-paragraph (i), (ii), (iii), (v) or (vi) benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts;
- (v) another company where—
 - (A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the donor company, of a person who is an associate of the donor company by virtue of sub-paragraph (i), (ii), (iii), (iv) or (vi) or of a company that is an associate of the donor company by virtue of another application of this sub-paragraph; or
 - (B) the donor company is, the persons who are associates of the donor company by virtue of sub-paragraphs (i), (ii), (iii), (iv) and (vi) are, or the donor company and the persons who are associates of the donor company by virtue of those sub-paragraphs are, in a position to cast, or control the casting of, more than 50 per centum of the maximum number of votes that might be cast at a general meeting of the other company; or
- (vi) another person who, if a third person who is an associate of the donor company by virtue of sub-paragraph (iii) were the donor, would be an associate of that third person by virtue of paragraph (a) or by virtue of another sub-paragraph of this paragraph.

“(2) Subject to this section, a gift of money, or of property other than money, made by a person (in this section referred to as the ‘donor’) after 7 April 1978 to a fund, authority or institution is not an allowable deduction under paragraph (a) or (aa) of sub-section (1) of section 78 where—

- (a) by reason of any act, transaction or circumstance that has occurred, will occur, or may reasonably be expected to occur, being an act, transaction or circumstance occurring as part of, in connexion with or as a result of—
 - (i) the making or receipt of the gift; or
 - (ii) any agreement or scheme entered into in association with the making or receipt of the gift,the amount or value of the benefit derived by the fund, authority or institution as a consequence of the gift is, will be, or may reasonably be expected to be, less than the amount or value at the time when the gift was made of the property comprising the gift;
- (b) by reason of any act, transaction or circumstance of a kind referred to in paragraph (a), any fund, authority or institution other than the fund, authority or institution to which the gift was made, makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment, or transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property, to any person or incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation;
- (c) by reason of any act, transaction or circumstance of a kind referred to in paragraph (a), the donor or an associate of the donor has obtained, will obtain or may reasonably be expected to obtain any benefit, advantage, right or privilege other than the benefit of any deduction that, but for this section, would be allowable from the assessable income of the donor under section 78; or
- (d) by reason of any agreement or scheme entered into as part of or in association with the making of the gift, any property, other than property comprising the gift, has been acquired or will be acquired, whether directly or indirectly, from the donor or an associate of the donor by that fund, authority or institution or by another fund, authority or institution.

“(3) Without limiting the application of sub-section (2), where the terms and conditions on which a gift of property other than money is made are such that the fund, authority or institution to which the gift is made does not receive immediate custody and control of the property, does not have the unconditional right to retain custody and control of the property in perpetuity to the exclusion of the donor or an associate of the donor or does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property, paragraph (c) of sub-section (2) shall be deemed to apply in relation to that gift.

“(4) Paragraph (a) of sub-section (2) does not prevent a deduction under paragraph (a) or (aa) of sub-section (1) of section 78 from being

allowed from the assessable income of the donor where the amount or value of the benefit derived by the fund, authority or institution as a consequence of the gift is, will be, or may reasonably be expected to be, less than the amount or value at the time when the gift was made of the property comprising the gift by reason only that the fund, authority or institution has incurred, will incur, or may reasonably be expected to incur, expenses for the purpose of obtaining or soliciting the gift, being expenses that, in the opinion of the Commissioner, are reasonable in relation to the value of the gift.

“(5) This section does not prevent a deduction under paragraph (aa) of sub-section (1) of section 78 from being allowed from the assessable income of the donor in respect of a gift of property other than money by reason only that the terms and conditions on which the gift was made are such, or the effect of any agreement entered into in association with the making or receipt of the gift is such, that the value of the gift may be reduced in accordance with sub-section (6F) of section 78.”.

Sufficient
distribution

13. (1) Section 105A of the Principal Act is amended by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) A dividend paid by a company during the prescribed period in relation to a year of income shall not be taken into account for the purposes of sub-section (1) if the dividend was paid in pursuance of an agreement under which a benefit was to be provided, or benefits were to be provided, whether before or after the time of payment of the dividend, to—

- (a) the company;
- (b) another person or other persons; or
- (c) the company and another person or other persons,

and the Commissioner is satisfied that the value of the benefit, or the sum of the values of the benefits, as the case may be, was to be not less than, or not substantially less than, the amount of the dividend.

“(4) A reference in paragraph (a), (b) or (c) of sub-section (3) to a person or to a company shall be read as including a reference to a person or to a company, as the case may be, in the capacity of a trustee.

“(4A) For the purposes of sub-section (3), an agreement shall be deemed to be an agreement under which a benefit is to be provided to a person if, and only if, the agreement is an agreement under which money is to be paid to, property transferred to or services provided for, a person for less than full consideration.

“(4B) For the purposes of this section—

- (a) an agreement under which a loan is to be made to a person on conditions including—
 - (i) a condition that the loan will be repayable on demand if a demand for repayment is made at or before a specified

time, or at or before a time ascertained by reference to the happening of a specified event; and

- (ii) a condition that, if a demand for repayment of the loan is not made at or before that time, repayment of the loan is to be postponed,

shall be deemed to be an agreement under which a payment of money of an amount equal to the amount of the loan is to be made, for no consideration, to the person to whom the loan is to be made;

- (b) an agreement under which a person is to release or abandon, or to fail to demand repayment of, a debt owed by another person shall be deemed to be an agreement under which an amount of money equal to the amount of the debt is to be paid, for no consideration, to the person by whom the debt is owed; and

- (c) an agreement under which—

- (i) a dividend is to be credited to a person by a company; and

- (ii) the payment of that dividend is, in whole or in part, to be satisfied by the issue to the person of any shares in, or debentures of, the company or by the transfer to the person of any property,

shall be deemed to be an agreement under which an amount of money equal to so much of the dividend as is to be so satisfied is to be paid to the company in respect of the issue of those shares or debentures or the transfer of that property, as the case may be.

“(4C) For the purposes of this section, an agreement under which money is to be paid, or property is to be transferred, to a person in respect of the issue or transfer of shares in, or debentures of, a company shall be deemed to be an agreement under which that money is to be paid, or that property is to be transferred, as the case may be, to that person for no consideration.

“(4D) A reference in sub-section (3) to the value of a benefit that is to be provided under an agreement shall be read as a reference to—

- (a) in the case of a benefit that is to consist of a payment of money or a transfer of property—the amount by which, in the opinion of the Commissioner, the amount of money that is to be paid, or the value of the property that it to be transferred, as the case may be, exceeds the value of any consideration that is to be given for that payment or transfer, as the case may be; and
- (b) in the case of a benefit that is to consist of the provision of services—the amount by which, in the opinion of the Commissioner, the value of the services that are to be provided exceeds the value of any consideration that is to be given for the provision of those services.

“(4E) In the preceding provisions of this section, ‘property’ includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.”.

(2) The amendments made by sub-section (1) apply in relation to dividends paid after 7 April 1978 other than dividends declared on or before that date.

(3) For the purposes of sub-section (2)—

- (a) where an amount that is paid or credited is, or any assets that are distributed are, for the purposes of the *Income Tax Assessment Act* 1936, deemed to be a dividend paid by a company, that dividend shall be taken to have been declared at the time when the amount was in fact paid or credited, or the assets were in fact distributed, as the case may be; and
- (b) where, by virtue of a provision of the constituent document of a company, a dividend may become payable by the company without having been declared, any such dividend that has become payable shall be taken to have been declared at the time when it became payable.

Purchase of
prospecting
or mining
rights or
information

14. Section 124AB of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-section:

“(6) For the purposes of this section, where—

- (a) deductions have been allowed or are allowable under section 77A of the *Income Tax Assessment Act* 1936 as amended and in force on 26 September 1969 or under section 77D or rebates have been allowed or are allowable under section 160ACA, being deductions or rebates in respect of moneys paid on shares specified in a declaration duly lodged by the vendor of a petroleum prospecting or mining right or of petroleum prospecting or mining information; and
- (b) as at the end of the year of income in which the right or information is disposed of there is an amount of net declared capital, or net eligible declared capital, of the vendor for the purposes of section 124AR that is not required to be applied by the Commissioner in accordance with sub-section (2) or (2A) of that section in the assessment of the vendor in respect of his income of that year of income,

the sum of the amounts referred to in paragraphs (a) and (c) of sub-section (3) shall be deemed to be reduced by so much of that amount of net declared capital or net eligible declared capital as the Commissioner considers to be reasonably attributable to the right or information.”.

15. After section 124AE of the Principal Act the following section is inserted:

“124AEA. (1) If, in ascertaining for the purposes of section 124AE in relation to the year of income of a taxpayer (in this sub-section referred to as the ‘relevant year of income’) next preceding the year of income of the taxpayer in which 17 September 1974 occurred, the amount that, for the purposes of section 124DF of the *Income Tax Assessment Act* 1936 as amended and in force on 5 December 1974, was the unrecouped capital expenditure of the taxpayer as at the end of the relevant year of income, the sum of the amounts referred to in paragraphs (a) to (h), inclusive, of that last-mentioned section exceeded the total amount of the allowable capital expenditure within the meaning of that section that was incurred by the taxpayer before or during the relevant year of income, so much of the excess as does not exceed the sum of the moneys referred to in paragraph (c) of that section shall be deemed to be net declared capital in relation to the taxpayer for the purposes of section 124AR as applying for the purposes of the year of income of the taxpayer in which 17 September 1974 occurred and all subsequent years of income.

Unapplied
moneys paid
on shares
specified in
certain
declarations

“(2) If, in ascertaining for the purposes of section 124AE in relation to the year of income of a taxpayer in which 30 June 1976 occurred, the unrecouped previous capital expenditure of the taxpayer as at the end of that year of income of the taxpayer, the aggregate of the amounts referred to in paragraphs (c) to (g), inclusive, of that section exceeded the sum of the amounts referred to in paragraphs (a) and (b) of that section, so much of the excess as does not exceed the sum of the moneys referred to in paragraph (f) of that section shall be deemed to be net declared capital in relation to the taxpayer for the purposes of section 124AR as applying for the purposes of that year of income and all subsequent years of income.”

16. Section 124AR of the Principal Act is amended—

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

Reduction of
allowable
deductions
where
certain
declarations
lodged

“(1) In this section—

‘mining company’ has the same meaning as in section 77D;

‘mining or prospecting outgoings’ has the same meaning as in section 160ACA;

‘net declared capital’, in relation to a mining company or a petroleum exploration company, means the amount, ascertained as at the end of the year of income, that is the sum of—

(a) any amounts—

- (i) specified in declarations duly lodged with the Commissioner by the company in pursuance of section 77D, to the extent that those amounts are, under sub-section (20)

of that section, deemed to have been specified in relation to petroleum; and

- (ii) expended after 17 September 1974 and before 1 July 1976 otherwise than 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 company, or expended on or after 1 July 1976; and

- (b) any amounts that are deemed to be net declared capital by virtue of section 124AEA,

less the sum of any amounts that have been applied by the Commissioner in accordance with sub-section (2) in the assessment of the income of the company of an earlier year of income;

‘net eligible declared capital’, in relation to a petroleum mining company, means the amount, ascertained as at the end of the year of income, that is the sum of any amounts specified in declarations duly lodged with the Commissioner by the company in pursuance of section 160ACA (other than amounts specified in declarations lodged by the company under sub-section (7) of that section and expended before or during that year of income in making prescribed payments), less the sum of any amounts that have been applied by the Commissioner in accordance with sub-section (2A) of this section in the assessment of the income of the company of an earlier year of income;

‘petroleum exploration company’ means a company that has received moneys paid on shares, being moneys specified in a declaration or declarations duly lodged by the company under sub-section (3) or (6) of section 77A of the *Income Tax Assessment Act* 1936 as amended and in force on 26 September 1969, other than moneys specified in declarations lodged by the company under sub-section (6) of that section and expended in making payments referred to in paragraph (e) of that sub-section;

‘petroleum mining company’ has the same meaning as in section 160ACA;

‘prescribed deduction’, in relation to a mining company or a petroleum exploration company, means—

- (a) a deduction allowed or allowable in an assessment of the income of the company under section 124AD, 124ADB, 124AH or 124AM; or

- (b) in the case of a company that has made an election in pursuance of section 124AG—a deduction allowed or allowable under section 54 or 59 in respect of plant referred to in the election,

but does not include a deduction that is a prescribed petroleum deduction;

‘prescribed payments’ has the same meaning as in section 160ACA;

‘prescribed petroleum deduction’, in relation to a petroleum mining company means—

- (a) a deduction allowed or allowable in an assessment of the income of the company under section 124ADB, 124AH or 124AM in respect of mining or prospecting outgoings incurred on or after 25 August 1977; or
- (b) in the case of a company that has made an election in pursuance of section 124AG in respect of expenditure on plant that has been or is incurred on or after 25 August 1977, being expenditure constituting mining or prospecting outgoings—a deduction allowed or allowable in respect of that plant under section 54 or 59,

but does not include a deduction that is attributable to expenditure that is, by virtue of sub-section (4), deemed to have been incurred out of unexpended moneys paid on shares, being—

- (c) moneys specified in a declaration or declarations duly lodged by the company under section 77A of the *Income Tax Assessment Act* 1936 as amended and in force on 26 September 1969; or
- (d) moneys specified in a declaration or declarations duly lodged by the company under section 77D.”;

(b) by inserting in sub-section (2) “or a petroleum exploration company” after “mining company”;

(c) by omitting paragraph (a) of sub-section (2) and substituting the following paragraph:

“(a) that has at any time lodged a declaration or declarations—

- (i) under section 77A of the *Income Tax Assessment Act* 1936 as amended and in force on 26 September 1969; or

(ii) under section 77D;”;

(d) by omitting sub-section (3) and substituting the following sub-sections:

“(2A) In the assessment of the income of a petroleum mining company—

- (a) that has at any time lodged a declaration or declarations under section 160ACA;
- (b) in respect of which there is, at the end of the year of income, an amount of net eligible declared capital; and
- (c) that is, apart from this section, entitled in respect of the year of income to any prescribed petroleum deductions,

the Commissioner shall apply the whole or a part of the amount of the net eligible declared capital as at the end of the year of income in reduction of those prescribed petroleum deductions in accordance with the following provisions—

- (d) where the total of those prescribed petroleum deductions exceeds the net eligible declared capital—he shall apply the whole of the amount of the net eligible declared capital in reduction of those prescribed petroleum deductions by that amount; and
- (e) where the total of those prescribed petroleum deductions does not exceed the net eligible declared capital—he shall apply so much of the amount of the net eligible declared capital as is equal to the total of those prescribed petroleum deductions in reduction of those prescribed petroleum deductions to nil.

“(3) Notwithstanding that, in the assessment of the income of a petroleum exploration company, a mining company or a petroleum mining company, any prescribed deductions or prescribed petroleum deductions have been reduced in pursuance of sub-section (2) or (2A), those prescribed deductions or prescribed petroleum deductions shall, for the purposes of the provisions of this Division other than this section and for the purposes of sections 59, 60 and 62, be deemed to have been allowed in full.

“(4) Where—

- (a) a company incurs expenditure on mining or prospecting outgoings; and
- (b) immediately before that expenditure was incurred, the company held unexpended moneys paid on shares, being moneys consisting of—
 - (i) moneys specified in a declaration or declarations duly lodged by the company under section 160ACA (in this sub-section referred to as the ‘section 160ACA moneys’); and
 - (ii) either or both of the following:
 - (A) moneys specified in a declaration or declarations duly lodged by the company

under section 77A of the *Income Tax Assessment Act* 1936 as amended and in force on 26 September 1969 (in this sub-section referred to as the 'section 77A moneys');

- (B) moneys specified in a declaration or declarations duly lodged by the company under section 77D (in this sub-section referred to as the 'section 77D moneys'),

then the expenditure referred to in paragraph (a) (in this sub-section referred to as the 'relevant expenditure') shall be deemed, for the purposes of this section, sub-section (20) of section 77D and section 160ACA, to have been expended by the company in accordance with the following provisions:

- (c) where the unexpended moneys included section 77A moneys—so much of the relevant expenditure as did not exceed the amount of the section 77A moneys shall be deemed to have been expended by the company out of the section 77A moneys;
- (d) where the unexpended moneys included section 77D moneys but did not include section 77A moneys—so much of the relevant expenditure as did not exceed the amount of the section 77D moneys shall be deemed to have been expended by the company out of the section 77D moneys;
- (e) where the unexpended moneys included both section 77A moneys and section 77D moneys and the amount of the relevant expenditure exceeded the amount of the section 77A moneys—so much of the excess as did not exceed the amount of the section 77D moneys shall be deemed to have been expended by the company out of the section 77D moneys; and
- (f) where the relevant expenditure exceeded the sum of any section 77A moneys and any section 77D moneys—so much of the excess as did not exceed the amount of the section 160ACA moneys shall be deemed to have been expended by the company out of the section 160ACA moneys.”.

17. (1) Section 157 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “For” and substituting “Subject to sub-section (3A), for”; and
- (b) by inserting after sub-section (3) the following sub-section:

“(3A) Sub-section (3) does not operate to deem a beneficiary in a trust estate who is presently entitled to the income or a part

Application
of Division
to primary
producers

of the income of that estate to be carrying on the business carried on by the trustees of the trust estate in a year of income unless—

- (a) the share of the income of that trust estate of the year of income to which the beneficiary is presently entitled is not less than \$1,040; or
- (b) the Commissioner is satisfied that the interest of the beneficiary in the trust estate was not acquired by, or granted to, the beneficiary for the purpose, or primarily for the purpose, of enabling the provisions of this Division to apply in respect of income derived by the beneficiary.”.

(2) The amendments made by sub-section (1) apply for the purpose of determining whether a beneficiary in a trust estate is, by reason of sub-section 157 (3) of the *Income Tax Assessment Act* 1936, to be deemed to be carrying on, at any time after 7 April 1978, the business carried on by the trustees of the trust estate.

Election that
this Division
shall apply

18. Section 158AA is amended—

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

“(1A) A taxpayer who has made an election under section 158A that this Division shall not apply to him for the purposes of tax upon his taxable income of a year of income later than the year of income that commenced on 1 July 1965 and of all subsequent years of income may elect that this Division shall apply to him for the purposes of tax upon his taxable income of the year of income that commenced on 1 July 1977.”;

- (b) by inserting in sub-section (5) “(1A) or” after “sub-section”;
- and
- (c) by inserting in sub-section (6) “(1A) or” after “sub-section” (first occurring).

Rebates for
dependants

19. (1) Section 159J of the Principal Act is amended—

- (a) by inserting “, amounts paid under a scheme for the provision by the Commonwealth of assistance in connexion with the education of isolated children” after “1975” (first occurring) in paragraph (a) of the definition of “separate net income” in sub-section (6); and
- (b) by omitting “or a handicapped child’s allowance” from subparagraph (i) of paragraph (b) of the definition of “separate net income” in sub-section (6) and substituting “, a handicapped child’s allowance or an amount paid under a scheme for the provision by the Commonwealth of assistance in connexion with the education of isolated children”.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

20. After section 160AC of the Principal Act the following sections are inserted:

“160ACA. (1) For the purposes of this section—

‘adjacent area’ means an area specified in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* as being adjacent to a State or Territory, and includes—

- (a) the land below and the space above an area so specified; and
- (b) in the case of the Territory of Ashmore and Cartier Islands—the area, whether land or water, within the territorial limits of that Territory and the space above that area;

‘authorized dealer in the short-term money market’ means a person who—

- (a) in accordance with arrangements made between the Reserve Bank of Australia and that person, deals in securities issued by the Commonwealth and, for that purpose, borrows money for short periods; and
- (b) is declared by an instrument in writing issued by the Reserve Bank of Australia, being an instrument that has not been revoked, to be an authorized dealer in the short-term money market;

‘eligible operations’ means operations of any one or more of the following kinds, namely, exploration, prospecting and mining for petroleum in an adjacent area;

‘mining or prospecting outgoings’ in relation to a petroleum mining company, means expenditure of the company that—

- (a) is incurred—
 - (i) in carrying on eligible operations; or
 - (ii) wholly and exclusively, and directly, in connexion with eligible operations; and
- (b) is allowable capital expenditure within the meaning of section 124AA or is expenditure referred to in section 124AH,

but does not include expenditure in the acquisition of a petroleum prospecting or mining right or petroleum prospecting or mining information;

‘moneys paid on shares’, in relation to a company, means moneys paid to the company on or after 25 August 1977, in respect of shares in the company, by the owners of the shares, including owners who are beneficial owners only, but does not include—

Rebate for moneys paid on shares for the purposes of off-shore petroleum exploration, prospecting or mining

- (a) moneys paid to the company in respect of a share that is, or at the option of the company may become, liable to be redeemed; or
- (b) moneys lent to the company, being moneys that are subsequently treated by the company as being payment to the company in respect of—
 - (i) shares issued by the company; or
 - (ii) calls made by the company on shares in the company;

‘petroleum mining company’ means a company—

- (a) that is the holder of a current production licence of petroleum under Part III of the *Petroleum (Submerged Lands) Act* 1967 or is the holder of a current exploration permit for petroleum under Part III of that Act, or holds any interest in such a licence or permit, being an interest created by an instrument in respect of which an entry has been made in the Register kept under section 76 of that Act; and
- (b) that carries on, or that the Commissioner is satisfied proposes to carry on, eligible operations;

‘prescribed payments’ means payments to petroleum mining companies, being petroleum mining companies of the kind mentioned in paragraph (b) of sub-section (7), in respect of shares in those companies for the purpose of enabling the moneys paid to be expended by those petroleum mining companies on mining or prospecting outgoings;

‘short-term investments’ means investments—

- (a) by way of deposit with a bank, being a trading bank as defined by sub-section 5 (1) of the *Banking Act* 1959, or with another bank approved by the Commissioner;
- (b) by way of loan to, or deposit with, an authorized dealer in the short-term money market;
- (c) in securities of the Commonwealth; or
- (d) in any other manner approved by the Commissioner,

being in any case investments the terms of which require the moneys invested to be repaid on demand or on the giving of a period of notice not exceeding 3 months.

“(2) Where a payment made in respect of a share in a company (whether on application for or allotment of the share, to meet calls or otherwise) is not applied by the company towards the paid-up value of the share, the payment shall, for the purposes of this section, be deemed not to have been made in respect of the share.

“(3) Subject to this section, a petroleum mining company that has, in a year of income, received moneys paid on shares may, for the purposes of sub-section (5) and Division 10AA, before the expiration of one month after the end of that year of income or within such further time as the Commissioner allows, lodge with the Commissioner a declaration in writing signed by the public officer of the company that the company has expended or proposes to expend, before the expiration of the second year of income of the company next following the year of income in which those moneys were received, such of those moneys as are specified in the declaration upon mining or prospecting outgoings.

“(4) Where a company specifies in a declaration lodged under this section part only of the moneys paid on shares in the company that the company received in a year of income, the declaration shall be deemed not to have been duly lodged unless the part of the moneys paid on shares that is specified in that declaration is specified as a percentage of the total amount of all the moneys paid on shares received by the company in that year of income and does not exclude moneys paid on particular shares or on shares included in a particular class or classes of shares or moneys paid on shares by a particular person or persons or by persons included in a particular class or classes of persons.

“(5) Subject to this section and to section 160ACB, a taxpayer is entitled, in his assessment in respect of income of a year of income, to a rebate of tax equal to 30 per centum of so much of the moneys paid on shares by that taxpayer during that year of income to a petroleum mining company as are specified in a declaration duly lodged by that company under sub-section (3).

“(6) If, at any time, the Commissioner is not satisfied, as to any moneys specified in a declaration duly lodged by a petroleum mining company under sub-section (3), that those moneys have been or will be expended by the company in accordance with the declaration, the Commissioner may inform the company, by notice in writing given for the purposes of this sub-section, that he is not so satisfied and, upon the company being so informed, the amount of any rebate allowed or allowable under sub-section (5) by virtue of the declaration shall be reduced by an amount that bears to the amount of the rebate before being so reduced the same proportion as the amount of the moneys as to which the Commissioner is not so satisfied bears to the amount of the moneys specified in the declaration.

“(7) Subject to this section, a company that has not, during a year of income of the company in which the company has received moneys paid on shares, carried on any business other than—

- (a) operations of any one or more of the following kinds, namely, exploration, prospecting and mining in Australia for—
 - (i) petroleum; or

- (ii) minerals other than petroleum that are obtainable by mining operations for the extraction of minerals from their natural site,
being operations carried on for the purpose of gaining or producing assessable income; or
- (b) providing capital (whether by investment in shares or otherwise) to petroleum mining companies, being petroleum mining companies the whole of the share capital in which at the time when the capital is provided—
 - (i) is beneficially owned by the first-mentioned company; or
 - (ii) is beneficially owned by that company and by—
 - (A) another company that is a listed company or the whole of the share capital in which is beneficially owned by one or more listed companies; or
 - (B) other companies each of which is a listed company or is a company the whole of the share capital in which is beneficially owned by one or more listed companies,

may, for the purposes of sub-section (15) and Division 10AA, before the expiration of one month after the end of that year of income or within such further time as the Commissioner allows, lodge with the Commissioner a declaration in writing signed by the public officer of the company that—

- (c) the company has expended, or proposes to expend, such as those moneys as are specified in the declaration—
 - (i) if the company is a petroleum mining company—on mining or prospecting outgoings or on the making of prescribed payments, or partly on mining or prospecting outgoings and partly on the making of prescribed payments; or
 - (ii) in any other case—on the making of prescribed payments;
- (d) in the case of any of the moneys specified in the declaration that have already been expended by the company on the making of prescribed payments—the moneys were so expended within 2 months of the date on which the company received the moneys; and
- (e) in the case of any of the moneys specified in the declaration that the company has not already expended, the company proposes to expend the moneys—
 - (i) in the case of moneys to be expended on mining or prospecting outgoings—before the expiration of the second year of income of the company next following the year of income in which the company received the moneys; or

- (ii) in the case of moneys to be expended on the making of prescribed payments—within 2 months of the date on which the company received the moneys.

“(8) Where—

- (a) a company has lodged a declaration under sub-section (7); and
- (b) the company has expended moneys specified in the declaration in making prescribed payments,

the declaration shall be deemed not to be duly lodged in relation to the moneys referred to in paragraph (b) unless the company was a listed company at the time of the making of the payments referred to in paragraph (b).

“(9) For the purposes of sub-sections (7) and (8) of this section and sub-section (7) of section 160ACB, a company shall be taken to be a listed company at a particular time if and only if—

- (a) shares in the company (other than shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) are listed for quotation at that time on the official list of a stock exchange, being a stock exchange in Australia or in another country; or
- (b) all the shares in the company are beneficially owned at that time by a company that is a listed company by virtue of paragraph (a) or by two companies each of which is a listed company by virtue of that paragraph and the company satisfies the Commissioner that it is reasonable to treat the company as if it were a listed company at that time having regard to that fact and to any other relevant circumstances including, in a case where this section is to be applied in relation to a company, the connexion between the company and the petroleum mining companies to which it provides capital.

“(10) Where shares in a company that were listed for quotation on the official list of a stock exchange ceased to be listed but at a later time again became listed, the Commissioner may, having regard to the reason why the shares ceased to be listed and the period during which they ceased to be listed, treat the shares, for the purposes of this section and section 160ACB, as not having ceased to be listed during that period.

“(11) For the purposes of sub-section (9)—

- (a) if at any time a company is the beneficial owner of shares in a second company and at that time the second company is the beneficial owner of shares in a third company, the first company shall be deemed to be at that time the beneficial owner of so many of the shares in the third company of which the second company is the beneficial owner at that time as bears to the number of those shares the same proportion as the number of shares in the second company of which the first company is the

beneficial owner at that time bears to the total number of shares in the second company at that time; and

- (b) in ascertaining for the purposes of paragraph (a) the number of shares in a company of which another company is at a particular time the beneficial owner, there shall be taken into account any shares in the first-mentioned company of which the other company is deemed to be the beneficial owner at that time by any other application or applications of that paragraph.

“(12) A company that has expended moneys in making payments to a petroleum mining company in respect of shares in the petroleum mining company is not entitled to lodge a declaration under sub-section (7) in respect of those moneys unless—

- (a) the petroleum mining company has lodged a declaration under sub-section (3) in respect of those moneys;
- (b) the Commissioner has informed the first-mentioned company, in writing, that he is satisfied that the petroleum mining company has expended or will expend those moneys in accordance with that declaration; and
- (c) the first-mentioned company has not been allowed a rebate under sub-section (5) in respect of those moneys.

“(13) A declaration lodged by a company under sub-section (7) shall be deemed not to be duly lodged, in relation to moneys specified in the declaration that have not been expended by the company in accordance with the declaration before the declaration is lodged (not being moneys that the company has, by the declaration, declared that it proposes to expend on mining or prospecting outgoings only), unless the declaration is accompanied by an undertaking in writing signed by the public officer of the company that the company will not, without the approval of the Commissioner, pay any of those moneys to a petroleum mining company in respect of shares in that company unless, before the payment—

- (a) the petroleum mining company has lodged with the Commissioner, for the purposes of the undertaking and Division 10AA, a declaration in writing signed by the public officer of the company that the company proposes to expend the moneys on mining or prospecting outgoings before the expiration of the second year of income of that company next following the year of income in which the company received the moneys; and
- (b) the Commissioner has informed the first-mentioned company, in writing, that he is satisfied that the petroleum mining company will so expend the moneys.

“(14) The Commissioner shall not, for the purposes of an undertaking given by a company under sub-section (13), approve the payment of moneys by that company to a petroleum mining company unless he is satisfied that the petroleum mining company—

- (a) will expend the moneys on mining or prospecting outgoings before the expiration of the second year of income of the petroleum mining company next following the year of income of that company in which that company received the money; and
- (b) will lodge with the Commissioner, before the expiration of one month after the end of the year of income of the petroleum mining company in which that company receives the moneys, a declaration under sub-section (3) in respect of the moneys,

and, if, in respect of any part of the moneys, the petroleum mining company fails so to lodge such a declaration, the Commissioner may inform the first-mentioned company, by notice in writing, of that failure and, upon the company being so informed, the notice shall have effect as if it were a notice given under sub-section (18) informing the company that the Commissioner is of the opinion that the company has failed to comply, in relation to that part of the moneys, with the undertaking given by it under sub-section (13).

“(15) Subject to this section and section 160ACB, a taxpayer is entitled, in his assessment in respect of income of a year of income, to a rebate of tax equal to 30 per centum of so much of the moneys paid on shares by that taxpayer during that year of income to a company as are specified in a declaration duly lodged by that company under sub-section (7).

“(16) Where a company duly lodges a declaration under sub-section (7) in respect of any moneys—

- (a) a rebate in respect of those moneys is not allowable under sub-section (5) in any assessment in respect of income of the company; and
- (b) where the company has expended moneys specified in the declaration in making prescribed payments, the amount of the expenditure shall not be allowable as a deduction from the assessable income of the company and shall not be taken into account for the purposes of this Act in ascertaining the amount of any profit or loss arising from sale of the shares in respect of which the prescribed payments were made.

“(17) Where—

- (a) a company has given an undertaking under sub-section (13) in respect of any moneys;
- (b) a petroleum mining company has, for the purposes of the undertaking, duly lodged with the Commissioner in respect of those moneys a declaration of the kind referred to in paragraph (a) of that sub-section;
- (c) the Commissioner has informed the first-mentioned company, in writing, that he is satisfied that the petroleum mining company will expend those moneys on mining or prospecting outgoings in accordance with the declaration; and

(d) the petroleum mining company has received those moneys as moneys paid on shares,
the petroleum mining company is not entitled to lodge a declaration under sub-section (3) or (7) in respect of those moneys.

“(18) If, at any time, the Commissioner—

- (a) is not satisfied as to any moneys specified in a declaration duly lodged by a company under sub-section (7), that those moneys have been or will be expended by the company in accordance with the declaration;
- (b) is not satisfied, as to any moneys specified in a declaration so lodged, being moneys expended in making prescribed payments, that the moneys included in the payments have been or will be expended by the petroleum mining company on mining or prospecting outgoings; or
- (c) is of the opinion that a company by which a declaration has been so lodged has, in relation to any moneys specified in the declaration, failed to comply with the undertaking given by the company under sub-section (13) in connexion with the declaration,

the Commissioner may inform the company that lodged the declaration and, where paragraph (b) applies, the petroleum mining company, by notice in writing given for the purposes of this sub-section, that he is not so satisfied or that he is of that opinion, as the case may be, and, upon the company or companies being so informed—

- (d) the amount of any rebate allowed or allowable under sub-section (15) by virtue of the declaration shall be reduced by an amount that bears to the amount of the rebate before being so reduced the same proportion as the amount of the moneys as to which the Commissioner is not so satisfied or is of that opinion bears to the amount of the moneys specified in the declaration; and
- (e) the undertaking given under sub-section (13) in connexion with the declaration shall cease to apply to the moneys as to which the Commissioner is not so satisfied or is of that opinion.

“(19) Where a company has duly lodged a declaration under sub-section (3) or sub-section (7) in respect of any moneys, the company is not entitled to lodge a declaration in respect of any of those moneys under the other of those sub-sections except with the approval of the Commissioner and if, in accordance with such an approval of the Commissioner, the company duly lodges a further declaration in respect of any of those moneys, the declaration previously lodged by the company in respect of the moneys specified in the further declaration shall be deemed not to have been duly lodged.

“(20) If—

- (a) a company has lodged a declaration with the Commissioner under this section; and
- (b) the manner in which moneys specified in the declaration have been dealt with by the company cannot be readily ascertained from the records of the company,

the Commissioner may, having regard to all the circumstances of the case, determine the manner in which, for the purposes of this section, section 160ACB and Division 10AA, those moneys shall be regarded as having been dealt with by the company and those moneys shall, for those purposes, be deemed to have been so dealt with by the company.

“(21) Where moneys specified in a declaration lodged by a company under this section include moneys that the company is not entitled to specify in the declaration, the declaration is not invalid in relation to the moneys that the company is entitled to specify by reason only that the declaration also specifies the other moneys.

“(22) Where the Commissioner is satisfied that any moneys that have been specified in a declaration duly lodged by a company under this section were paid by a person in pursuance of an agreement or arrangement made in connexion with the purchase by the company or by another company of a petroleum prospecting or mining right or petroleum prospecting or mining information or shares in a company holding such a right or possessing such information, the Commissioner may inform the company, by notice in writing, that he is so satisfied and, upon the company being so informed a rebate in respect of those moneys is not allowable, and shall be deemed not to have been allowable, under sub-section (5) or sub-section (15) in any assessment in respect of income of that person.

“(23) For the purposes of sub-section (22), every company that beneficially owns shares in a company that holds a petroleum prospecting or mining right or possesses petroleum prospecting or mining information (including a company that is, by virtue of any application or applications of this sub-section, deemed to hold a petroleum prospecting or mining right or to possess petroleum prospecting or mining information) shall be deemed to hold that right or possess that information, as the case may be.

“(24) Where—

- (a) a company has specified moneys in a declaration duly lodged by the company under this section;
- (b) the moneys specified in the declaration comprise or include moneys that the company has not expended, but proposes to expend in accordance with the declaration; and
- (c) the Commissioner is satisfied that the moneys referred to in paragraph (b) are not held by the company in short term investments,

the Commissioner may inform the company, by notice in writing given for the purposes of this sub-section, that he is so satisfied and, upon the company being so informed—

- (d) the amount of any rebate allowed or allowable under sub-section (5) or (15) by virtue of the declaration shall be reduced by an amount that bears to the amount of the rebate before being so reduced the same proportion as the amount of the moneys as to which the Commissioner is so satisfied bears to the amount of the moneys specified in the declaration; and
- (e) in the case of a declaration duly lodged under sub-section (7)—the undertaking given under sub-section (13) in connexion with the declaration shall cease to apply to the moneys as to which the Commissioner is so satisfied.

“(25) Where a person has paid moneys on shares and—

- (a) the proceeds of the sale of the shares have been included, or are to be included, in the assessable income of the person of any year of income;
- (b) a profit arising from the sale of the shares has been included, or is to be included, in the assessable income of the person of any year of income; or
- (c) a loss arising from the sale of the shares has been allowed, or is allowable, as a deduction in an assessment of the person in respect of income of any year of income,

then a rebate in respect of the moneys paid on the shares is not allowable, and shall be deemed not to have been allowable, under sub-section (5) or (15) in any assessment in respect of income of that person.

“(26) Where a partnership would, if the partnership were a taxpayer, be entitled in a year of income to a rebate of tax under sub-section (5) or (15) in respect of moneys paid on shares by the partnership in that year of income, each partner is entitled, in his assessment in respect of income of that year of income, to so much of that rebate of tax as bears to that rebate of tax the same proportion as—

- (a) his individual interest in the net income of the partnership for that year of income bears to that net income; or
- (b) his individual interest in a partnership loss incurred by the partnership in that year of income bears to the amount of that loss.

“(27) Where moneys paid on shares in a year of income by a trustee of a trust estate have been specified in a declaration duly lodged by a company under this section, the trustee or a beneficiary is entitled, in his assessment in respect of income of that year of income, to such rebate of tax (if any) under sub-section (5) or (15) in respect of those moneys paid on shares as, in the opinion of the Commissioner, is reasonable having regard to—

- (a) the operation of this section in relation to persons other than trustees and beneficiaries in trust estates; and

(b) the respective interests of the beneficiaries in the trust estate.

“160ACB. (1) In this section—

‘eligible operations’ and ‘mining or prospecting outgoings’ have the same respective meanings as in section 160ACA;

Sale of
shares in
petroleum
mining
companies

‘prescribed company’ means a company that carries on, or that the Commissioner is satisfied proposes to carry on, either or both of the following businesses:

- (a) eligible operations;
- (b) the investment in shares in a company that carries on, or that the Commissioner is satisfied proposes to carry on, eligible operations.

“(2) For the purposes of this section—

- (a) a declaration shall be taken to be lodged by a company under section 160ACA in respect of a particular year of income of the company if the declaration specifies moneys paid on shares that were received by the company in that year of income; and
- (b) a reference to a sale or other disposal of a share includes a reference to a sale or other disposal of a beneficial interest in a share.

“(3) Where—

- (a) a person sells or otherwise disposes of a share in a company (in this sub-section referred to as the ‘relevant company’) to a prescribed company;
- (b) moneys paid on the share by the person are included in moneys specified in a declaration or declarations duly lodged by the relevant company under section 160ACA in respect of the year of income of that company in which the sale or other disposal occurred or in respect of a preceding year of income of that company; and
- (c) the Commissioner is not satisfied that the relevant company had, on or before the date of the sale or other disposal, expended on mining or prospecting outgoings all of the moneys specified in the declaration or declarations and all other moneys (if any) that were paid on shares in that company by any person during the year of income of that company in which the sale or other disposal occurred or a preceding year of income and specified in a declaration or declarations duly lodged by the relevant company under section 160ACA in respect of any of those years of income,

then, for the purpose of determining the amount of any rebate allowable in an assessment in respect of income of the person under sub-section (5) or (15) of section 160ACA, the moneys paid on the share by the person shall be deemed to be, and be deemed to have been, reduced by an amount equal to so much of the consideration received by the person in

respect of the sale or other disposal of the share as does not exceed the moneys actually paid on the share by the person.

“(4) Where a person has sold or otherwise disposed of a share in a company to another person under a contract, arrangement or understanding to which a prescribed company is a party and which concerns—

(a) the management or control of, or the use of moneys belonging to, the first-mentioned company; or

(b) the resale or disposal of that share to the prescribed company, this section has effect as if the first-mentioned person had sold the share to a prescribed company.

“(5) Where a person sells or otherwise disposes of a share in a company to another person and the Commissioner is satisfied, having regard to any connexion between the persons or to any other relevant circumstances, that—

(a) those persons were not dealing with each other at arm’s length; and

(b) the consideration for the sale or other disposal of the share was less than the amount that, in the opinion of the Commissioner, was the value of the share at the time of the sale or other disposal,

the consideration shall, for the purposes of the application of sub-section (3), be deemed to have been that amount.

“(6) Where a person has sold or otherwise disposed of a share in a company that has, in accordance with a declaration lodged by the company under sub-section (7) of section 160ACA, expended moneys paid on the share by the person in making a payment to another company for the purpose of enabling the moneys included in the payment to be expended by that other company on mining or prospecting outgoings and the Commissioner is satisfied that an amount included in the payment has been expended by the last-mentioned company on mining or prospecting outgoings, sub-section (3) of this section has effect as if that amount had been expended on mining or prospecting outgoings by the first-mentioned company.

“(7) This section does not apply in relation to moneys paid by a person on a share if the Commissioner is satisfied that—

(a) the share is a share in a company that was, at the time of the making of the payment, a listed company or became a listed company within 3 months after that time; and

(b) at the time of the making of the payment—

(i) no contract, arrangement or understanding; and

(ii) no right, power or option (including a contingent right, power or option),

that, in any way directly or indirectly, related to, affected, or depended for its operation on, the right of the person to sell or

otherwise dispose of that share was or had been entered into by, or granted to, a prescribed company.

“160ACC. Where a company duly lodges a declaration under section 160ACA, any expenditure incurred by the company in the year of income in which the moneys to which the declaration relates were received by the company, or in either of the next two succeeding years of income, on a unit of plant, being expenditure referred to in section 124AH that constitutes mining or prospecting outgoings as defined by section 160ACA, shall not be taken into account in determining whether the company is entitled to a deduction under section 82AB notwithstanding any election made by the company under section 124AG in respect of that expenditure.”.

Company not entitled to investment allowance in certain circumstances

21. Section 170 of the Principal Act is amended—

Amendment of assessments

- (a) by inserting in sub-section (10) “section 78A,” after “section 77E,”; and
- (b) by inserting in sub-section (10) “, section 160ACA, section 160ACB, section 160ACC” after “section 160AC”.

22. (1) Section 221A of the Principal Act is amended—

Interpretation

- (a) by omitting “or” from paragraph (g) of the definition of “salary or wages”; and
- (b) by inserting after paragraph (h) of that definition the following word and paragraph:

“; or (j) by way of allowance under the scheme known as the Former Regular Servicemen’s Vocational Training Scheme,”.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

23. (1) Section 265 of the Principal Act is amended by omitting from sub-section (1) “Treasury” and substituting “Department of Finance”.

Release of taxpayers in cases of hardship

(2) The amendment made by sub-section (1) does not affect the jurisdiction of a Board constituted under section 265 of the Principal Act in relation to any application made under that section the consideration of which had commenced before the commencement of this section.

24. Sub-section 124AB (6) of the Principal Act shall be deemed to have had effect at all times as if the reference in that sub-section to a mining or prospecting right or mining or prospecting information had been a reference to a petroleum prospecting or mining right or petroleum prospecting or mining information.

Effect of sub-section 124AB (6) of Principal Act

NOTES

1. Act No. 57, 1978; assented to 22 June 1978.
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, 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; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; and Nos. 57, 126 and 127, 1977.