

# INCOME TAX ASSESSMENT AMENDMENT ACT (No. 4) 1978

No. 172 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:

1. (1) This Act may be cited as the *Income Tax Assessment Amendment Act (No. 4) 1978*.<sup>1</sup> Short title,  
&c.

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

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commence-  
ment

3. Section 6 of the Principal Act is amended by omitting from sub-section (1) the definition of “taxable income” and substituting the following definition: Interpret-  
ation

“ ‘taxable income’ means—

- (a) in a case to which paragraph (b) does not apply—the amount remaining after deducting from the assessable income all allowable deductions; and
- (b) in a case to which Subdivision B of Division 2A of Part III applies—the amount calculated in accordance with section 50C;”.

4. Section 46 of the Principal Act is amended by inserting after sub-section (6) the following sub-section: Rebate on  
dividends

“(6A) For the purposes of the application of this section in relation to a shareholder in relation to a year of income, being a shareholder that is a company to which Subdivision B of Division 2A applies in relation to the year of income, a reference in sub-section (2) or (3) to the part of any dividends that is included in the taxable income of the shareholder of the year of income or to the part of any private company dividends that is included in that taxable income shall, notwithstanding sub-section (7), be read as a reference to so much of any dividends, or private company dividends, as the case may be, as is deemed to be included in the taxable income of the shareholder of the year of income by reason of the operation of section 50N.”.

Rebate on  
dividends  
paid as part  
of dividend  
stripping  
operation

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

- (a) by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) A dividend paid in respect of shares in a company (in this section referred to as the ‘relevant company’) shall not be taken to be a dividend in relation to which this section applies unless the shareholder acquired (whether alone or jointly with another person or other persons) property, being—

- (a) those shares;
- (b) other shares in the relevant company;
- (c) shares in another company that, at the time of acquisition of the shares in that other company or at any time after the time of acquisition of the shares in that other company and before the time when the dividend was paid, was related to the relevant company; or
- (d) a beneficial interest in a trust estate, being a trust estate that, at the time of acquisition of the beneficial interest or at any time after the time of acquisition of the beneficial interest and before the time when the dividend was paid, was related to the relevant company,

as trading stock or in such circumstances that any profit that would arise from a disposal of the property would, in whole or in part, be included in the assessable income of the shareholder or any loss that would arise from a disposal of the property would, in whole or in part, be allowable as a deduction to the shareholder.

“(3) In considering whether the payment of a dividend (in this sub-section referred to as the ‘relevant dividend’) by the relevant company arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping, the Commissioner shall take into consideration—

- (a) whether the effect of the payment of the relevant dividend by the relevant company to the shareholder, or the effect of that payment and of the payments of any other dividends that have been or are likely to be made by the relevant company to the shareholder has been, or would be, to reimburse the shareholder wholly or substantially for the amount or amounts paid by him in respect of the acquisition of any relevant property;
- (b) whether the value of any relevant property immediately after the time when the relevant dividend was paid was substantially less than the value of that relevant property at the time when it was acquired by the shareholder and, if so, whether the reduction in value was wholly or

mainly attributable to the payment of a dividend to the shareholder by the relevant company;

- (c) whether the right to receive dividends in respect of any relevant property consisting of shares in the relevant company is, by reason of any provision in the constituent document of the company or of any agreement, limited as to the total of the amounts that may be paid as dividends in respect of the shares or as to the source of the profits from which, or the period during which, dividends may be paid in respect of the shares; and
  - (d) any other relevant matters.”;
- (b) by inserting after sub-section (8) the following sub-sections:

“(8A) For the purposes of the application of this section in relation to a shareholder in relation to a year of income, being a shareholder that is a company to which Subdivision B of Division 2A applies in relation to the year of income—

- (a) a reference in sub-section (5) to the net income derived from dividends by the shareholder shall be read as a reference to an amount equal to the sum of—
  - (i) the amount of income from private company dividends that is deemed to be included in the taxable income of the shareholder of the year of income by the operation of section 50N; and
  - (ii) the amount of income from dividends other than private company dividends that is deemed to be included in the taxable income of the shareholder of the year of income by the operation of section 50N,

reduced by so much of any deductions (including deductions, whether in respect of losses, outgoings or otherwise, that are not specifically related to particular income or to income included in a particular class of income) that have been allowed or are allowable to the shareholder under this Act in relation to the year of income or any other year of income as—

- (iii) has not, in the application of section 50N in relation to the shareholder in relation to the year of income, been deducted from income from private company dividends or from income from dividends other than private company dividends; and
- (iv) the Commissioner is satisfied it is reasonable to attribute to dividends included in the assessable income of the shareholder of the year of income;

- (b) a reference in sub-section (5) or (6) to the net income derived from private company dividends by the shareholder shall be read as a reference to the amount of income from private company dividends that is deemed to be included in the taxable income of the shareholder of the year of income by the operation of section 50N reduced by so much of any deductions (including deductions, whether in respect of losses, outgoings or otherwise, that are not specifically related to particular income or to income included in a particular class of income) that have been allowed or are allowable to the shareholder under this Act in relation to the year of income or any other year of income as—
  - (i) has not, in the application of section 50N in relation to the shareholder in relation to the year of income, been deducted from income from private company dividends; and
  - (ii) the Commissioner is satisfied it is reasonable to attribute to private company dividends included in the assessable income of the shareholder of the year of income; and
- (c) a reference in sub-section (5) to the net income derived by the shareholder from dividends other than private company dividends shall be read as a reference to the amount of income from dividends other than private company dividends that is deemed to be included in the taxable income of the shareholder of the year of income by the operation of section 50N, reduced by so much of any deductions (including deductions, whether in respect of losses, outgoings or otherwise, that are not specifically related to particular income or to income included in a particular class of income) that have been allowed or are allowable to the shareholder under this Act in relation to the year of income or any other year of income as—
  - (i) has not, in the application of section 50N in relation to the shareholder in relation to the year of income, been deducted from income from dividends other than private company dividends; and
  - (ii) the Commissioner is satisfied it is reasonable to attribute to dividends (other than private company dividends) included in the assessable income of the shareholder of the year of income.

“(8B) A reference in this section to deductions that have been allowed or are allowable to a shareholder under this Act in relation to a year of income or to amounts that have been or are included in the assessable income of a shareholder of a year of income shall, if Subdivision B of Division 2A applies or applied in relation to the shareholder in relation to the year of income, be read as a reference to deductions that would have been allowable or would be allowable to the shareholder under this Act or to amounts that would have been included in the assessable income of the shareholder, as the case may be, if the taxable income of the shareholder of the year of income concerned were ascertained in accordance with section 48.”;

- (c) by omitting sub-sections (11), (12), (12A) and (12B) and substituting the following sub-sections:

“(10A) For the purposes of sub-sections (8A) and (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 relevant property other than relevant property consisting of the shares in the relevant company in respect of which the dividends were paid.

“(11) For the purposes of the application of sub-section (8A) or sub-sections (10) and (10A) in determining the deductions that have been allowed or are allowable to a shareholder under this Act in respect of any dividends included in the assessable income of the shareholder of a year of income, where any profit arising from a transaction, undertaking or scheme that involved the acquisition by the shareholder (whether alone or jointly with another person or other persons) of relevant property, has been or is included in the assessable income of the shareholder of a year of income (in this sub-section referred to as the ‘relevant year of income’)—

- (a) any expenditure incurred by the shareholder in respect of the acquisition of that relevant property; and
- (b) any other expenditure incurred by the shareholder in connection with the transaction, undertaking or scheme, being expenditure that was, or is to be, taken into account in ascertaining the amount of that profit,

shall be deemed to have been a deduction allowed, or to be a deduction allowable, as the case may be, to the shareholder under this Act in relation to the relevant year of income.

“(12) For the purposes of the application of sub-section (8A) or sub-sections (10) and (10A) in determining the deductions that have been allowed or are allowable to a shareholder under

this Act in respect of any dividends included in the assessable income of the shareholder of a year of income, where any loss incurred in respect of a transaction, undertaking or scheme that involved the acquisition by the shareholder (whether alone or jointly with another person or other persons) of relevant property, has been allowed or is allowable as a deduction to the shareholder under this Act in relation to a year of income (in this sub-section referred to as the ‘relevant year of income’)—

- (a) any expenditure incurred by the shareholder in respect of the acquisition of that relevant property; and
- (b) any other expenditure incurred by the shareholder in connection with the transaction, undertaking or scheme, being expenditure that was, or is to be, taken into account in ascertaining the amount of that loss,

shall be deemed to have been a deduction allowed, or to be a deduction allowable, as the case may be, to the shareholder under this Act in relation to the relevant year of income, but the amount of the loss shall, for the purposes of those sub-sections, be deemed not to have been a deduction allowed, or not to be a deduction allowable, as the case may be, to the shareholder under this Act in relation to the relevant year of income.”;

- (d) by inserting in sub-section (13) “in sub-section (8A) or” after “deduction referred to”;
- (e) by inserting after sub-section (13) the following sub-sections:

“(13A) For the purposes of this section—

- (a) 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 any shares in the relevant company could reasonably be expected to result in a reduction in the value of any shares in the first-mentioned company; and
- (b) a trust estate 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 any shares in the relevant company could reasonably be expected to result in a reduction in the value of any of the property of the trust estate.

“(13B) Unless the contrary intention appears—

- (a) a reference in this section to a share shall be read as including a reference to—
  - (i) an interest in a share; and
  - (ii) a right or option (including a contingent right or option) to acquire a share or an interest in a share; and

- (b) a reference in this section to a beneficial interest in a trust estate shall be read as including a reference to a right or option (including a contingent right or option) to acquire a beneficial interest in a trust estate.

“(13C) For the purposes of this section, a person who acquires shares or a beneficial interest in a trust estate in pursuance of an agreement shall be taken to have acquired the shares, or the beneficial interest, as the case may be, at the time when the agreement was entered into.

“(13D) For the purposes of the application of this section in relation to a dividend paid to a shareholder in respect of shares in the relevant company, ‘relevant property’ means—

- (a) the shares in respect of which the dividend was paid;
- (b) other shares in the relevant company that were acquired by the shareholder (whether alone or jointly with another person or other persons) at any time before the time when the dividend was paid;
- (c) shares in another company that were acquired by the shareholder (whether alone or jointly with another person or other persons) at any time before the time when the dividend was paid, being another company that was, at the time of acquisition of the shares in that other company or at any time after the time of acquisition of the shares in that other company and before the time when the dividend was paid, related to the relevant company; or
- (d) a beneficial interest in a trust estate that was acquired by the shareholder (whether alone or jointly with another person or other persons) at any time before the time when the dividend was paid, being a trust estate that was, at the time of acquisition of the beneficial interest or at any time after the time of acquisition of the beneficial interest and before the time when the dividend was paid, related to the relevant company.

“(13E) A reference in this section 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.

“(13F) 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.”;

- (f) by omitting “and” from the end of paragraph (a) of sub-section (14);

- (g) by omitting from paragraph (b) of sub-section (14) “sub-sections (9) and (10)” and substituting “sub-section (8A), or sub-sections (9) and (10),”; and
  - (h) by inserting after paragraph (b) of sub-section (14) the following word and paragraph:
    - “; and (c) the Commissioner may amend an assessment at any time for the purpose of taking into account an acquisition of shares or a beneficial interest in a trust estate by a person that, by virtue of sub-section (13C), is deemed to have taken place before the end of the year of income to which the assessment relates,”.
- (2) The amendments made by sub-section (1) (other than paragraphs (1) (b), (d) and (g)) apply in relation to dividends paid after 7 May 1978 other than dividends declared on or before that date.
- (3) For the purposes of the application of section 46A of the *Income Tax Assessment Act* 1936 in relation to dividends paid to a company on or before 7 May 1978 or dividends declared on or before that date that are paid to a company after that date, being a company to which Subdivision B of Division 2A applies in relation to the year of income of the company during which the dividends are paid—
- (a) sub-section (11) of that section shall be read as if “the last preceding sub-section” were omitted and “sub-section (8A) or (10)” were substituted; and
  - (b) sub-section (12) of that section shall be read as if “sub-section (10) of this section” were omitted and “sub-section (8A) or (10)” were substituted.
- (4) For the purposes of the application of section 46A of the *Income Tax Assessment Act* 1936 in relation to—
- (a) dividends paid to a company on or before 7 May 1978 and after 7 April 1978 (not being dividends declared on or before 7 April 1978); or
  - (b) dividends paid to a company after 7 May 1978, being dividends declared after 7 April 1978 and on or before 7 May 1978,
- being in either case a company to which Subdivision B of Division 2A applies in relation to the year of income of the company during which the dividends are paid, sub-section (12A) of that section shall be read as if “sub-section (10)” were omitted and “sub-section (8A) and (10)” were substituted.
- (5) 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.

**6. (1) Section 46B of the Principal Act is amended—**

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

Rebate not  
allowable in  
certain  
circumstances

“(b) before the time when the relevant dividend was paid, another person (in this section referred to as the ‘associated person’) acquired property (in this section referred to as the ‘associated property’), being—

- (i) shares in the relevant company;
- (ii) shares in another company that, at the time of acquisition of the shares in that other company or at any time after the time of acquisition of the shares in that other company and before the time when the relevant dividend was paid, was related to the relevant company; or
- (iii) a beneficial interest in a trust estate, being a trust estate that, at the time of acquisition of the beneficial interest or at any time after the time of acquisition of the beneficial interest and before the time when the relevant dividend was paid, was related to the relevant company;

- (c) the associated property was acquired by the associated person as trading stock or in such circumstances that any profit that would arise on a disposal of the associated property would, in whole or in part, be included in the assessable income of the associated person or any loss that would arise from a disposal of the associated property would, in whole or in part, be allowable as a deduction to the associated person; and”;
- (b) by omitting from paragraph (d) of sub-section (1) “shares by the associated shareholder” and substituting “property by the associated person”;
- (c) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

“(2) For the purposes of this section—

- (a) 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 any shares in the relevant

company could reasonably be expected to result in a reduction in the value of any shares in the first-mentioned company; and

- (b) a trust estate 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 any shares in the relevant company could reasonably be expected to result in a reduction in the value of any of the property of the trust estate.

“(3) Unless the contrary intention appears—

- (a) a reference in this section to a share shall be read as including a reference to—

- (i) an interest in a share; and

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

- (b) a reference in this section to a beneficial interest in a trust estate shall be read as including a reference to a right or option (including a contingent right or option) to acquire a beneficial interest in a trust estate.

“(4) For the purposes of this section, a person who acquires shares or a beneficial interest in a trust estate in pursuance of an agreement shall be taken to have acquired the shares or the beneficial interest, as the case may be, at the time when the agreement was entered into.”; and

- (d) by inserting in paragraph (b) of sub-section (9) “or a beneficial interest in a trust estate” after “shares”.

(2) The amendments made by sub-section (1) apply in relation to dividends paid after 7 May 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.

**Heading**

**7. After section 47 of the Principal Act the following heading is inserted:**

*“Division 2A—Calculation of Taxable Income”.*

8. The heading to Division 3 of Part III of the Principal Act is omitted. Heading to  
Division 3 of  
Part III

9. After section 50 of the Principal Act the following Subdivision and headings are inserted:

*“Subdivision B—Calculation of Taxable Income where Disqualifying Event Occurs*

“50A. (1) This Subdivision applies in relation to a taxpayer in relation to a year of income if, and only if, the taxpayer is a company and, by reason of section 50H, a disqualifying event is deemed to have occurred, or disqualifying events are deemed to have occurred, in relation to the company during the year of income. Application  
of  
Subdivision

“(2) Notwithstanding sub-section (1) of section 50H—

- (a) a disqualifying event shall not be deemed to have occurred in relation to a company on or before 7 April 1978; and
- (b) a disqualifying event shall not be deemed to have occurred in relation to a company at a time during a year of income if—
  - (i) the company is not a private company in relation to the year of income; and
  - (ii) the Commissioner considers that it is unreasonable that a disqualifying event should be deemed to have occurred in relation to the company at that time.

“50B. (1) For the purposes of the application of this Subdivision in relation to a company in relation to a year of income— Interpretation

‘excepted amount’ means an amount that is a full-year amount or a divisible amount in relation to the company in relation to the year of income;

‘excepted deduction’ means an allowable deduction that is a full-year deduction or a divisible deduction in relation to the company in relation to the year of income;

‘full-year amount’ means so much of any amount that is included in the assessable income of the company of the year of income under section 97 as is not a divisible amount in relation to the company in relation to the year of income;

‘income period’ means a relevant period in respect of which the company is deemed to have a notional taxable income;

‘loss period’ means a relevant period in respect of which the company is deemed to have a notional loss;

‘natural person’ means a person other than a company;

‘relevant period’ means any of the following periods:

- (a) where only one disqualifying event is deemed to have occurred in relation to the company during the year of income—
  - (i) the period commencing at the commencement of the year of income and ending immediately before the time when the disqualifying event is deemed to have occurred; and
  - (ii) the period commencing at the time when the disqualifying event is deemed to have occurred and ending at the end of the year of income;
- (b) where 2 or more disqualifying events are deemed to have occurred in relation to the company during the year of income—
  - (i) the period commencing at the commencement of the year of income and ending immediately before the time when the first of those disqualifying events is deemed to have occurred;
  - (ii) the period commencing at the time when the last of those disqualifying events is deemed to have occurred and ending at the end of the year of income; and
  - (iii) each period commencing at the time when one of those disqualifying events (not being the last of those disqualifying events) is deemed to have occurred and ending immediately before the time when the next of those disqualifying events is deemed to have occurred;

‘whole day’ means a period of 24 hours.

“(2) For the purposes of this Subdivision, a company shall be deemed to have a notional taxable income in respect of a relevant period if the assessable income of the company in respect of that relevant period exceeds the allowable deductions of the company in respect of that relevant period and the amount of the excess shall be deemed to be the amount of that notional taxable income.

“(3) For the purposes of this Subdivision, a company shall be deemed to have a notional loss in respect of a relevant period if the allowable deductions of the company in respect of that relevant period exceed the assessable income of the company in respect of that relevant period and the amount of the excess shall be deemed to be the amount of that notional loss.

“(4) For the purposes of sub-sections (2) and (3)—

- (a) the assessable income of a company in respect of a relevant period in relation to the company in relation to a year of income is the sum of—

- (i) any amounts (other than excepted amounts) that would be included in the assessable income of the company of the year of income if the year of income were constituted by that relevant period; and
  - (ii) any amount that is, or the sum of any amounts that are, by section 50E, deemed to be included in the assessable income of the company of that relevant period; and
- (b) the following amounts are allowable deductions of a company in respect of a relevant period in relation to a year of income:
  - (i) deductions (other than excepted deductions) that would be allowable to the company under this Act in relation to the year of income if the year of income were constituted by the relevant period;
  - (ii) any amount that is deemed by section 50G to be an allowable deduction in respect of the relevant period.

“(5) For the purposes of this Subdivision—

- (a) an amount shall be deemed to be an amount that is included in the assessable income of a company of a year of income if, were the taxable income of the company of the year of income to be calculated in accordance with section 48, that amount would be included in the assessable income of the company of the year of income; and
- (b) a deduction shall be deemed to be a deduction allowable to a company under this Act in relation to a year of income if, were the taxable income of the company to be calculated in accordance with section 48, the deduction would be a deduction allowable to the company under this Act in relation to the year of income.

“(6) For the purposes of this Subdivision—

- (a) subject to sub-section (7), a partnership shall be deemed to have a notional net income in respect of a period that is a relevant period in relation to a company if the assessable income of the partnership in respect of that period exceeds the allowable deductions of the partnership in respect of that period and the amount of the excess shall be deemed to be the amount of that notional net income; and
- (b) subject to sub-section (7), a partnership shall be deemed to have a notional partnership loss in respect of a period that is a relevant period in relation to a company if the allowable deductions of the partnership in respect of that period exceed the assessable income of the partnership in respect of that period and the amount of the excess shall be deemed to be the amount of that notional partnership loss.

“(7) A partnership shall not be deemed for the purposes of this Subdivision to have a notional net income or a notional partnership loss in

respect of a period that is a relevant period in relation to a company in relation to a year of income unless the period that constitutes the year of income of the partnership is the same period as the period that constitutes the year of income of the company.

“(8) For the purposes of sub-section (6)—

- (a) the assessable income of a partnership of a period that is a relevant period in relation to a company in relation to a year of income of the company is the sum of—
  - (i) any amounts (other than excepted amounts) that would be included in the assessable income of the partnership of the year of income of the partnership that corresponds with the year of income of the company if that corresponding year of income of the partnership were constituted by the period that constitutes the relevant period; and
  - (ii) any amount that is, or the sum of any amounts that are, by section 50E (as that section applies by reason of sub-section (9) of this section), deemed to be included in the assessable income of the partnership of the period that constitutes the relevant period; and
- (b) the following amounts are allowable deductions of a partnership in respect of a period that is a relevant period in relation to a company in relation to a year of income of the company:
  - (i) deductions (other than divisible deductions or deductions that, for the purposes of section 50F, are full-year partnership deductions in relation to the partnership) that would be allowable to the partnership under this Act in respect of income of the year of income of the partnership that corresponds with the year of income of the company if that corresponding year of income of the partnership were constituted by the period that constitutes the relevant period;
  - (ii) any amount that is deemed by section 50G (as that section applies by reason of sub-section (9) of this section) to be an allowable deduction of the partnership in respect of the period that constitutes the relevant period.

“(9) The provisions of this section (other than this sub-section) and of sections 50E and 50G apply for the purposes of determining for the purposes of sub-section (8)—

- (a) whether an amount is an excepted amount, or whether a deduction is a divisible deduction, in relation to a partnership in respect of a period that is a relevant period in relation to a company; or

- (b) whether an amount is to be deemed to be included in the assessable income, or whether an amount is to be deemed to be an allowable deduction, of a partnership in respect of a period that is a relevant period in relation to a company,

as if that period were a relevant period in relation to the partnership and the reference in any of those provisions to a company were a reference to the partnership.

“(10) For the purposes of this Subdivision—

- (a) where a nominated period consists of more than 12 hours and less than 24 hours, that nominated period shall be deemed to consist of one whole day; and
- (b) where a nominated period consists of—

- (i) one whole day and a part of another whole day, being a part that consists of more than 12 hours; or

- (ii) 2 or more whole days and a part of another whole day, being a part that consists of more than 12 hours,

the number of whole days in that nominated period shall be deemed to be the number ascertained by increasing by 1 the number that, apart from this sub-section, would be the number of whole days in that nominated period.

“(11) In sub-section (10), ‘nominated period’ means any of the following periods:

- (a) a relevant period in relation to a company;
- (b) a period commencing at the time during a relevant period in relation to a company when a particular event occurred and ending at the end of the relevant period;
- (c) a period commencing at the time during a year of income when a particular event occurred and ending at the end of the year of income;
- (d) a period commencing at the beginning of a year of income and ending at the end of a period that is a relevant period in relation to a company in relation to the year of income.

“(12) For the purposes of the application of this Subdivision in relation to a company in relation to a year of income of the company that is not constituted by 365 days, a reference in this Subdivision to 365 shall be read as a reference to the number of days in that year of income.

“50C. (1) Where this Subdivision applies in relation to a company in relation to a year of income, the taxable income of the company of the year of income shall, notwithstanding section 48, be calculated in accordance with this section.

Calculation  
of taxable  
income

“(2) Subject to sub-section (3), the taxable income of the company of the year of income shall be the amount (if any) remaining after

deducting from the sum (in this section referred to as the ‘income amount’) of—

- (a) if the company has a notional taxable income in respect of a relevant period, or has notional taxable incomes in respect of relevant periods, in relation to the year of income—the amount of that notional taxable income or the sum of the amounts of those notional taxable incomes, as the case may be; and
- (b) if a full-year amount is included or full-year amounts are included in the assessable income of the company of the year of income—that full-year amount or the sum of those full-year amounts, as the case may be,

the sum (in this section referred to as the ‘deductible amount’) of—

- (c) the amount of any eligible notional loss of the company in relation to the year of income;
- (d) if a full-year deduction is, or full-year deductions are, allowable to the company in relation to the year of income under section 51 or 63 or under Subdivision BA of Division 3—the amount of that full-year deduction or the sum of the amounts of those full-year deductions, as the case may be; and
- (e) if, by reason of sub-section (3) of section 50F, there is a partnership deduction, or there are partnership deductions, in relation to the company in relation to the year of income—the amount of that partnership deduction or the sum of the amounts of those partnership deductions, as the case may be.

“(3) Where—

- (a) in the application of sub-section (2) in relation to a company in relation to a year of income, the income amount exceeds the deductible amount; and
- (b) a full-year deduction is, or full-year deductions are, allowable to the company in relation to the year of income otherwise than under section 51, section 63 or Subdivision BA of Division 3,

the taxable income of the company of the year of income shall be—

- (c) in a case where only one full-year deduction is allowable to the company in relation to the year of income otherwise than under section 51, section 63 or Subdivision BA of Division 3—the amount (if any) remaining after deducting from the amount of the excess referred to in paragraph (a) so much of the amount of that full-year deduction as does not exceed the amount of that excess; and
- (d) in any other case—the amount (if any) remaining after deducting successively from the amount of the excess referred to in paragraph (a) the amounts of any full-year deductions included in the following classes of full-year deductions that are allowable to the company in relation to the year of income:
  - (i) full-year deductions allowable under section 77B or 78;



- (ii) full-year deductions allowable under Subdivision B of Division 3;
- (iii) full-year deductions allowable under section 80 or 80AA;
- (iv) full-year deductions allowable under section 122D, 122DB, 124AD, 124ADB or 124AF;
- (v) full-year deductions allowable under section 122J or 124AH;
- (vi) full-year deductions allowable under Division 16C.

“(4) Where, in the application of sub-section (3) in relation to a company in relation to a year of income, deductions included in 2 or more of the classes of full-year deductions specified in paragraph (d) of that sub-section are required to be deducted successively from the amount by which the income amount exceeds the deductible amount (in this sub-section referred to as the ‘excess amount’), deductions included in the first of those classes shall be set off against that excess amount and, if the excess amount exceeds the amount of the deductions included in that class, the deductions included in the next of those classes shall be set off against the excess amount reduced by the amount of the deductions of the first of those classes and so on until either the deductions included in the classes of deductions referred to in paragraph (d) of sub-section (3) are exhausted or the excess amount is exhausted.

“50D. (1) For the purposes of this Subdivision, the eligible notional loss of a company in relation to a year of income is the amount that is, or the sum of the amounts that are, by reason of sub-sections (2), (4) and (6), to be taken into account in ascertaining the eligible notional loss of the company in relation to the year of income.

“(2) Where a company satisfies the Commissioner that, at all times during a loss period, shares in the company carrying between them—

- (a) the right to exercise more than one-half of the voting power in the company;
- (b) the right to receive more than one-half of any dividends that might be paid by the company; and
- (c) the right to receive more than one-half of any distribution of capital of the company,

were beneficially owned by a natural person or natural persons who beneficially owned shares in the company carrying between them rights of those kinds—

- (d) at all times during an income period; or
- (e) at all times during 2 or more income periods,

so much of the amount ascertained by deducting from the amount of the notional loss in respect of the loss period so much (if any) of that notional loss as, by the previous application of sub-section (4) or (6), is to be taken into account in determining the eligible notional loss of the company in relation to the year of income as does not exceed—

- (f) in a case to which paragraph (d) applies—the amount of the notional taxable income in respect of the income period referred to in that paragraph reduced by so much (if any) of that notional taxable income as has previously been taken into account for the purposes of this paragraph or paragraph (g), for the purposes of paragraph (c) or (d) of sub-section (4) or for the purposes of paragraph (c), (d) or (e) of sub-section (6); and
- (g) in a case to which paragraph (e) applies—the sum of the amounts of the notional taxable incomes in respect of the income periods referred to in that paragraph reduced by so much (if any) of those notional taxable incomes as has previously been taken into account for the purposes of paragraph (f) or this paragraph, for the purposes of paragraph (c) or (d) of sub-section (4) or for the purposes of paragraph (c), (d) or (e) of sub-section (6),

shall be taken into account in determining the amount of the eligible notional loss of the company in relation to the year of income.

“(3) In sub-section (2)—

- (a) a reference to a loss period in relation to a company shall be read as not including a reference to a loss period at the commencement of which a disqualifying event is deemed to have occurred in relation to the company by reason of the operation of paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section 50H; and
- (b) a reference to an income period in relation to a company shall be read as not including a reference to an income period at the commencement of which a disqualifying event is deemed to have occurred in relation to the company by reason of the operation of paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section 50H.

“(4) Where a company did not, at any time during a period that is a subsequent continuous business period in relation to a loss period—

- (a) derive income from a business of a kind that it did not carry on, or from a transaction of a kind that it had not entered into in the course of its business operations, before the end of the loss period; or
- (b) incur expenditure in carrying on a business of a kind that it did not carry on, or as a result of a transaction of a kind that it had not entered into in the course of its business operations, before the end of the loss period,

so much of the amount ascertained by deducting from the amount of the notional loss in respect of the loss period so much (if any) of that notional loss as, by the previous application of sub-section (2) or (6), is to be taken into account in determining the eligible notional loss of the company in relation to the year of income as does not exceed—

- (c) in a case where there is only one income period within that subsequent continuous business period—the notional taxable income of that income period reduced by so much of that notional taxable income as has been taken into account for the purposes of paragraph (f) or (g) of sub-section (2), for the purposes of this paragraph or paragraph (d) or for the purposes of paragraph (c), (d) or (e) of sub-section (6); or
- (d) in a case where there are 2 or more income periods within that subsequent continuous business period—the sum of the notional taxable incomes of those income periods reduced by so much of those notional taxable incomes as has been taken into account for the purposes of paragraph (f) or (g) of sub-section (2), for the purposes of paragraph (c) or this paragraph or for the purposes of paragraph (c), (d) or (e) of sub-section (6),

shall be taken into account in determining the eligible notional loss of the company in relation to the year of income.

“(5) Sub-section (4) does not apply in relation to the notional loss in respect of a loss period in relation to a company if—

- (a) before the end of that loss period, the company commenced to carry on a business that it had not previously carried on or the company entered into, in the course of its business operations, a transaction of a kind that it had not previously entered into; and
- (b) the company commenced to carry on that business or entered into that transaction for the purpose, or for purposes that included the purpose, of enabling that sub-section to apply in relation to that notional loss or of enabling the notional taxable income of an income period to be taken into account, in the application of that sub-section, in determining the amount of that notional loss that is to be taken into account in determining the eligible notional loss of the company in relation to the year of income.

“(6) Where a company did not, at any time during a period that is a prior continuous business period in relation to a loss period—

- (a) derive income from a business of a kind that it did not carry on, or from a transaction of a kind that it had not entered into in the course of its business operations, before the commencement of that prior continuous business period; or
- (b) incur expenditure in carrying on a business of a kind that it did not carry on, or as a result of a transaction of a kind that it had not entered into in the course of its business operations, before the commencement of that prior continuous business period,

so much of the amount ascertained by deducting from the amount of the notional loss in respect of the loss period so much (if any) of that notional loss as, by the previous application of sub-section (2) or (4), has

been taken into account in determining the eligible notional loss of the company of the year of income as does not exceed—

- (c) if there are no income periods within that prior continuous business period—the notional taxable income in respect of the income period at the end of which the prior continuous business period commenced reduced by so much (if any) of that notional taxable income as has been taken into account for the purposes of paragraph (f) or (g) of sub-section (2), for the purposes of paragraph (c) or (d) of sub-section (4), or for the purposes of this paragraph, paragraph (d) or paragraph (e);
- (d) in a case where there is only one income period within that prior continuous business period—the sum of the notional taxable income in respect of that income period and the notional taxable income in respect of the income period referred to in paragraph (c) reduced by so much (if any) of those notional taxable incomes as has been taken into account for the purposes of paragraph (f) or (g) of sub-section (2), for the purposes of paragraph (c) or (d) of sub-section (4), or for the purposes of paragraph (c), this paragraph or paragraph (e); and
- (e) in a case where there are 2 or more income periods within the prior continuous business period—the sum of the notional taxable incomes in respect of those income periods and the income period referred to in paragraph (c) reduced by so much of those notional taxable incomes as has been taken into account for the purposes of paragraph (f) or (g) of sub-section (2), for the purposes of paragraph (c) or (d) of sub-section (4), or for the purposes of paragraph (c), paragraph (d) or this paragraph,

shall be taken into account in determining the eligible notional loss of the company in relation to the year of income.

“(7) Sub-section (6) does not apply in relation to the notional loss in respect of a loss period in relation to a company if—

- (a) before the commencement of that loss period, the company commenced to carry on a business that it had not previously carried on or the company entered into, in the course of its business operations, a transaction of a kind that it had not previously entered into; and
- (b) the company commenced to carry on that business or entered into that transaction for the purpose, or for purposes that included the purpose, of enabling that sub-section to apply in relation to that notional loss or of enabling the notional taxable income of an income period to be taken into account, in the application of that sub-section, in determining the amount of that notional loss that is to be taken into account in determining the eligible notional loss of the company in relation to the year of income.

“(8) In this section—

‘prior continuous business period’, in relation to a loss period in relation to a company, means a period commencing at the end of an income period and ending at the end of the loss period, being a period at all times during which the company carried on the same business as it carried on at the end of the income period;

‘subsequent continuous business period’, in relation to a loss period in relation to a company, means a period commencing at the end of the loss period and ending at the end of an income period, being a period at all times during which the company carried on the same business as it carried on at the end of the loss period.

“(9) In sub-sections (4) and (6)—

(a) a reference to a loss period in relation to a company shall be read as not including a reference to a loss period at the commencement of which a disqualifying event is deemed to have occurred in relation to the company by reason of the operation of paragraph (e), (f), (g) or (h) of sub-section (1) of section 50H; and

(b) a reference to an income period in relation to a company shall be read as not including a reference to an income period at the commencement of which a disqualifying event is deemed to have occurred in relation to the company by reason of the operation of paragraph (e), (f), (g) or (h) of sub-section (1) of section 50H.

“(10) Where sub-section (2), (4) or (6) is applicable in relation to 2 or more loss periods, that sub-section shall apply successively in relation to those loss periods in such order as the Commissioner, subject to sub-section (13), determines.

“(11) Where 2 or more of sub-sections (2), (4) and (6) are applicable in relation to a loss period, those sub-sections shall apply in relation to that loss period in such order as the Commissioner, subject to sub-section (13), determines.

“(12) Where sub-section (2), (4) or (6) is applicable in relation to a loss period and, in the application of that sub-section in relation to that loss period, regard may be had to the notional taxable income of 2 or more income periods, regard shall be had to the notional taxable incomes of those income periods in such order as the Commissioner, subject to sub-section (13), determines.

“(13) The Commissioner shall not make a determination or determinations for the purposes of the application of sub-sections (2), (4) and (6) in relation to a company in relation to a year of income if the effect of that determination or of those determinations would be less beneficial to the company in relation to the application of this Act in relation to the company in relation to the year of income than the effect of a different

determination or determinations that could have been made for the purposes of those sub-sections.

Divisible  
amounts of  
assessable  
income

“50E. (1) For the purposes of this Subdivision, the following amounts are divisible amounts in relation to a company in relation to a year of income:

- (a) any amount included in the assessable income of the company of the year of income in respect of an insurance recovery received by the company in any year of income, being an insurance recovery to which section 26B applies;
- (b) any amount included in the assessable income of the company of the year of income under paragraph (b) of sub-section (6) of section 26BA;
- (c) where an amount is included in the assessable income of the company of the year of income under sub-section (1) of section 36 in respect of a disposal of live stock by the company and the company has made an election under sub-section (3) of that section in respect of any profit arising on the disposal—so much of the amount included in the assessable income of the company as is equal to the amount of that profit;
- (d) any amount included in the assessable income of the company of the year of income under paragraph (b) of sub-section (3A) of section 36;
- (e) any amount included in the assessable income of the company of the year of income under paragraph (c) or (d) of sub-section (2) of section 36AAA;
- (f) where an amount is included in the assessable income of the company of the year of income under paragraph (a) of sub-section (2) of section 36AA by reason that the company has made an election under sub-section (1) of that section in relation to the profit arising in respect of the death or destruction of live stock—so much of the amount included in the assessable income of the company as is equal to the amount of that profit;
- (g) any amount included in the assessable income of the company of the year of income under paragraph (c) of sub-section (2) of section 36AA;
- (h) any amount included in the assessable income of the company of the year of income under section 92;
- (j) where an amount is included in the assessable income of the company of the year of income under section 97 in respect of a share of the net income of a trust estate and the Commissioner considers that the whole or a part of that share of the net income was derived from income that was derived during a period that is a relevant period in relation to the company in relation to the year of income—that share of the net income, or that part of the share of the net income, as the case may be.

“(2) For the purposes of the application of sub-paragraph (ii) of paragraph (a) of sub-section (4) of section 50B in relation to a relevant period in relation to a company in relation to a year of income—

(a) where—

- (i) the assessable income of the company of the year of income includes a divisible amount in respect of an insurance recovery received by the company in the year of income, being an insurance recovery to which section 26B applies;
- (ii) the amount is included in the assessable income of the company of the year of income otherwise than under sub-section (6) or (7) of that section; and
- (iii) the insurance recovery was received by the company before the commencement of, or during, the relevant period,

so much of that divisible amount as bears to that divisible amount the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the insurance recovery was received, bears to the number of whole days in the year of income, being whole days occurring after the time when the insurance recovery was received, shall be deemed to be included in the assessable income of the company of the relevant period;

- (b) where a divisible amount is included in the assessable income of the company of the year of income under sub-section (6) or (7) of section 26B, so much of that divisible amount as bears to that divisible amount the same proportion as the number of whole days (if any) in the relevant period bears to 365 shall be deemed to be included in the assessable income of the company of the relevant period;

(c) where—

- (i) a divisible amount is included in the assessable income of the company of the year of income under paragraph (b) of sub-section (6) of section 26BA by reason that an election was made by the company in relation to the shearing of sheep that, by reason of fire, drought or flood, took place at a time earlier than the time at which, but for that fire, drought or flood, that shearing would ordinarily have taken place; and
- (ii) that shearing would ordinarily have taken place during the relevant period,

the assessable income of the company of the relevant period shall be deemed to include that divisible amount;

- (d) where a divisible amount is included in the assessable income of the company of the year of income under sub-section (1) of section 36 in respect of a disposal of live stock by the company during the year of income and before the commencement of, or during, the relevant period, there shall be deemed to be included in the assessable income of the company of the relevant period an amount equal to so much of that divisible amount as bears to one-fifth of that divisible amount the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the disposal took place, bears to the number of whole days in the year of income, being whole days occurring after the time when the disposal took place;
- (e) where a divisible amount is included in the assessable income of the company of the year of income under paragraph (b) of sub-section (3A) of section 36, so much of that divisible amount as bears to that divisible amount the same proportion as the number of whole days (if any) in the relevant period bears to 365 shall be deemed to be included in the assessable income of the company of the relevant period;
- (f) where a divisible amount is included in the assessable income of the company of the year of income under paragraph (c) or (d) of sub-section (2) of section 36AAA, so much of that divisible amount as bears to that divisible amount the same proportion as the number of whole days (if any) in the relevant period bears to 365 shall be deemed to be included in the assessable income of the company of the relevant period;
- (g) where a divisible amount is included in the assessable income of the company of the year of income under paragraph (a) of sub-section (2) of section 36AA by reason that the company has made an election under sub-section (1) of that section in relation to the profit arising in respect of the death or destruction of live stock during the year of income and before the commencement of, or during, the relevant period, there shall be deemed to be included in the assessable income of the company of the relevant period an amount equal to so much of that divisible amount as bears to one-fifth of that divisible amount the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the death or destruction took place, bears to the number of whole days in the year of income, being whole days occurring after the time when the death or destruction took place;
- (h) where the assessable income of the company of the year of income includes a divisible amount that is included in the assessable income of the company under paragraph (c) of sub-section (2) of section 36AA or under sub-section (5) of that section, so much of that divisible amount as bears to that divisible amount



the same proportion as the number of whole days (if any) in the relevant period bears to 365 shall be deemed to be included in the assessable income of the company of that relevant period;

- (j) where, during the whole or a part of the relevant period, the company was a partner in a partnership that had a notional net income in respect of the relevant period, the assessable income of the company of the relevant period shall be deemed to include—
  - (i) where, for the purposes of section 92, the partnership had a net income of the year of income of the partnership—so much of the amount of the notional net income of the partnership in respect of the relevant period as bears to the amount of that notional net income the same proportion as the individual interest of the company in the net income of the partnership of that year of income of the partnership bears to the amount of the net income of the partnership of that year of income;
  - (ii) where, for the purposes of section 92, the partnership incurred a partnership loss in the year of income of the partnership—so much of the amount of the notional net income of the partnership of the relevant period as bears to the amount of that notional net income the same proportion as the individual interest of the company in the partnership loss of the partnership bears to the amount of that partnership loss; and
  - (iii) in any other case—so much of the notional net income of the partnership in respect of that relevant period as the Commissioner considers fair and reasonable having regard to the extent of the interest of the company in the partnership;
- (k) where the assessable income of the company of the year of income includes a divisible amount that is included in the assessable income of the company of the year of income under section 92 in respect of the individual interest of the company in the net income of a partnership of a year of income and the period that constitutes that year of income of the partnership is not the same period as the period that constitutes the year of income of the company, so much of that divisible amount as the Commissioner considers fair and reasonable having regard to all the relevant circumstances shall be deemed to be included in the assessable income of the company of the relevant period; and
- (m) there shall be deemed to be included in the assessable income of the company of the relevant period any amount that, by reason of paragraph (j) of sub-section (1), is a divisible amount in relation to that relevant period.

Full-year  
deductions  
and  
partnership  
deductions

“50F. (1) For the purposes of this Subdivision, the following deductions are full-year deductions in relation to a company in relation to a year of income:

- (a) any deduction allowable to the company in relation to the year of income under section 51 in respect of a bad debt;
- (b) if the company is a leasing company, any deduction allowable to the company under Subdivision B of Division 3 in relation to the year of income in respect of a unit of eligible property leased by the company to another person or other persons;
- (c) any deduction allowable to the company under section 63, 77B, 78, 80 or 80AA, under Subdivision BA of Division 3, under Division 10AA (other than section 124AM) or under Division 16C;
- (d) subject to sub-section (2), any deduction allowable to the company under Division 10 (other than section 122K).

“(2) Where a company has made an election in relation to a year of income under section 122D or 122DB, a deduction allowable to the company under that section in relation to the year of income shall be deemed not to be a full-year deduction in relation to the company in relation to the year of income.

“(3) For the purposes of the application of this Subdivision in relation to a company in relation to a year of income—

(a) where—

- (i) at any time during the year of income the company was a partner in a partnership;
- (ii) a full-year partnership deduction has been allowed or is allowable, or full-year partnership deductions have been allowed or are allowable, to the partnership in relation to the year of income of the partnership that corresponds with the year of income of the company;
- (iii) the period that constitutes that corresponding year of income of the partnership is the same period as the period that constitutes the year of income of the company; and
- (iv) for the purposes of section 92, the partnership had a net income of that year of income of the partnership,

so much of the amount of that full-year partnership deduction or of the sum of the amounts of those full-year partnership deductions, as the case may be, as bears to that amount or sum, as the case may be, the same proportion as the individual interest of the company in that net income bears to the amount of that net income shall be deemed to be a partnership deduction in relation to the company in relation to the year of income;

(b) where—

- (i) at any time during the year of income the company was a partner in a partnership;

- (ii) a full-year partnership deduction has been allowed or is allowable, or full-year partnership deductions have been allowed or are allowable, to the partnership in relation to the year of income of the partnership that corresponds with the year of income of the company;
- (iii) the period that constitutes that corresponding year of income of the partnership is the same period as the period that constitutes the year of income of the company; and
- (iv) for the purposes of section 92, a partnership loss was incurred by the partnership in that year of income of the partnership,

so much of the amount of that full-year partnership deduction or of the sum of the amounts of those full-year partnership deductions, as the case may be, as bears to that amount or sum, as the case may be, the same proportion as the individual interest of the company in that partnership loss bears to the amount of that partnership loss shall be deemed to be a partnership deduction in relation to the company in relation to the year of income;

(c) where—

- (i) at any time during the year of income the company was a partner in a partnership;
- (ii) a full-year partnership deduction has been allowed or is allowable, or full-year partnership deductions have been allowed or are allowable, to the partnership in relation to the year of income of the partnership that corresponds with the year of income of the company;
- (iii) the period that constitutes that corresponding year of income of the partnership is the same period as the period that constitutes the year of income of the company; and
- (iv) for the purposes of section 92, the partnership did not have a net income of that year of income of the partnership and did not incur a partnership loss in that year of income of the partnership,

so much of the amount of that full-year partnership deduction or of the sum of the amounts of those full-year partnership deductions, as the case may be, as the Commissioner considers fair and reasonable having regard to the extent of the interest of the company in the partnership shall be deemed to be a partnership deduction in relation to the company in relation to the year of income; and

(d) where—

- (i) at any time during the year of income the company was a partner in a partnership;
- (ii) a full-year partnership deduction has been allowed or is allowable, or full-year partnership deductions have been allowed or are allowable, to the partnership in relation to

the year of income of the partnership that corresponds with the year of income of the company; and

- (iii) the period that constitutes that corresponding year of income of the partnership is not the same period as the period that constitutes the year of income of the company,

so much of the amount of that full-year partnership deduction or of the sum of the amounts of those full-year partnership deductions, as the case may be, as the Commissioner considers fair and reasonable having regard to all the relevant circumstances shall be deemed to be a partnership deduction in relation to the company in relation to the year of income.

“(4) For the purposes of this section, the following deductions are full-year partnership deductions in relation to a partnership in relation to a year of income:

- (a) any deduction allowable to the partnership under section 78, under Subdivision BA of Division 3 or under Division 10AA (other than section 124AM);
- (b) subject to sub-section (5), any deduction allowable to the partnership under Division 10 (other than section 122K).

“(5) Where a partnership has made an election in relation to a year of income under section 122D or section 122DB, a deduction allowable to the partnership under that section in relation to the year of income shall be deemed not to be a full-year partnership deduction in relation to the partnership in relation to the year of income.

Divisible  
deductions

“50G. (1) For the purposes of this Subdivision, the following deductions are divisible deductions in relation to a company in relation to a year of income:

- (a) any deduction allowable to the company in relation to the year of income under section 54, 57AA, 57AB, 62A, 67 or 70, sub-section (2) of section 73A, section 75A, 88 or 92, Division 10AAA (other than section 123C), Division 10A (other than section 124G or 124JB) or Division 10B (other than section 124N);
- (b) where the company has made an election in relation to the year of income under section 122D or 122DB—any deduction allowable to the company under that section in relation to the year of income.

“(2) For the purposes of the application of sub-paragraph (ii) of paragraph (b) of sub-section (4) of section 50B in relation to a relevant period in relation to a company in relation to a year of income—

- (a) where a divisible deduction is allowable to the company in relation to the year of income under section 54 in respect of property that, during the whole or a part of the relevant period, was

owned by the company and used by the company for the purpose of producing assessable income or installed ready for use for that purpose and held in reserve, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period during which the property was owned by the company and used by the company for the purpose of producing assessable income or installed ready for use for that purpose and held in reserve bears to the number of whole days during the year of income during which the property was owned by the company and used by the company for the purpose of producing assessable income or installed ready for use and held in reserve shall be deemed to be an allowable deduction in respect of that relevant period;

- (b) where a divisible deduction is allowable to the company under section 57AA, 57AB or 62A in relation to the year of income, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;
- (c) where a divisible deduction is allowable to the company in relation to the year of income under section 67 in respect of expenditure incurred by the company in borrowing money for a period, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period that are within the period for which the money was borrowed bears to the number of whole days in the year of income that are within the period for which the money was borrowed shall be deemed to be an allowable deduction in respect of that relevant period;
- (d) where—
  - (i) a divisible deduction is allowable to the company in relation to the year of income under section 70 in respect of expenditure of a capital nature incurred by the company on a telephone line;
  - (ii) the year of income is the first year of income in which the company incurred expenditure of a capital nature on that telephone line; and
  - (iii) before the commencement of, or during, the relevant period, the company incurred expenditure of a capital nature on that telephone line,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being

whole days occurring after the time when the company first incurred expenditure of a capital nature on that telephone line, bears to the number of whole days in the year of income, being whole days occurring after the time when the company first incurred expenditure of a capital nature on that telephone line, shall be deemed to be an allowable deduction in respect of that relevant period;

- (e) where a divisible deduction is allowable to the company in relation to the year of income under section 70 in respect of expenditure of a capital nature incurred by the company on a telephone line and the year of income is not the first year of income in which the company incurred expenditure of a capital nature on that telephone line, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;

- (f) where—

- (i) a divisible deduction is allowable to the company in relation to the year of income under section 73A in respect of expenditure of a capital nature incurred by the company in the construction or acquisition of a building, or a part of a building, or in making any alteration or addition to a building;
  - (ii) the year of income is the first year of income in which the company incurred expenditure of a capital nature in the construction or acquisition of the building, in the construction or acquisition of the part of the building, or in making the alteration or addition to the building, as the case may be; and
  - (iii) the company incurred expenditure of a capital nature in the construction or acquisition of the building, in the construction or acquisition of the part of the building, or in making the alteration or addition to the building, as the case may be, before the commencement of, or during, the relevant period,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the company first incurred expenditure of a capital nature in the construction or acquisition of the building, in the construction or acquisition of the part of the building, or in making the alteration or addition to the building, as the case may be, bears to the number of whole days in the year of income, being whole days occurring after the time when the company first incurred expenditure of a capital nature in the construction or acquisition of the building,

in the construction or acquisition of the part of the building, or in making the alteration or addition to the building, as the case may be, shall be deemed to be an allowable deduction in respect of that relevant period;

(g) where—

- (i) a divisible deduction is allowable to the company in relation to the year of income under section 73A in respect of expenditure of a capital nature incurred by the company in the construction or acquisition of a building, or a part of a building, or in making any alteration or addition to a building; and
- (ii) the year of income is not the first year of income in which the company incurred expenditure of a capital nature in the construction or acquisition of the building, in the construction or acquisition of the part of the building, or in making the alteration or addition to the building, as the case may be,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;

(h) where—

- (i) a divisible deduction is allowable to the company in relation to the year of income under section 75A in respect of expenditure incurred by the company in respect of any land in Australia;
- (ii) the year of income is the first year of income in which the company carried on a business of primary production on that land; and
- (iii) before the commencement of, or during, the relevant period, the company carried on a business of primary production on that land,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the company commenced to carry on a business of primary production on that land, bears to the number of whole days in the year of income, being whole days occurring after the time when the company commenced to carry on a business of primary production on that land, shall be deemed to be an allowable deduction in respect of that relevant period;

(j) where a divisible deduction is allowable to the company in relation to the year of income under section 75A in respect of expenditure incurred by the company in respect of any land in

Australia and the year of income is not the first year of income in which the company carried on a business of primary production on that land, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;

- (k) where a divisible deduction is allowable to the company in relation to the year of income under sub-section (1) of section 88 in respect of a premium paid by the company or under sub-section (2) of that section in respect of expenditure incurred by the company, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;

- (m) where—

- (i) a divisible deduction is allowable to the company in relation to the year of income under sub-section (4) of section 88 by reason of the death of a person; and

- (ii) the person died during the year of income and before the commencement of, or during, the relevant period,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the person died, bears to the number of whole days in the year of income, being whole days occurring after the time when the person died, shall be deemed to be an allowable deduction in respect of that relevant period;

- (n) where a divisible deduction is allowable to the company in relation to the year of income under sub-section (4) of section 88 by reason of the death of a person and the year of income is not the year of income in which the person died, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;

- (o) where, during the whole or a part of the relevant period, the company was a partner in a partnership that had a notional partnership loss in respect of the relevant period—

- (i) where, for the purposes of section 92, the partnership had a net income of the year of income of the



partnership—so much of the amount of the notional partnership loss as bears to the amount of that notional partnership loss the same proportion as the individual interest of the company in the net income of the partnership of that year of income of the partnership bears to the amount of the net income of the partnership of that year of income shall be deemed to be an allowable deduction to the company in respect of the relevant period;

- (ii) where, for the purposes of section 92, the partnership incurred a partnership loss in the year of income of the partnership—so much of the amount of the notional partnership loss as bears to the amount of that notional partnership loss the same proportion as the individual interest of the company in the partnership loss for that year of income bears to the amount of that partnership loss shall be deemed to be an allowable deduction to the company in respect of the relevant period; and
  - (iii) in any other case—so much of the notional partnership loss as the Commissioner considers fair and reasonable having regard to the extent of the interest of the company in the partnership shall be deemed to be an allowable deduction to the company in respect of the relevant period;
- (p) where a divisible deduction is allowable to the company in relation to the year of income under section 92 in respect of the individual interest of the company in a partnership loss incurred by a partnership in a year of income and the period that constitutes that year of income of the partnership is not the same period as the period that constitutes the year of income of the company, so much of that divisible deduction as the Commissioner considers fair and reasonable having regard to all the relevant circumstances shall be deemed to be an allowable deduction in respect of the relevant period;
- (q) where a divisible deduction is allowable to the company in relation to the year of income under section 122D or 122DB, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;
- (r) where—
- (i) a divisible deduction is allowable to the company in relation to the year of income under Division 10AAA in respect of a facility;
  - (ii) the year of income is the first year of income in which the facility was used primarily and principally for a purpose referred to in section 123A; and

- (iii) the facility was used primarily and principally for a purpose referred to in section 123A before the commencement of, or during, the relevant period,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the facility commenced to be used primarily and principally for that purpose, bears to the number of whole days in the year of income, being whole days occurring after the time when the facility commenced to be used primarily and principally for that purpose, shall be deemed to be an allowable deduction in respect of that relevant period;

- (s) where a divisible deduction is allowable to the company in relation to the year of income under Division 10AAA in respect of a facility and the year of income is not the first year of income in which the facility was used primarily and principally for a purpose referred to in section 123A, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;

- (t) where—

- (i) a divisible deduction is allowable to the company in relation to the year of income under section 124F in respect of expenditure of a capital nature incurred by the company on an access road, or under section 124JA in respect of expenditure of a capital nature incurred by the company in respect of a building;
- (ii) the year of income is the first year of income in which the company incurred expenditure of a capital nature on that access road or building, as the case may be; and
- (iii) the company incurred expenditure of a capital nature on that access road or building, as the case may be, before the commencement of, or during, the relevant period,

so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the company first incurred expenditure of a capital nature on that access road or building, as the case may be, bears to the number of whole days in the year of income, being whole days occurring after the time when the company first incurred expenditure of a capital nature on the access road or building, as the case may be, shall be deemed to be an allowable deduction in respect of that relevant period;

- (u) where a divisible deduction is allowable to the company in relation to the year of income under section 124F in respect of expenditure of a capital nature incurred by the company on an access road, or under section 124JA in respect of expenditure of a capital nature incurred by the company in respect of a building, and the year of income is not the first year of income in which the company incurred expenditure of a capital nature on that access road or building, as the case may be, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in that relevant period bears to 365 shall be deemed to be an allowable deduction in respect of that relevant period;
- (v) where—
  - (i) a divisible deduction is allowable to the company in relation to the year of income under section 124M (other than sub-section (3) of that section) in respect of a unit of industrial property;
  - (ii) the year of income is the first year of income in which the unit was used by the company for the purpose of producing assessable income; and
  - (iii) the unit was used by the company for the purpose of producing assessable income before the commencement of, or during, the relevant period,so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period, being whole days occurring after the time when the unit commenced to be used by the company for the purpose of producing assessable income, bears to the number of whole days in the year of income, being whole days occurring after the time when the unit commenced to be used by the company for the purpose of producing assessable income, shall be deemed to be an allowable deduction in respect of the relevant period;
- (w) where a divisible deduction is allowable to the company in relation to the year of income under section 124M (other than sub-section (3) of that section) in respect of a unit of industrial property and the year of income is not the first year of income in which the unit was used by the company for the purpose of producing assessable income, so much of the amount of that divisible deduction as bears to the amount of that divisible deduction the same proportion as the number of whole days (if any) in the relevant period bears to 365 shall be deemed to be an allowable deduction in respect of the relevant period; and
- (x) where a divisible deduction is allowable to the company in relation to the year of income under sub-section (3) of section

124M in respect of the residual value of a unit of industrial property and, in ascertaining that residual value, the whole or part of expenditure incurred by the company during the relevant period was included in the cost of that unit, an amount equal to the amount of that expenditure, or of that part of that expenditure, as the case may be, shall be deemed to be an allowable deduction in respect of the relevant period.

Occurrence  
of  
disqualifying  
event

“50H. (1) Subject to this section, a disqualifying event in relation to a company shall be deemed to have occurred at a time during a year of income (in this sub-section referred to as the ‘relevant time’) if the Commissioner is satisfied that—

- (a) immediately after the relevant time, there was no natural person, and there were no natural persons, who beneficially owned shares in the company carrying between them the right to exercise more than one-half of the voting power in the company who, immediately before the relevant time, beneficially owned shares in the company carrying between them the right to exercise more than one-half of the voting power in the company;
- (b) immediately after the relevant time there was no natural person, and there were no natural persons, who beneficially owned shares in the company carrying between them the right to receive more than one-half of any dividend that might be paid by the company who, immediately before the relevant time, beneficially owned shares in the company carrying between them the right to receive more than one-half of any dividend that might be paid by the company;
- (c) immediately after the relevant time there was no natural person, and there were no natural persons, who beneficially owned shares in the company carrying between them the right to receive more than one-half of any distribution of capital of the company who, immediately before the relevant time, beneficially owned shares in the company carrying between them the right to receive more than one-half of any distribution of capital of the company;
- (d) at the relevant time, the voting power in the company was controlled, or became capable of being controlled, either directly or through one or more interposed companies, trustees or partnerships, by a person or persons who did not control the voting power in the company and was not or were not, as the case may be, capable of controlling the voting power in the company, either directly or through one or more interposed companies, trustees or partnerships, at any time before the relevant time, being a time during the year of income, and that person or those persons acquired the control of that voting power or became capable of acquiring the control of that voting power, as the case

may be, for the purpose, or for purposes that included the purpose, of receiving any benefit or obtaining any advantage in relation to the application of this Act or securing that another person or other persons would receive such a benefit or obtain such an advantage;

- (e) immediately before the relevant time, the company had an available loss and, at the relevant time, the company derived income that would not have been derived by the company if the company had not had an available loss immediately before the relevant time;
  - (f) immediately before the relevant time, the company had an available profit and, at the relevant time, the company incurred a loss or outgoing that would not have been incurred by the company if the company had not had an available profit immediately before the relevant time;
  - (g) immediately before the relevant time, the company had an available loss or an available profit and a person other than the company will, either directly or indirectly, receive a benefit, or obtain an advantage, in relation to the application of this Act as a result of the operation of any agreement, scheme, arrangement, understanding, transaction, course of conduct or course of business that—
    - (i) was entered into or commenced to be carried out at the relevant time; and
    - (ii) would not have been entered into or carried out if the company had not had an available loss or an available profit, as the case may be, immediately before the relevant time; or
  - (h) at the relevant time, the affairs or business operations of the company were managed or conducted without proper regard to the rights, powers or interests of a natural person or natural persons who controlled the voting power in the company at the relevant time or who was or were, as the case may be, capable of controlling the voting power in the company at the relevant time, either directly or through one or more interposed companies, trustees or partnerships.
- “(2) For the purposes of sub-section (1)—
- (a) a company shall be taken to have had an available loss immediately before a time during the year of income if, had the year of income ended immediately before that time, the assessable income of the company of the year of income would have been less than the allowable deductions (other than deductions under section 80 or 80AA) of the company of the year of income; and
  - (b) a company shall be taken to have had an available profit immediately before a time during a year of income if, had the year of income ended immediately before that time, the assessable

income of the company of the year of income would have exceeded the allowable deductions (other than deductions under section 80 or 80AA) of the company of the year of income.

“(3) Paragraph (e) of sub-section (1) applies notwithstanding that the income referred to in that paragraph was derived by the company in the course of ordinary family or commercial dealing, but that paragraph does not apply in a case where the natural person or natural persons who had a shareholding interest or shareholding interests in the company immediately before, and immediately after, the time when the income was derived will benefit from the derivation of the income to an extent that the Commissioner considers to be fair and reasonable having regard to voting, dividend or capital rights attached to the shares in respect of which that person or those persons had a shareholding interest or shareholding interests in the company immediately after the time when the income was derived.

“(4) Paragraph (f) of sub-section (1) applies notwithstanding that the loss or outgoing referred to in that paragraph was incurred by the company in the course of ordinary family or commercial dealing, but that paragraph does not apply in a case where the natural person or natural persons who had a shareholding interest or shareholding interests in the company immediately before, and immediately after, the time when the loss or outgoing was incurred will benefit from any profit or advantage that has, or might, arise, directly or indirectly, from the incurring of the loss or outgoing to an extent that the Commissioner considers to be fair and reasonable having regard to voting, dividend or capital rights attached to the shares in respect of which that person or those persons had a shareholding interest or shareholding interests in the company immediately after the time when the loss or outgoing was incurred.

“(5) Without limiting the generality of paragraph (g) of sub-section (1), a person shall be deemed, for the purposes of that paragraph, to receive a benefit or obtain an advantage in relation to the application of this Act if the person is not liable to pay income tax in respect of a year of income, or the liability of the person to pay income tax in respect of a year of income is reduced, by reason that the person has not derived income that the person would have derived if the agreement, scheme, arrangement, understanding, transaction, course of conduct or course of business referred to in that paragraph had not been entered into or carried out.

“(6) Paragraph (g) of sub-section (1) applies notwithstanding that the agreement, scheme, arrangement, understanding, transaction, course of conduct or course of business referred to in that paragraph was entered into or carried out in the course of ordinary family or commercial dealing but that paragraph does not apply in relation to a benefit or advantage that is received or obtained by a person who had a shareholding interest in the company in the year of income, being a benefit or

advantage that the Commissioner considers to be fair and reasonable having regard to voting, dividend or capital rights attached to the shares in respect of which that person had that shareholding interest in the company.

“(7) For the purposes of this section—

- (a) a person has a shareholding interest in a company if he is the beneficial owner of, or of an interest in, any shares in the company; and
- (b) where a person has a shareholding interest in a company that has a shareholding interest in another company (including a shareholding interest that the company has in that other company by any other application or applications of this paragraph) that person shall be deemed to have a shareholding interest in that other company.

“(8) In determining for the purposes of this section whether the affairs or business operations of a company were managed or conducted as mentioned in paragraph (h) of sub-section (1), regard shall be had to any act or thing done in the course of the management or conduct of those affairs or business operations, irrespective of the purpose or purposes for which the act or thing was done and notwithstanding that the act or thing was done in the course of ordinary family or commercial dealing.

“(9) For the purposes of this section, it shall be taken that—

- (a) income would not have been derived, or a loss or outgoing would not have been incurred, by a company if a particular act had not been done;
- (b) income would have been derived by a person if a particular act had not been done; or
- (c) an agreement, scheme, arrangement, understanding, transaction, course of conduct or course of business would not have been entered into or carried out if a particular act had not been done,

if the income would not have been derived or the loss or outgoing would not have been incurred by the company, the income would have been derived by the person or the agreement, scheme, arrangement, understanding, transaction, course of conduct or course of business would not have been entered into or carried out, as the case may be, if none of 2 or more acts (including that act) had been done.

“(10) A reference in sub-section (9) to the doing of an act includes a reference to the happening of an event or the existence of a matter or circumstance.

“50J. (1) This section applies for the purposes of determining, for the purposes of section 50D or section 50H, whether a natural person was, at any time, the beneficial owner of shares in a company.

Tracing of  
beneficial  
ownership of  
shares

“(2) Where, at any time, whether before or after the commencement of this section, a person had, or has, a voting interest in a company and at that time that company had, or has, a voting interest in another company, that person shall be deemed to have had, or to have, at that time a voting interest in that other company (in addition to any other voting interest that that person may have had, or may have, at that time in that other company) that bears to the voting interest that the first-mentioned company had, or has, at that time in that other company the same proportion as the voting interest that that person had, or has, at that time in the first-mentioned company bears to the total of the voting interests that persons had, or have, at that time, apart from this sub-section, in the first-mentioned company.

“(3) In ascertaining for the purposes of sub-section (2) the extent of the voting interest that a company had, or has, at any time in another company, there shall be taken into account any voting interest that the first-mentioned company is to be deemed to have had, or to have, at that time in that other company by any other application or applications of that sub-section.

“(4) In addition to the operation of sub-sections (2) and (3) in relation to voting interests, those sub-sections have effect in relation to dividend interests and capital interests in like manner as they have effect in relation to voting interests.

“(5) For the purposes of this section—

- (a) a reference to a person having had, or having, at any time a voting interest in a company shall be read as a reference to the person having been, or being, at that time the beneficial owner of shares in the company that carried, or carry, at that time the right to exercise any of the voting power in the company and the extent of the voting interest shall be taken to have been, or to be, the fraction of the total voting power in the company the right to exercise which was, or is, carried by those shares;
- (b) a reference to a person having had, or having, at any time a dividend interest in a company shall be read as a reference to the person having been, or being, at that time the beneficial owner of shares in the company that carried, or carry, at that time any right to receive dividends that might have been, or may be, paid by the company and the extent of the dividend interest shall be taken to have been, or to be, the fraction of any dividends that might have been, or may be, paid by the company that would have been, or would be, received in respect of those shares;
- (c) a reference to a person having had, or having, at any time a capital interest in a company shall be read as a reference to the person having been, or being, at that time the beneficial owner



of shares in the company that carried, or carry, at that time the right to receive any distribution of capital in the company in the event of the winding-up, or of a reduction in the capital, of the company and the extent of the capital interest shall be taken to have been, or to be, the fraction of any distribution of capital of the company in such an event that would have been, or would be, received in respect of those shares; and

- (d) where at any time 2 or more persons jointly had, or have, a voting interest, a dividend interest or a capital interest in a company, each of those persons shall be taken to have had, or to have, at that time a separate voting interest, dividend interest or capital interest, as the case may be, in the company equal to his share in the first-mentioned voting interest, dividend interest or capital interest.

“(6) For the purposes of this section, section 50D and section 50H, where a person is deemed by this section to have had or to have, at any time, a voting interest, a dividend interest or a capital interest in a company, the person shall be deemed to have been or to be, at that time, the beneficial owner of shares carrying the right to exercise voting power in the company, the right to receive the whole or a part of any dividends that might be paid by the company or the right to receive the whole or a part of any distribution of capital of the company, as the case may be, and the extent of that right shall be deemed to be the same as the extent of the voting interest, the dividend interest or the capital interest, as the case may be.

“50K. (1) The succeeding provisions of this section have effect where—

- (a) for the purposes of the application of sub-section (2) of section 50D, it is necessary to determine whether, at any time, a person beneficially owned shares in a company or whether certain rights were attached to shares in a company;
- (b) for the purposes of determining, in accordance with section 50H, whether a disqualifying event is deemed to have occurred in relation to a company at a time during a year of income, it is necessary to determine whether a person beneficially owned shares in any company, or whether certain rights were attached to shares in any company, at any time during that year of income; or
- (c) for the purposes of the application of section 50J, it is necessary to determine whether a person at any time beneficially owned shares in a company otherwise than by the operation of that section, or whether certain rights were attached at any time to shares in a company that were beneficially owned by a person otherwise than by the operation of that section.

Special provisions relating to beneficial ownership of, or rights attached to, shares

“(2) Shares in a company that were beneficially owned at any time by a natural person shall be deemed to have been beneficially owned by

the same person at a later time if the person has died and, at that later time, the shares were owned by the trustee of his estate in his capacity as trustee of that estate or were beneficially owned by a person who received the shares as a beneficiary in that estate.

“(3) Redeemable shares beneficially owned by a person at any time shall be taken not to have been owned by the person at that time.

“(4) For the purposes of sub-section (3), a share issued by a company shall be deemed to be a redeemable share if—

- (a) the share is, or at the option of the company is to be, liable to be redeemed; or
- (b) the share was issued in pursuance of, or as part of, an agreement, whether oral or in writing and whether entered into before or after the commencement of this sub-section, that had the purpose, or purposes that included the purpose, of enabling the company, by means of the redemption, purchase or cancellation, or of a reduction in the paid-up value, of that share or of any other share in the company, to pay, transfer or apply to, on behalf of or at the direction of the person to whom the share was issued or any other person, whether upon the exercise of an option by the company or by any other person or not, any money or other property other than shares in the company.

“(5) Where—

- (a) a person beneficially owned shares in a company, or a company claims that a person beneficially owned shares in a company, at a time (in this sub-section referred to as the ‘relevant time’) during a year of income;
- (b) before or during the year of income, an agreement was entered into, or a right, power or option (including a contingent right, power or option) was granted, being an agreement, right, power or option that, in any way, directly or indirectly, related to, affected, or depended for its operation on—
  - (i) the beneficial interest of the person in the shares, or the value of that interest;
  - (ii) the right of that person to sell, or otherwise dispose of, that interest, or any such sale or other disposition;
  - (iii) any rights carried by the shares, or the exercise of any such rights; or
  - (iv) any dividends that might be paid, or any distribution of capital that might be made, in respect of the shares, or the payment of any such dividends or the making of any such distribution of capital; and
- (c) the agreement was entered into or the right, power or option was granted or acquired, for the purpose, or for purposes that included the purpose of securing that a person who, if the agreement had not been entered into or the right, power or option had

not been granted or acquired, 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 the person would have been liable to pay if the agreement had not been entered into, or the right, power or option had not been granted, as the case may be,

the Commissioner may treat the shares as not having been beneficially owned by the person at the relevant time.

“(6) Where the Commissioner is satisfied that, by virtue of a provision in the constituent document of a company as in force at any time during the year of income or by virtue of an agreement made before the end of the year of income, shares in the company have commenced, or will or may commence at any time, to carry certain rights (whether or not any of those rights had previously been carried by those shares), those shares shall be deemed to have carried those rights at all times during the year of income when the provision in the constituent document was in force, or after the time when the agreement was entered into, as the case may be.

“(7) Where the Commissioner is satisfied that, by virtue of a provision in the constituent document of a company as in force at any time during the year of income or by virtue of an agreement made before the end of the year of income, shares in the company have ceased, or will or may cease, at any time, to carry rights that those shares carried at any time during the year of income, those shares shall be deemed not to have carried those rights at any time when the provision in the constituent document was in force, or at any time after the time the agreement was entered into, as the case may be.

“(8) A reference in this section to an agreement, right, power or option shall be read as including a reference to an agreement, right, power or option that is not enforceable by legal proceedings whether or not it was intended to be so enforceable.

“(9) 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.

“50L. (1) For the purposes of the application of this Subdivision in relation to a company (in this sub-section referred to as the ‘relevant company’) in relation to a year of income, where—

Deemed dividends

- (a) during the year of income, a payment was made to the relevant company, or a liability was incurred to the relevant company, by a partnership in which another company was a partner; and
- (b) by reason of the making of that payment, or the incurring of that liability, as the case may be, a dividend is deemed by section 65 to have been paid to the relevant company by that other

company on the last day of a year of income of that other company,  
that dividend shall be taken to have been received by the relevant company at the time when the payment referred to in paragraph (a) was made, or the liability referred to in that paragraph was incurred, as the case may be.

“(2) For the purposes of the application of this Subdivision in relation to a company (in this sub-section referred to as the ‘relevant company’) in relation to a year of income, where, by reason of the making of a payment or the distribution of assets by another company during the year of income, that other company is deemed by section 108 to have paid dividends to the relevant company on the last day of a year of income of that other company, those dividends shall be deemed to have been received by the relevant company at the time when the payment or distribution was made.

“(3) For the purposes of the application of this Subdivision in relation to a company (in this sub-section referred to as the ‘relevant company’) in relation to a year of income, where, by reason that a sum was paid or credited to the relevant company by another company, a dividend is deemed by section 109 to have been paid to the relevant company on the last day of a year of income of that other company, that dividend shall be deemed to have been received by the relevant company at the time when the sum was paid or credited.

Trading  
stock of  
winemakers

“50M. (1) The succeeding provisions of this section have effect for the purposes of the application of this Subdivision in relation to a company in relation to the year of income that commenced on 1 July 1977 or any of the next 4 succeeding years of income, being a company that, for the purposes of section 31B, is a taxpayer to whom sub-section (4) of that section applies.

“(2) The value of prescribed trading stock owned by the taxpayer at the end of a relevant period in relation to a year of income (not being a relevant period that ends at the end of the year of income) shall be the amount ascertained by deducting from the value of that trading stock, as ascertained in accordance with section 31, the amount ascertained in accordance with the formula  $A - B C$ , where—

$A$  is the amount ascertained by multiplying the excess amount by—

- (a) if the year of income is the year of income that commenced on 1 July 1977—0.5;
- (b) if the year of income is the year of income that commenced on 1 July 1978—0.4;
- (c) if the year of income is the year of income commencing on 1 July 1979—0.3;
- (d) if the year of income is the year of income commencing on 1 July 1980—0.2; and

(e) if the year of income is the year of income commencing on 1 July 1981—0.1;

*B* is the amount ascertained by multiplying the excess amount by 0.1; and

*C* is the fraction ascertained by dividing by 365 the number of whole days (if any) in the period commencing at the beginning of the year of income and ending at the end of the relevant period.

“(3) In addition to its application for the purpose of ascertaining the value of prescribed trading stock to be taken into account at the end of a relevant period, this section also applies for the purpose of ascertaining the value of prescribed trading stock to be taken into account under section 29 at the beginning of a relevant period.

“(4) In this section—

‘prescribed trading stock’ in relation to a company, means trading stock that, for the purposes of section 31B, is prescribed trading stock in relation to the company;

‘excess amount’ in relation to a company, means the amount that, in the application of section 31B in relation to the company, is the amount of the excess to which sub-section (4) of that section applies.

“50N. (1) Where, for the purposes of any provision of this Act (other than this section), it is necessary to ascertain the extent to which the taxable income of a company of a year of income, being a company in relation to which this subdivision applies in relation to the year of income, consists of one or more of the following classes of income, that is to say, income from private company dividends, income from dividends other than private company dividends, income from property other than dividends and income from personal exertion, than, notwithstanding the provisions of Subdivision A, this section applies for that purpose.

Composition  
of taxable  
income

“(2) Where the assessable income of the company in respect of a relevant period in relation to the company in relation to a year of income is derived from income included in more than one of the following classes of income, that is to say, income from private company dividends, income from dividends other than private company dividends, income from property other than dividends and income from personal exertion, the provisions of sub-sections (3), (4), (5) and (6) shall apply to all allowable deductions of the company in respect of the relevant period.

“(3) Where an allowable deduction or part of an allowable deduction in respect of the relevant period relates directly to income from private company dividends (whether of the relevant period, another relevant period or another year of income), the deduction or part of the deduction, as the case may be, shall be made successively from income

from private company dividends, from income from dividends other than private company dividends, from income from property other than dividends and from income from personal exertion.

“(4) Where an allowable deduction or part of an allowable deduction in respect of the relevant period relates directly to income from dividends other than private company dividends (whether of the relevant period, another relevant period or another year of income), the deduction or part of the deduction, as the case may be, shall be made successively from income from dividends other than private company dividends, from income from private company dividends, from income from property other than dividends and from income from personal exertion.

“(5) Where an allowable deduction or part of an allowable deduction in respect of the relevant period relates directly to income from property other than dividends (whether of the relevant period, another relevant period, or another year of income), the deduction or part of the deduction, as the case may be, shall be made successively from income from property other than dividends, from income from private company dividends, from income from dividends other than private company dividends and from income from personal exertion.

“(6) Where an allowable deduction or part of an allowable deduction in respect of the relevant period does not relate directly to income from property, the deduction or part of the deduction, as the case may be, shall be made successively from income from personal exertion, from income from property other than dividends, from income from private company dividends and from income from dividends other than private company dividends.

“(7) Where, by sub-section (3), (4), (5) or (6), it is provided that any deduction shall be made successively from income of 2 or more classes of income, the deduction shall be set off against the income of the first of those classes, and, if it exceeds the income of that class, the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.

“(8) The notional taxable income of a company in respect of a relevant period shall be deemed to consist of—

- (a) where the assessable income of the company in respect of the relevant period consists of or includes income from private company dividends—so much (if any) of the amount of that income from private company dividends as remains after deducting in accordance with sub-sections (3), (4), (5) and (6) any allowable deductions or parts of allowable deductions that, by virtue of any of those sub-sections, are to be deducted from income from private company dividends;
- (b) where the assessable income of the company in respect of the relevant period consists of or includes income from dividends

other than private company dividends—so much (if any) of the amount of that income from dividends other than private company dividends as remains after deducting in accordance with sub-sections (3), (4), (5) and (6) any allowable deductions or parts of allowable deductions that, by virtue of any of those sub-sections, are to be deducted from income from dividends other than private company dividends;

- (c) where the assessable income of the company in respect of the relevant period consists of or includes income from property other than dividends—so much (if any) of the amount of that income from property other than dividends as remains after deducting in accordance with sub-sections (3), (4), (5) and (6) any allowable deductions or parts of allowable deductions that, by virtue of any of those sub-sections, are to be deducted from income from property other than dividends; and
- (d) where the assessable income of the company in respect of the relevant period consists of or includes income from personal exertion—so much (if any) of the amount of that income from personal exertion as remains after deducting in accordance with sub-sections (3), (4), (5) and (6) any allowable deductions or parts of any allowable deductions that, by virtue of any of those sub-sections, are to be deducted from income from personal exertion.

“(9) The notional loss of a company in respect of a relevant period shall be deemed to consist of—

- (a) so much of the allowable deductions (if any) in respect of the relevant period as relates directly to income from private company dividends as has not been deducted, in accordance with sub-section (3), from assessable income of the company in respect of the relevant period;
- (b) so much of the allowable deductions (if any) in respect of the relevant period as relates directly to income from dividends other than private company dividends as has not been deducted, in accordance with sub-section (4), from assessable income of the company in respect of the relevant period;
- (c) so much of the allowable deductions (if any) in respect of the relevant period as relates directly to income from property other than dividends as has not been deducted, in accordance with sub-section (5), from assessable income of the company in respect of the relevant period; and
- (d) so much of the allowable deductions (if any) in respect of the relevant period as does not relate directly to income from property as has not been deducted, in accordance with sub-section (6), from assessable income of the company in respect of the relevant period.

“(10) Where the whole of a notional loss of a company in respect of a relevant period is to be taken into account in determining the amount of the eligible notional loss in relation to the company in relation to the year of income—

- (a) so much of allowable deductions that relate directly, in whole or in part, to income from private company dividends (whether of the relevant period, another relevant period or another year of income) as is deemed by sub-section (9) to be included in the notional loss shall be deemed to be included in the eligible notional loss;
- (b) so much of allowable deductions that relate directly, in whole or in part, to income from dividends other than private company dividends (whether of the relevant period, another relevant period or another year of income) as is deemed by sub-section (9) to be included in the notional loss shall be deemed to be included in the eligible notional loss;
- (c) so much of allowable deductions that relate directly, in whole or in part, to income from property other than dividends (whether of the relevant period, another relevant period or another year of income) as is deemed by sub-section (9) to be included in the notional loss shall be deemed to be included in the eligible notional loss; and
- (d) so much of allowable deductions that do not relate directly, in whole or in part, to income from property as is deemed by sub-section (9) to be included in the notional loss shall be deemed to be included in the eligible notional loss.

“(11) Where a part of a notional loss of a company in respect of a relevant period is to be taken into account in determining the amount of the eligible notional loss in relation to the company in relation to the year of income—

- (a) so much of the amount of allowable deductions that relate directly, in whole or in part, to income from private company dividends (whether of the relevant period, another relevant period or another year of income) that is deemed by sub-section (9) to be included in the notional loss as bears to that amount the same proportion as the part of that notional loss that is to be taken into account in determining the amount of the eligible notional loss bears to the whole of the notional loss shall be deemed to be included in the eligible notional loss;
- (b) so much of the amount of allowable deductions that relate directly, in whole or in part, to income from dividends other than private company dividends (whether of the relevant period, another relevant period or another year of income) that is deemed by sub-section (9) to be included in the notional loss as bears to that amount the same proportion as the part of that notional loss that is to be taken into account in determining the



amount of the eligible notional loss bears to the whole of the notional loss shall be deemed to be included in the eligible notional loss;

- (c) so much of the amount of allowable deductions that relate directly, in whole or in part, to income from property other than dividends (whether of the relevant period, another relevant period or another year of income) that is deemed by sub-section (9) to be included in the notional loss as bears to that amount the same proportion as the part of that notional loss that is to be taken into account in determining the amount of the eligible notional loss bears to the whole of the notional loss shall be deemed to be included in the eligible notional loss; and
- (d) so much of the amount of allowable deductions that do not relate directly, in whole or in part, to income from property that is deemed by sub-section (9) to be included in the notional loss as bears to that amount the same proportion as the part of that notional loss that is to be taken into account in determining the amount of the eligible notional loss bears to the whole of the notional loss shall be deemed to be included in the eligible notional loss.

“(12) Subject to sub-section (13), the amount of income from private company dividends included in the taxable income of the company of the year of income shall be deemed to be the amount (if any) ascertained by deducting from the sum (in this sub-section referred to as the ‘income amount’) of—

- (a) any amount, or the sum of any amounts, of income from private company dividends included in the notional taxable income of a relevant period or included in the notional taxable incomes of relevant periods, as the case may be, by sub-section (8); and
- (b) any amount, or the sum of any amounts, of income from private company dividends included in a full-year amount or included in full-year amounts, as the case may be, in relation to the company in relation to the year of income,

the sum (in this sub-section referred to as the ‘deduction amount’) of—

- (c) so much of allowable deductions that relate directly, in whole or in part, to income from private company dividends (whether of the year of income or of a previous year of income) as is deemed by this section to be included in the eligible notional loss of the company in relation to the year of income;
- (d) so much of any full-year deduction or full-year deductions as relates directly to income from private company dividends; and
- (e) so much of any partnership deduction or partnership deductions as relates directly to income from private company dividends.

“(13) Where, apart from this sub-section, an amount (in this sub-section referred to as the ‘excess income amount’) of income from private company dividends would, by sub-section (12), be included in the taxable income of the company of the year of income and—

- (a) the deduction amount referred to in sub-section (14) exceeds the income amount referred to in that sub-section;
- (b) the deduction amount referred to in sub-section (16) exceeds the income amount referred to in that sub-section; or
- (c) the deduction amount referred to in sub-section (18) exceeds the income amount referred to in that sub-section,

the amount of income from private company dividends included in the taxable income of the company of the year of income shall be deemed to be—

- (d) in a case where only one of paragraphs (a), (b) and (c) is applicable—the amount (if any) remaining after deducting from the excess income amount the amount of the excess referred to in the paragraph that is applicable; and
- (e) in a case where 2 or more of paragraphs (a), (b) and (c) are applicable—the amount (if any) remaining after deducting successively from the excess income amount the amounts of the excesses referred to in the paragraphs that are applicable.

“(14) Subject to sub-section (15), the amount of income from dividends other than private company dividends included in the taxable income of the company of the year of income shall be deemed to be the amount (if any) ascertained by deducting from the sum (in this sub-section referred to as the ‘income amount’) of—

- (a) any amount, or the sum of any amounts, of income from dividends other than private company dividends included in the notional taxable income of a relevant period or included in the notional taxable incomes of relevant periods, as the case may be, by sub-section (8); and
- (b) any amount, or the sum of any amounts, of income from dividends other than private company dividends included in a full-year amount or included in full-year amounts, as the case may be, in relation to the company in relation to the year of income,

the sum (in this sub-section referred to as the ‘deduction amount’) of—

- (c) so much of allowable deductions that relate directly, in whole or in part, to income from dividends other than private company dividends (whether of the year of income or of a previous year of income) as is deemed by this section to be included in the eligible notional loss of the company in relation to the year of income;
- (d) so much of any full-year deduction or full-year deductions as relates directly to income from dividends other than private company dividends; and

- (e) so much of any partnership deduction or partnership deductions as relates directly to income from dividends other than private company dividends.

“(15) Where, apart from this sub-section, an amount (in this sub-section referred to as the ‘excess income amount’) of income from dividends other than private company dividends would, by sub-section (14), be included in the taxable income of the company of the year of income and—

- (a) the deduction amount referred to in sub-section (12) exceeds the income amount referred to in that sub-section;
- (b) the deduction amount referred to in sub-section (16) exceeds the income amount referred to in that sub-section; or
- (c) the deduction amount referred to in sub-section (18) exceeds the income amount referred to in that sub-section,

the amount of income from dividends other than private company dividends included in the taxable income of the company of the year of income shall be deemed to be—

- (d) in a case where only one of paragraphs (a), (b) and (c) is applicable—the amount (if any) remaining after deducting from the excess income amount the amount of the excess referred to in the paragraph that is applicable; and
- (e) in a case where 2 or more of paragraphs (a), (b) and (c) are applicable—the amount (if any) remaining after deducting successively from the excess income amount the amounts of the excesses referred to in the paragraphs that are applicable.

“(16) Subject to sub-section (17), the amount of income from property other than dividends included in the taxable income of the company of the year of income shall be deemed to be the amount (if any) ascertained by deducting from the sum (in this sub-section referred to as the ‘income amount’) of—

- (a) any amount, or the sum of any amounts, of income from property other than dividends included in the notional taxable income of a relevant period or included in the notional taxable incomes of relevant periods, as the case may be, by sub-section (8); and
- (b) any amount, or the sum of any amounts, of income from property other than dividends included in a full-year amount or included in full-year amounts, as the case may be, in relation to the company in relation to the year of income,

the sum (in this sub-section referred to as the ‘deduction amount’) of—

- (c) so much of allowable deductions that relate directly, in whole or in part, to income from property other than dividends (whether of the year of income or of a previous year of income) as is deemed by this section to be included in the eligible notional loss of the company in relation to the year of income;

- (d) so much of any full-year deduction or full-year deductions as relates directly to income from property other than dividends; and
- (e) so much of any partnership deduction or partnership deductions as relates directly to income from property other than dividends.

“(17) Where, apart from this sub-section, an amount (in this sub-section referred to as the ‘excess income amount’) of income from property other than dividends would, by sub-section (16), be included in the taxable income of the company of the year of income and—

- (a) the deduction amount referred to in sub-section (12) exceeds the income amount referred to in that sub-section;
- (b) the deduction amount referred to in sub-section (14) exceeds the income amount referred to in that sub-section; or
- (c) the deduction amount referred to in sub-section (18) exceeds the income amount referred to in that sub-section,

the amount of income from property other than dividends included in the taxable income of the company of the year of income shall be deemed to be—

- (d) in a case where only one of paragraphs (a), (b) and (c) is applicable—the amount (if any) remaining after deducting from the excess income amount the amount of the excess referred to in the paragraph that is applicable; and
- (e) in a case where 2 or more of paragraphs (a), (b) and (c) are applicable—the amount (if any) remaining after deducting successively from the excess income amount the amounts of the excesses referred to in the paragraphs that are applicable.

“(18) Subject to sub-section (19), the amount of income from personal exertion included in the taxable income of the company of the year of income shall be deemed to be the amount (if any) ascertained by deducting from the sum (in this sub-section referred to as the ‘income amount’) of—

- (a) any amount, or the sum of any amounts, of income from personal exertion included in the notional taxable income of a relevant period or included in the notional taxable incomes of relevant periods, as the case may be, by sub-section (8); and
- (b) any amount, or the sum of any amounts, of income from personal exertion included in a full-year amount or included in full-year amounts, as the case may be, in relation to the company in relation to the year of income,

the sum (in this sub-section referred to as the ‘deduction amount’) of—

- (c) so much of allowable deductions that do not relate directly, in whole or in part, to income from property as is deemed by this section to be included in the eligible notional loss of the company in relation to the year of income;
- (d) so much of any full-year deduction or full-year deductions as does not relate directly to income from property; and

- (e) so much of any partnership deduction or partnership deductions as does not relate directly to income from property.

“(19) Where, apart from this sub-section, an amount (in this sub-section referred to as the ‘excess income amount’) of income from personal exertion would, by sub-section (18), be included in the taxable income of the company of the year of income and—

- (a) the deduction amount referred to in sub-section (16) exceeds the income amount referred to in that sub-section;
- (b) the deduction amount referred to in sub-section (12) exceeds the income amount referred to in that sub-section; or
- (c) the deduction amount referred to in sub-section (14) exceeds the income amount referred to in that sub-section,

the amount of income from personal exertion included in the taxable income of the company of the year of income shall be deemed to be—

- (d) in a case where only one of paragraphs (a), (b) and (c) is applicable—the amount (if any) remaining after deducting from the excess income amount the amount of the excess referred to in the paragraph that is applicable; and
- (e) in a case where 2 or more of paragraphs (a), (b) and (c) are applicable—the amount (if any) remaining after deducting successively from the excess income amount the amounts of the excesses referred to in the paragraphs that are applicable.

“(20) Where, in the application of sub-section (13), (15), (17) or (19), 2 or more amounts (in this sub-section referred to as ‘deductible amounts’) are required to be deducted successively from another amount (in this sub-section referred to as the ‘initial amount’), the first of those deductible amounts shall be set off against that initial amount and, if the initial amount exceeds that deductible amount, the next of those deductible amounts shall be set off against the amount by which the initial amount exceeds the first deductible amount and so on until either the deductible amounts are exhausted or the initial amount is exhausted.

“(21) For the purposes of this section, where an allowable deduction or part of an allowable deduction relates directly to income from dividends but does not relate directly to income from private company dividends or to income from dividends other than private company dividends—

- (a) so much (if any) of that deduction or part, as the case may be, as, in the opinion of the Commissioner, may appropriately be related to income from private company dividends shall be deemed to relate directly to income from private company dividends; and
- (b) so much (if any) of that deduction or part, as the case may be, as, in the opinion of the Commissioner, may not appropriately be related to income from private company dividends shall be

deemed to relate directly to income from dividends other than private company dividends.

“(22) Subject to sub-section (23), dividends paid to a company (in this sub-section referred to as the ‘relevant company’) by another company during a year of income of the relevant company shall, for the purposes of this section, be deemed to be private company dividends if, and only if—

- (a) the relevant company was a private company in relation to that year of income; and
- (b) the other company was a private company in relation to the year of income of that other company during which the dividends were paid.

“(23) In the application of this section for the purposes of determining the amount of any rebate to which a company is entitled, or that may be allowed to a company, under section 46 or 46A in relation to a year of income, a reference in this section, in relation to the company in relation to the year of income, to private company dividends shall be read as not including a reference to so much of any dividends paid to the company by another company that is a non-resident as was paid out of profits derived from sources out of Australia.

*“Division 3—Deductions*

*“Subdivision A—General”.*

Losses of  
previous  
years

**10.** Section 80 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Notwithstanding sub-section (1), if Subdivision B of Division 2A applies in relation to a taxpayer being a company in relation to a year of income, a loss shall, for the purposes of this section, be deemed to be incurred by the taxpayer in the year of income if, and only if, the sum (in this sub-section referred to as the ‘loss amount’) of—

- (a) if, for the purposes of that Subdivision, the taxpayer has a notional loss in respect of a relevant period, or notional losses in respect of relevant periods, in relation to the year of income and the amount of that notional loss or the sum of the amounts of those notional losses, as the case may be, exceeds the amount (if any) that is the eligible notional loss of the company in relation to the year of income—the amount of the excess; and
- (b) if, in the application of sub-section (2) of section 50C in relation to the taxpayer in relation to the year of income, the deductible amount referred to in that sub-section exceeds the income amount referred to in that sub-section—the amount of the excess,

exceeds the amount of any net exempt income of the company of the year of income, and the amount of the loss for the purposes of this section shall be deemed to be the amount by which the loss amount exceeds the amount of that net exempt income.”.

**11.** Section 80AA of the Principal Act is amended by inserting after sub-section (3) the following sub-sections:

Losses of  
previous  
years  
incurred in  
engaging in  
primary  
production

“(3A) Notwithstanding sub-section (2), if Subdivision B of Division 2A applies in relation to a taxpayer being a company in relation to a year of income, being a taxpayer who has engaged in primary production in the year of income, a loss shall, for the purposes of this section, be deemed to be incurred by the taxpayer in the year of income if, and only if, for the purposes of section 80, a loss was incurred by the taxpayer in the year of income and—

- (a) for the purposes of that Subdivision, the company has a notional loss in respect of a relevant period, or notional losses in respect of relevant periods, in relation to the year of income and the amount of that notional loss or the sum of the amounts of those notional losses, as the case may be, exceeds the amount (if any) that is the eligible notional loss of the company in relation to the year of income; or
- (b) in the application of sub-section (2) of section 50C in relation to the taxpayer in relation to the year of income, the deductible amount referred to in that sub-section exceeds the income amount referred to in that sub-section,

and the amount of the loss that the taxpayer is to be deemed to have incurred in engaging in primary production in that year of income shall be deemed to be—

- (c) if the amount of the loss that, for the purposes of section 80, was incurred by the taxpayer in the year of income is equal to the notional primary production loss of the taxpayer—the amount of the notional primary production loss; and
- (d) in any other case—the amount of the loss that, for the purposes of section 80, was incurred by the taxpayer in the year of income or the amount of the notional primary production loss of the taxpayer, whichever is the less.

“(3B) For the purposes of the application of sub-section (3A) in relation to a taxpayer in relation to a year of income, ‘notional primary production loss’ means—

- (a) in a case where paragraph (a) of sub-section (3A) applies but paragraph (b) of that sub-section does not apply—the amount of the excess referred to in paragraph (a) of that sub-section;
- (b) in a case where paragraph (b) of sub-section (3A) applies but paragraph (a) of that sub-section does not apply—the amount of the excess referred to in paragraph (b) of that sub-section; and

- (c) in any other case—the sum of the amount of the excess referred to in paragraph (a) of sub-section (3A) and the amount of the excess referred to in paragraph (b) of that sub-section.

“(3C) In the application of Subdivision B of Division 2A in relation to a company in relation to a year of income for the purposes of sub-section (3A), regard shall not be had to assessable income of the company other than assessable income derived from engaging in primary production and regard shall not be had to allowable deductions other than deductions allowable from assessable income derived from engaging in primary production.”.

12. After section 105AA of the Principal Act the following section is inserted:

Additional  
period for  
distribution  
by liquidator

“105AB. (1) Where—

- (a) the liquidator of a private company that is in the course of being wound up proposes to make a distribution of money or other property to shareholders of the company during the first 10 months of a year of income of the company;
- (b) the distribution, if made, would, in whole or in part, be deemed by section 47 to be a dividend paid to the shareholders by the company out of profits derived by it; and
- (c) the liquidator expects that there will be a distributable income in relation to the company in relation to the year of income,

the liquidator may, by writing signed by him, notify the Commissioner that he proposes to make the distribution and may request the Commissioner to determine a period that is, for the purposes of this section, to be an additional distribution period in relation to the company in relation to the year of income.

“(2) Where—

- (a) the liquidator of a private company notifies the Commissioner under sub-section (1) that he proposes to make a distribution of money or other property to shareholders of the company and requests the Commissioner to determine a period that, for the purposes of this section, is to be an additional distribution period in relation to the company in relation to a year of income; and
- (b) the Commissioner considers that it is reasonable to assume that, if the money or other property that the liquidator proposes to distribute were not to be distributed during the prescribed period in relation to the year of income, there would, apart from this section, be an undistributed amount in relation to the company in relation to the year of income,

the Commissioner may grant the request and determine that a period, being a period that ends before the commencement of the prescribed



period in relation to the year of income, is, for the purposes of this section, an additional distribution period in relation to the company in relation to the year of income, or he may refuse to grant the request.

“(3) In deciding whether to grant or refuse a request made under sub-section (1) by the liquidator of a company who has notified the Commissioner that he proposes to make a distribution of money or other property to shareholders of the company during the first 10 months of a year of income of the company, the Commissioner shall have regard to—

- (a) whether, in the opinion of the Commissioner, the making of the proposed distribution before the expiration of that period of 10 months would expedite the winding up of the company;
- (b) whether, apart from the operation of this Division (other than this section), it would be unreasonable for the liquidator not to make the proposed distribution before the commencement of the prescribed period in relation to the year of income;
- (c) whether, in the opinion of the Commissioner, the distribution proposed to be made by the liquidator is to be 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; and
- (d) any other matters that he considers relevant.

“(4) Where the Commissioner has made a decision to grant or to refuse a request made under sub-section (1) by the liquidator of a company, he shall serve by post on the liquidator notice in writing of the decision and, in a case of a decision to grant such a request, the notice—

- (a) shall specify the period that has been determined by the Commissioner to be an additional distribution period in relation to the company in relation to a year of income; and
- (b) shall be served on the liquidator before the commencement of that additional distribution period.

“(5) Where the Commissioner has granted a request made under sub-section (1) by the liquidator of a company and has determined an additional distribution period in relation to the company in relation to a year of income, the liquidator shall, within 30 days after the end of that additional distribution period, or within such further time as the Commissioner allows, give a notice in writing to the Commissioner stating—

- (a) whether any distribution of money or other property was made by the liquidator during that additional distribution period;
- (b) if a distribution of money or other property was made, or distributions of money or other property were made, by the liquidator during that additional distribution period, the amount of that distribution or the amounts of those distributions, as the case may be; and
- (c) if a distribution of property other than money was made, or distributions of property other than money were made, by the liquidator during that additional distribution period, the amount of that distribution of property or the amounts of those distributions of property, as the case may be, and the nature of the property that was distributed.

“(6) Where, in pursuance of sub-section (2), the Commissioner has determined that a period is to be an additional distribution period, or that periods are to be additional distribution periods, in relation to a company in relation to a year of income (in this sub-section referred to as the ‘relevant year of income’), so much of the dividend component of any distribution or of the sum of the dividend components of any distributions of money or other property made during that additional distribution period or those additional distribution periods by the liquidator of the company (being a distribution the amount of which was, or being distributions the amounts of which were, specified in a notice or notices given to the Commissioner by the liquidator in accordance with sub-section (5)) as exceeds the amount (if any) that would be the undistributed amount in relation to the company in relation to the year of income immediately preceding the relevant year of income if no regard were had to the distribution or distributions of money or other property made by the liquidator during that additional distribution period or those additional distribution periods shall, for the purposes of ascertaining, for the purposes of this Division, whether the company is deemed to have made a sufficient distribution in relation to the relevant year of income, be taken to have been made during the prescribed period in relation to the relevant year of income.

“(7) For the purposes of sub-section (6), the dividend component of a distribution made by the liquidator of a company is so much of the amount of the distribution as is deemed by section 47 to be a dividend or dividends paid by the company to shareholders out of profits derived by the company.

“(8) The reference in sub-section (6) to a period that is an additional distribution period in relation to a company shall be read as not including a reference to a period that is, by reason of sub-section (9) or (10), deemed to be an ineligible additional distribution period in relation to the company.

“(9) Where—

- (a) the liquidator of a company has made a distribution or distributions of money or other property during a period that is an additional distribution period in relation to the company in relation to a year of income; and
- (b) the Commissioner is satisfied that the distribution, or any of the distributions, as the case may be, 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 additional distribution period shall, for the purposes of sub-section (8), be deemed to be an ineligible distribution period.

“(10) Where—

- (a) apart from this sub-section, a distribution or distributions of money or other property made by the liquidator of a company during a period that is an additional distribution period in relation to the company in relation to a year of income would, for the purposes of ascertaining, for the purposes of this Division, whether the company is deemed to have made a sufficient distribution in relation to the year of income, be taken, by virtue of sub-section (6), in whole or in part, to have been made during the prescribed period in relation to that year of income; and
- (b) the company is not dissolved before the end of the period of 6 months, or such longer period as the Commissioner allows, after the end of that additional distribution period,

that additional distribution period shall, for the purposes of sub-section (8), be deemed to be an ineligible additional distribution period.

“(11) Where—

- (a) the dissolution of a company occurs at any time; and
- (b) by reason of the operation of any law or of an order of a court, the dissolution is void or the company is deemed to have continued in existence for any purpose after the time when the dissolution occurred,

that dissolution of the company shall be disregarded for the purposes of paragraph (b) of sub-section (10).

“(12) In this section, ‘income tax’ does not include additional tax payable under section 104.”.

Interpret-  
ation

**13. Section 124K of the Principal Act is amended—**

- (a) by inserting before the definition of “the owner” in sub-section (1) the following definitions:

“ ‘Australian film’ means a film that is certified in writing by the Minister for Home Affairs to be a film that—

- (a) has been, or is to be, made wholly or substantially in Australia or in an external Territory and has, or will have, a significant Australian content; or
- (b) has been, or is to be, made in pursuance of an agreement or arrangement entered into between the Government of Australia or an authority of the Government of Australia and the Government of another country or an authority of the Government of another country;

‘film’ means an aggregate of images, or of images and sounds, embodied in any material;”;

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

“(1A) In considering for the purposes of the definition of ‘Australian film’ in sub-section (1) whether a film has or will have a significant Australian content, the Minister for Home Affairs shall have regard to—

- (a) the subject-matter of the film;
- (b) the place or places where the film was, or is to be, made;
- (c) the nationalities and places of residence of—
  - (i) the persons who took part, or are to take part, in the making of the film (including authors, composers, actors, scriptwriters, editors, producers, directors and technicians);
  - (ii) the persons who are, or will be, the beneficial owners of the shares or stock in the capital of any company concerned in the making of the film; and
  - (iii) the persons who are, or will be, the beneficial owners of the copyright in the film;

- (d) the source from which moneys used, or to be used, in the making of the film were, or will be, derived; and

- (e) any other matters that he considers to be relevant.”;

- (c) by adding at the end thereof the following sub-sections:

“(3) Where a unit of industrial property is transmitted to a person by operation of law, this Division has effect as if that unit had been disposed of to that person by the last preceding owner of the unit at the time of the transmission.

“(4) In this Division, a reference to the transmission of a unit of industrial property by operation of law includes, without

limiting the generality of that expression, a reference to the transmission of a unit of industrial property to a person—

- (a) as trustee of the estate of the deceased owner of the unit;
- (b) as a beneficiary under the will or a codicil of the deceased owner of the unit or under an order of a court that varied or modified the provisions of such a will or codicil; or
- (c) as a beneficiary on the intestacy of the deceased owner of the unit or as a beneficiary under an order of a court that varied or modified the application, in relation to the estate of the deceased owner of the unit, of the provisions of the law relating to the distribution of the estates of persons who die intestate.”.

**14. Section 124L of the Principal Act is amended—**

Application

- (a) by inserting in paragraph (a) of sub-section (1) “or other subject-matter” after “work”;
- (b) by omitting “or” at the end of paragraph (b) of sub-section (1);
- (c) by inserting in paragraph (c) of sub-section (1) “(other than a disposal by way of transmission by operation of law)” after “disposal”;
- (d) by inserting in paragraph (c) of sub-section (1) “or other subject-matter” after “work”;
- (e) by inserting after paragraph (c) of sub-section (1) the following word and paragraph:

“; or (d) acquired the unit of industrial property by virtue of the transmission, in whole or in part, of a unit of industrial property by operation of law, in a case where a deduction under this Division in respect of that unit has been allowed or is allowable in an assessment in respect of income of the last preceding owner of that unit or would have been so allowable if that unit, or the invention, work or other subject-matter or design to which that unit relates, had been used by that last preceding owner for the purpose of producing assessable income,”; and

- (f) by inserting in sub-section (1) “or other subject-matter” after “work” (last occurring).

**15. Section 124M of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-sections:**

Annual deductions

“(3) Where—

- (a) at any time during the year of income a taxpayer was the owner of a unit of industrial property to whom this Division applies;
- (b) the effective life of the unit in relation to the taxpayer expired before the commencement of the year of income; and

(c) there was a residual value of the unit in relation to the taxpayer as at the end of the year of income,  
an amount equal to that residual value shall, subject to this Act, be an allowable deduction in respect of the unit in the assessment of the taxpayer in respect of income of that year of income.

“(4) Subject to sub-section (5), where, during a year of income, the owner of a unit of industrial property ceases to be the owner of the unit, a deduction under this section in respect of the unit is not allowable in his assessment in respect of income of that year of income.

“(5) Sub-section (4) extends to the case where the owner of the unit of industrial property ceases to be the owner by reason that the property ceases to exist but does not apply—

- (a) where the owner ceases to be the owner of the unit of industrial property by virtue of the transmission of the unit by operation of law; or
- (b) where the unit of industrial property was purchased or otherwise acquired by the owner for a specified period and he ceases to be the owner by reason that the specified period terminates.

“(6) A reference in sub-section (1) or (3) to the residual value of a unit of industrial property as at the end of a year of income in relation to a taxpayer who was the owner of the unit at any time during that year of income shall, in a case where the taxpayer ceased to be the owner of the unit by virtue of the transmission of the unit by operation of law, be read as a reference to the residual value of the unit in relation to the taxpayer immediately before the time of the transmission of the unit.”.

Deductions  
on the  
disposal or  
lapse of a  
unit of  
industrial  
property

**16.** Section 124N of the Principal Act is amended—

- (a) by omitting from sub-section (2) “(being a time before the expiration of the effective life of the unit in relation to the taxpayer)” (wherever occurring);
- (b) by omitting from paragraph (b) of sub-section (2) “otherwise than in consideration of the payment of a lump sum” and substituting “in a case where there was no consideration receivable by the taxpayer in respect of the surrender”; and
- (c) by omitting from sub-section (2) “the residual value of the unit in relation to the taxpayer at that time” and substituting “and there is a residual value of the unit in relation to the taxpayer as at that time, that residual value”.

Amount to  
be included  
in assessable  
income on  
disposal of a  
unit of  
industrial  
property

**17.** Section 124P of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-section:  
“(1) Where, at any time during the year of income, a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of that unit in whole or in part

(whether or not the effective life of that unit in relation to the taxpayer had expired at that time)—

- (a) if there is a residual value of that unit in relation to the taxpayer at that time and the amount of the consideration receivable in respect of the disposal exceeds that residual value—the amount of the excess; or
- (b) if there is no residual value of that unit in relation to the taxpayer at that time—the amount of the consideration receivable in respect of the disposal,

shall be included in the assessable income of the taxpayer of the year of income.”; and

- (b) by omitting from sub-section (3) “either of the last two preceding sub-sections” and substituting “sub-section (1)”.

**18.** Section 124R of the Principal Act is repealed and the following section substituted:

“124R. (1) For the purposes of this Division, the cost of a unit of industrial property to the owner of the unit shall, subject to sub-section (2) of section 124S, be taken to be—

Cost of a unit  
of industrial  
property

- (a) in the case of an owner referred to in paragraph (a) of sub-section (1) of section 124L—
  - (i) if sub-section (2) of this section is applicable—the cost ascertained in accordance with that sub-section; or
  - (ii) if sub-section (2) of this section is not applicable—the expenditure referred to in paragraph (a) of sub-section (1) of section 124L;
- (b) in the case of an owner referred to in paragraph (b) of sub-section (1) of section 124L—
  - (i) if sub-section (3) or (5) of this section is applicable—the cost ascertained in accordance with that sub-section; or
  - (ii) if neither of those sub-sections is applicable—the expenditure referred to in paragraph (b) of sub-section (1) of section 124L;
- (c) in the case of an owner referred to in paragraph (c) of sub-section (1) of section 124L—
  - (i) if the owner acquired a unit of industrial property of another person in whole—the residual value of the unit in relation to the last preceding owner of the unit immediately before the time of the disposal of the unit; or
  - (ii) in any other case—such part of that residual value as the Commissioner determines; or
- (d) in the case of an owner referred to in paragraph (d) of sub-section (1) of section 124L—
  - (i) if the owner acquired a unit of industrial property of another person in whole—an amount ascertained by

deducting from the residual value of the unit in relation to the last preceding owner of the unit immediately before the time of the transmission of the unit any deductions allowed or allowable under this Division in respect of the unit in an assessment in respect of income of that last preceding owner of the year of income during which the transmission took place; or

- (ii) in any other case—such part of that amount as the Commissioner determines.

“(2) Where, in the case of an owner referred to in paragraph (a) of sub-section (1) of section 124L, the Commissioner is satisfied, having regard to any connection between the owner and any person who supplied goods to, or provided services for, the owner in relation to the unit of industrial property concerned or to any other relevant circumstances, that—

- (a) the owner and that person were not dealing with each other at arm's length in relation to the supply of those goods or the provision of those services; and
- (b) the expenditure of a capital nature incurred by the owner in relation to devising the invention, producing the work or other subject-matter in which the copyright subsists or producing the design, as the case may be, exceeds the expenditure of a capital nature that would have been incurred by the owner if the owner and that person had dealt with each other at arm's length,

the cost of the unit to the owner for the purposes of this Division shall be taken to be the amount of the expenditure of a capital nature that, in the opinion of the Commissioner, would have been incurred by the owner if the owner and that person had dealt with each other at arm's length.

“(3) Where, in the case of an owner referred to in paragraph (b) of sub-section (1) of section 124L—

- (a) the Commissioner is satisfied, having regard to any connection between the owner and the person from whom the unit of industrial property concerned was purchased or to any other relevant circumstances, that the owner and that person were not dealing with each other at arm's length in relation to the purchase; and
- (b) the expenditure of a capital nature incurred by the owner on the purchase of the unit of industrial property—
  - (i) exceeds the amount that was the cost of the unit to the last preceding owner of the unit; or
  - (ii) does not exceed the amount that was the cost of the unit to the last preceding owner of the unit but exceeds the value of the unit at the time of the purchase,

the cost of the unit to the owner for the purposes of this Division shall be taken to be the cost of the unit to the last preceding owner of the unit or the value of the unit at the time of the purchase, whichever is the less.



“(4) References in sub-section (3) to the cost of a unit of industrial property to the last preceding owner of the unit or to the value of a unit of industrial property at the time of the purchase of the unit shall, if the purchase was a purchase of a part of a unit of industrial property of another person, be construed as references to such part of that cost or of that value, as the case may be, as the Commissioner determines.

“(5) Where, in the case of an owner referred to in paragraph (b) of sub-section (1) of section 124L, the unit of industrial property was purchased by the owner of the unit with other property and no separate price was allocated to the unit, the amount of the expenditure of a capital nature incurred by the owner on the purchase of the unit for the purposes of this Division shall be taken to be so much of the purchase price of the unit and the other property as the Commissioner determines.”.

**19. Section 124S of the Principal Act is amended—**

Residual  
value

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

“(1A) The reference in paragraph (a) of sub-section (1) to any deductions allowed or allowable under this Division in respect of a unit of industrial property shall, in the case of a deduction that has been or is to be reduced by reason of section 124Z, be read as a reference to the deduction that, but for that section, would have been allowed or would be allowable.”; and

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

“(2) Where the owner of a unit of industrial property has incurred expenditure of a capital nature in obtaining the surrender to him of a licence previously granted by him in respect of the patent, copyright or design, as the case may be, to which the unit relates, then, in ascertaining the residual value of the unit in relation to the owner of the unit at any time after the surrender, the cost of the unit to the owner of the unit shall be deemed to be increased by—

(a) in a case to which paragraph (b) does not apply—an amount equal to the expenditure so incurred in obtaining the surrender; or

(b) if—

(i) the Commissioner is satisfied, having regard to any connection between the owner and the person who surrendered the licence or to any other relevant circumstances, that the owner and that person were not dealing with each other at arm's length in relation to the surrender; and

(ii) the consideration for the surrender—

(A) was greater than the value of the licence at the time of the surrender; or

(B) was not greater than that value but was greater than the expenditure of a capital nature that was incurred by the person who surrendered the licence in obtaining the grant of the licence,

an amount equal to that value or that expenditure, whichever is the less.”.

20. Section 124T of the Principal Act is repealed and the following section substituted:

Consideration  
receivable on  
disposal

“124T. (1) Subject to this section, for the purposes of this Division, the consideration receivable by the owner of a unit of industrial property in respect of the disposal of the unit in whole or in part shall be taken to be—

- (a) where the unit is sold in whole or in part (whether with or without other property) for a specified price—the sale price of the unit or part of the unit, less the expenses of the sale of the unit or part of the unit or such part of the expenses of the sale of the unit or part of the unit together with the other property as the Commissioner determines;
- (b) where the unit is sold in whole or in part together with other property and a specified price is not allocated to the unit or the part of the unit—such part of the sale price of the unit or part of the unit together with the other property as the Commissioner determines, less such part of the expenses of the sale of the unit or part of the unit together with the other property as the Commissioner determines; or
- (c) where the unit is transmitted by operation of law—
  - (i) if the unit is transmitted in whole—an amount equal to the residual value of the unit in relation to that owner of the unit immediately before the time of the transmission of the unit; or
  - (ii) if the unit is transmitted in part—such part of that residual value as is determined by the Commissioner.

“(2) Where the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole or in part to another person and—

- (a) the Commissioner is satisfied, having regard to any connection between the owner and that other person or to any other relevant circumstances, that the owner and that other person were not dealing with each other at arm’s length in relation to the disposal; and
- (b) there was no amount receivable by the owner in respect of the disposal or the amount receivable by the owner in respect of the

disposal was less than the value of the unit or the part of the unit at the time of the disposal,

the consideration receivable by the owner in respect of the disposal for the purposes of this Division shall be taken to be the amount that was the value of the unit or the part of the unit at the time of the disposal.

“(3) Where—

- (a) the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole or in part; and
- (b) the whole or a part of the amount receivable by the owner in respect of the disposal has been included or is to be included in the assessable income of the owner of any year of income under any provision of this Act other than a provision of this Division,

then, for the purposes of this Division, the consideration receivable by the owner in respect of the disposal shall be reduced by so much of that amount as has been so included or is to be so included.”.

**21.** Section 124U of the Principal Act is amended—

Effective life

- (a) by inserting in sub-section (1) “(not being a unit of industrial property the effective life of which for the purposes of this Division is required to be determined under sub-section (1) of section 124UA)” after “property”; and
- (b) by inserting in sub-section (1) “or other subject-matter” after “work”.

**22.** After section 124U of the Principal Act the following section is inserted:

“124UA. (1) Subject to this section, for the purposes of this Division, the effective life of a unit of industrial property that relates to a copyright subsisting in an Australian film shall, in relation to the owner of the unit, be deemed to have commenced at the commencement of the year of income during which the owner of the unit first used that unit, or the subject-matter to which that unit relates, for the purpose of producing assessable income and shall end—

Effective life  
of certain  
units of  
industrial  
property

- (a) where the unit was purchased or otherwise acquired by him for a specified period—at the end of the year of income next succeeding the year of income during which the unit was first so used or at the end of the year of income during which the specified period will terminate, whichever will first occur; or
- (b) in any other case—at the end of the year of income next succeeding the year of income during which the unit was first so used.

“(2) The owner of a unit of industrial property that relates to a copyright subsisting in an Australian film may elect that this section shall not apply in relation to that unit and, where such an election is made, the effective life of the unit for the purposes of this Division shall be determined in accordance with section 124U.

“(3) An election under sub-section (2) shall be made in writing signed by or on behalf of the owner of the unit and shall be delivered to the Commissioner on or before the last day for the furnishing of the owner’s return of income of the year of income during which the owner first used that unit, or the subject-matter to which the unit relates, for the purpose of producing assessable income, or within such further time as the Commissioner allows.

“(4) This section does not apply in relation to a unit of industrial property that relates to a copyright subsisting in an Australian film if the unit, or the subject-matter to which the unit relates, was used for the purpose of producing income before 22 November 1977.”

Interest by  
licence in  
patent, &c.

**23.** Section 124V of the Principal Act is amended by omitting from paragraph (a) of sub-section (2) “a lump sum” and substituting “an amount”.

**24.** Section 124W of the Principal Act is repealed and the following section substituted:

Disposal of  
unit of  
industrial  
property on  
change of  
partnership,  
&c.

“124W. (1) Where, for any reason, including—

- (a) the formation or dissolution of a partnership; or
- (b) a variation in the constitution of a partnership or in the interests of the partners,

a change has occurred in the ownership of, or in the interests of persons in, a unit of industrial property and the person, or one or more of the persons, who owned the unit before the change has or have an interest in the unit after the change, then, subject to sub-section (2) of section 124S but notwithstanding any other provision of this Division, the succeeding provisions of this section have effect.

“(2) The provisions of this Division apply as if the person or persons who owned the unit before the change had, on the day on which the change occurred, disposed of the unit in whole to the person, or all the persons, by whom the unit is owned after the change.

“(3) If the agreement in consequence of which the change occurred specifies an amount as the value of the unit for the purposes of that agreement (being an amount that is the value of the unit at the time when the change occurred) or if there is no such agreement or no amount is so specified—

- (a) for the purposes of the application of this Division to the person or persons who owned the unit before the change, that person or those persons shall be deemed to have disposed of the unit as mentioned in sub-section (2) for a consideration equal to the value of the unit at the time when the change occurred; and

- (b) for the purposes of the application of this Division to the person or persons by whom the unit is owned after the change, that person or those persons shall be deemed to have incurred expenditure of a capital nature on the purchase of the unit of an amount equal to the value of the unit at the time when the change occurred or the cost of the unit to the person or persons who owned the unit before the change, whichever is the less.

“(4) If the agreement in consequence of which the change occurred specifies an amount as the value of the unit for the purposes of that agreement and the amount so specified exceeds the value of the unit at the time when the change occurred—

- (a) for the purposes of the application of this Division to the person or persons who owned the unit before the change, that person or those persons shall be deemed to have disposed of the unit as mentioned in sub-section (2) for a consideration equal to the amount specified in the agreement; and
- (b) for the purposes of the application of this Division to the person or persons by whom the unit is owned after the change, that person or those persons shall be deemed to have incurred expenditure of a capital nature on the purchase of the unit of an amount equal to the value of the unit at the time when the change occurred or the cost of the unit to the person or persons who owned the unit before the change, whichever is the less.

“(5) If the agreement in consequence of which the change occurred specifies an amount as the value of the unit for the purposes of that agreement and the amount so specified is less than the value of the unit at the time when the change occurred—

- (a) for the purposes of the application of this Division to the person or persons who owned the unit before the change, that person or those persons shall be deemed to have disposed of the unit as mentioned in sub-section (2) for a consideration equal to the value of the unit at the time when the change occurred; and
- (b) for the purposes of the application of this Division to the person or persons who owned the unit after the change, that person or those persons shall be deemed to have incurred expenditure of a capital nature on the purchase of the unit of an amount equal to the amount so specified in the agreement or the cost of the unit to the person or persons who owned the unit before the change, whichever is the less.”.

**25. Section 124X of the Principal Act is amended—**

- (a) by omitting “a lump sum” from paragraph (b) and substituting “an amount”; and
- (b) by omitting “that lump sum” and substituting “that amount”.

Use of patent  
by Common-  
wealth or  
State

Damages for  
infringement

**26.** Section 124Y of the Principal Act is amended—

- (a) by omitting “a lump sum” and substituting “an amount”; and
- (b) by omitting “that lump sum” and substituting “that amount”.

Benefit from  
overseas  
rights

**27.** Section 124Z of the Principal Act is amended by inserting “or other subject-matter” after “work”.

**28.** After Division 11A of Part III of the Principal Act the following Division is inserted:

*“Division 11B—Income of Non-resident Companies*

Interpret-  
ation

“128S. (1) In this Division, ‘reduced taxable income’, in relation to a company in relation to a year of income, means the amount ascertained by deducting from the taxable income of the company of that year of income the sum of the following amounts:

- (a) the amount remaining after deducting from the amount of the dividends included in the assessable income of the company of that year of income—
  - (i) any deductions allowable to the company under this Act from income from dividends, being deductions that relate directly to the dividends; and
  - (ii) so much of any other deductions allowable to the company under this Act from income from dividends as, in the opinion of the Commissioner, may appropriately be related to the dividends;
- (b) any amount included in the taxable income of the company of that year of income in accordance with Division 12 or 14;
- (c) the amount (if any) included in the taxable income of the company of that year of income in accordance with section 143, other than an amount included in that taxable income by reason of the application of the proviso to that section;
- (d) if sub-section (1) of section 148 applies to the company in relation to that year of income—the amount (if any) by which the taxable income of the company of that year of income is greater than it would have been if that sub-section had not so applied; and
- (e) where the company is a life assurance company for the purposes of Division 8—
  - (i) so much of the part of the taxable income of the company of that year of income that has been derived from its life assurance business (as reduced by so much of the amount (if any) referred to in paragraph (a) as is included in that part) as bears the same proportion to that part of the taxable income (as so reduced) as the amount of the profits divided for the same year of income among the life assurance policy holders of the company bears to

the total profits divided among those policy holders and the shareholders of the company in respect of the company's life assurance business for the same year of income; or

- (ii) where no profits in respect of the company's life assurance business are divided for the year of income but, by virtue of the company's constituent document, any profits to be divided among the life assurance policy holders of the company are required to be a certain proportion of the total profits to be divided—that proportion of the part of the taxable income of the company of that year of income that has been derived from its life assurance business, reduced by so much of the amount (if any) referred to in paragraph (a) as is included in that part.

“(2) For the purposes of the application of sub-section (1) in relation to a company in relation to a year of income, being a company to which Subdivision B of Division 2A applies in relation to the year of income, there shall be substituted for paragraph (a) of that sub-section the following paragraph:

- ‘(a) so much of any dividends as is deemed to be included in the taxable income of the company of that year of income by reason of the operation of section 50N;’.

“128T. (1) A company that is a non-resident is liable to pay income tax, at the rate declared by the Parliament, upon the reduced taxable income of the company of the year of income that commenced on 1 July 1977 and upon the reduced taxable income of the company of each subsequent year of income.

Liability of  
non-residents  
to pay tax on  
reduced  
taxable  
income

“(2) For the purposes of the application of sub-section (1) in relation to a company in relation to the year of income that commenced on 1 July 1977, the reference in that sub-section to the reduced taxable income of the company of that year of income shall be construed as a reference to so much only of that reduced taxable income as bears to that reduced taxable income the same proportion as the number of days in the period that commenced on 4 November 1977 and ended at the expiration of that year of income of the company bears to 365.

“(3) Income tax payable by a company in accordance with sub-section (1) is in addition to any other income tax payable by the company in respect of its taxable income of the year of income.

“(4) Income tax payable by a company in accordance with sub-section (1) shall, for the purposes of this Act other than this Division, be deemed to be income tax payable by the company under this Act in respect of its taxable income of the year of income.”.

- Amendment of assessments**     **29.** Section 170 of the Principal Act is amended—
- (a) by inserting in sub-section (10) “, section 105AB” after “section 105AA”; and
  - (b) by inserting in sub-section (13) “section 50H (other than paragraphs (a), (b) and (c) of sub-section (1) of that section), section 50K,” after “to the provisions of”.
- Cancellation of registration of tax agents**     **30.** Section 251K of the Principal Act is amended by omitting sub-section (6).
- Application of amendments relating to industrial property**     **31.** (1) Subject to this section, the amendments made by this Act to Division 10B of Part III of the Principal Act apply to assessments made after the commencement of this Act in respect of income of any year of income.
- (2) The amendment made by paragraph 19(a) applies to assessments in respect of income of the year of income commencing on 1 July 1978 and to assessments in respect of income of all subsequent years of income.
- (3) The following provisions of Division 10B of Part III of the *Income Tax Assessment Act* 1936 as amended and in force at any time after the commencement of this Act, namely, sub-sections 124R (2) and (3), 124S (2), 124T (2) and 124W (3), (4) and (5), apply only in relation to transactions entered into after 27 April 1978.

## NOTES

1. Act No. 172, 1978; assented to 28 November 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; Nos. 57, 126 and 127, 1977; and Nos. 57, 87, 90, 123 and 171, 1978.