

Income Tax Assessment Amendment Act 1979

No. 12 of 1979

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 1979*.¹ Short title, &c.

(2) The *Income Tax Assessment Act 1936*² 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.¹ Commencement

3. (1) Section 6C of the Principal Act is amended by inserting after sub-section (1) the following sub-section: Source of royalty income derived by non-resident

“(1A) For the purposes of Division 5 and Division 6 of Part III, but subject to sub-sections (3) and (4), income to which this section applies shall be deemed to be attributable to sources in Australia.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

4. (1) Section 24F of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section: Exemption from tax of certain income derived from sources outside Australia

“(1) Subject to sub-sections (2), (3) and (4), this section applies to—

(a) income derived (otherwise than as a trustee) from sources outside Australia by a person being a Territory resident or by a company being a Territory company in relation to the year of income; and

(b) income derived from sources outside Australia by a trustee of a trust that is a Territory trust in relation to the year of income.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

Certain
items of
assessable
income

5. (1) Section 26 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

“(b) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust, not being—

- (i) amounts that are included in the assessable income of a beneficiary of a trust estate in pursuance of section 97 or 99B; or
- (ii) amounts in respect of which a trustee of a trust estate is assessed and liable to pay tax in pursuance of section 98, 99 or 99A.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

6. After section 82KG of the Principal Act the following Subdivision is inserted in Division 3 of Part III:

“*Subdivision D—Losses and Outgoings Incurred under Certain Tax Avoidance Schemes*

Interpret-
ation

“82KH. (1) In this Subdivision, unless the contrary intention appears—

‘agreement’ means any agreement, arrangement, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings;

‘associate’, in relation to a taxpayer, means—

- (a) in the case of a taxpayer who is a natural person, other than a taxpayer in the capacity of a trustee—
 - (i) a relative of the taxpayer;
 - (ii) a partner of the taxpayer;
 - (iii) if a person who is an associate of the taxpayer by virtue of sub-paragraph (ii) is a natural person—the spouse or a child of that person;
 - (iv) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of another sub-paragraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnership or trusts; or
- (v) a company where—

- (A) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the

taxpayer, of another person who is an associate of the taxpayer by virtue of another sub-paragraph of this paragraph, of a company that is in an associate of the taxpayer by virtue of another application of this sub-paragraph or of any 2 or more such persons; or

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

would be associates of that person by virtue of paragraph (a), by virtue of clause (A), by virtue of another sub-paragraph of this paragraph or by virtue of paragraph (c) are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the taxpayer company;

(v) another company where—

(A) the other company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the taxpayer company, of a person who is an associate of the taxpayer company by virtue of another sub-paragraph of this paragraph, of a company that is an associate of the taxpayer company by virtue of another application of this sub-paragraph or of any 2 or more such persons; or

(B) the taxpayer company is, the persons who are associates of the taxpayer company by virtue of clause (A) and the other sub-paragraphs of this paragraph are, or the taxpayer company and the persons who are associates of the taxpayer company by virtue of that clause and those sub-paragraphs are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company; or

(vi) any other person who, if a third person who is an associate of the taxpayer company by virtue of sub-paragraph (iv) were the taxpayer, would be an associate of that third person by virtue of paragraph (a), by virtue of another sub-paragraph of this paragraph or by virtue of paragraph (c);

(c) in the case of a taxpayer in the capacity of a trustee of trust estate—

(i) any person who benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust estate, either directly or through any interposed companies, partnerships or trust;

- (ii) where a person who is an associate of the taxpayer by virtue of sub-paragraph (i) is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of paragraph (a) or this paragraph; or
 - (iii) where a person who is an associate of the taxpayer by virtue of sub-paragraph (i) or (ii) is a company—any person who, if that company were the taxpayer, would be an associate of that company by virtue of paragraph (b) or this paragraph; or
- (d) in the case of a taxpayer being a partnership—
- (i) a partner in the partnership;
 - (ii) where any partner in the partnership is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of paragraph (a) or (c); or
 - (iii) where any partner in the partnership is a company—any person who, if the company were the taxpayer, would be an associate of the company by virtue of paragraph (b) or (c);

‘property’ includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property;

‘tax avoidance agreement’ means an agreement 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 agreement 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 agreement had not been entered into or carried out.

“(2) A reference in this Subdivision to the supply of goods or the provision of services shall be read as not including a reference to the making available of money by way of loan.

“(3) For the purposes of this Subdivision, an agreement shall be taken to have been entered into or carried out for a particular purpose, or for purposes that included a particular purpose, if any of the parties to the agreement entered into or carried out the agreement for that purpose, or for purposes that included that purpose, as the case may be.

“(4) A reference in this Subdivision to a person shall be read as including a reference to a person in the capacity of a trustee.

Deduction
not
allowable in
respect of
certain
pre-paid
outgoings

“82KJ. Where—

- (a) a loss or outgoing in respect of which a deduction would, but for this section, be allowable, was incurred by a taxpayer after 19 April 1978 by reason of, as a result of or as part of a tax avoidance agreement;
- (b) having regard to the benefit in respect of which the loss or outgoing was incurred (but without regard to any benefit relating to the acquisition or possible acquisition of the property referred to in paragraph (c)), the amount of the loss or outgoing was greater than the amount (if any) that might reasonably be expected to have been incurred, at the time when the loss or outgoing was incurred, in respect of that benefit if the loss or outgoing had not been incurred by reason of, as a result of or as part of a tax avoidance agreement;
- (c) property has been, will be, or may reasonably be expected to be, acquired by the taxpayer or by an associate of the taxpayer as a result of, by reason of, or as part of the tax avoidance agreement; and
- (d) the consideration (if any) that was payable in respect of the acquisition of that property was less, or the consideration that may reasonably be expected to be payable in respect of the acquisition of that property is less, than the consideration that might reasonably be expected to have been payable, or to be payable, as the case may be, in respect of the acquisition of that property if the loss or outgoing had not been incurred,

notwithstanding any other provision of this Act, a deduction is not allowable to the taxpayer in respect of the loss or outgoing.

Schemes
designed to
postpone tax
liability

“82KK. (1) This section applies to a loss or outgoing incurred by a taxpayer if—

- (a) the loss or outgoing was incurred after 19 April 1978 and was incurred to an associate of the taxpayer;
- (b) a deduction is allowable to the taxpayer in respect of that loss or outgoing; and
- (c) the deduction allowable in respect of that loss or outgoing would, but for this section, be allowable to the taxpayer in the year of income in which the loss or outgoing was incurred and—
 - (i) in a case where the loss or outgoing is in respect of interest that, if it had actually been paid, would be subject to withholding tax under Division 11A—the withholding tax payable in respect of the whole or a part of the interest is not payable until a time occurring in a subsequent year of income; and

- (ii) in any other case—the whole or a part of the amount incurred to the associate will not be included in the assessable income of the associate until a subsequent year of income.

“(2) Notwithstanding any other provision of this Act, where—

- (a) a taxpayer incurs in a year of income (in this sub-section referred to as the ‘relevant year of income’) a loss or outgoing (not being a loss or outgoing in respect of the supply of goods or the provision of services at a time that occurs after, or during a period that occurs after or extends beyond, the end of the relevant year of income) and the loss or outgoing is a loss or outgoing to which this section applies; and
- (b) the loss or outgoing was incurred by reason of, as a result of, as part of or in connection with an agreement, course of conduct or course of business that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that—
 - (i) in a case where the loss or outgoing is in respect of interest that, if it had actually been paid, would be subject to withholding tax under Division 11A—the withholding tax payable in respect of the whole or a part of the interest will not be payable until a time occurring in a subsequent year of income; and
 - (ii) in any other case—the whole or a part of the amount incurred to the associate would not be included in the assessable income of the associate until a subsequent year of income,

the loss or outgoing shall, for the purposes of this Act, be deemed to have been incurred by the taxpayer in the relevant year of income and in any subsequent year of income only to the extent to which the loss or outgoing represents an amount actually paid during the relevant year of income or that subsequent year of income by the taxpayer to the person to whom the loss or outgoing is incurred.

“(3) Notwithstanding any other provision of this Act but subject to sub-section (4), where—

- (a) a taxpayer incurs in a year of income a loss or outgoing in respect of the supply of goods or the provision of services at a time that occurs after, or during a period that occurs after or extends beyond, the end of the year of income and the loss or outgoing is a loss or outgoing to which this section applies; and
- (b) the loss or outgoing was incurred by reason of, as a result of or as part of an agreement that was entered into or carried out for the purpose, or for purposes that included the purpose, of securing that—

- (i) a deduction would be allowable to the taxpayer in a year of income in respect of the loss or outgoing; and
- (ii) the whole or a part of the amount of the loss or outgoing would not be included in the assessable income of the person to whom the loss or outgoing was incurred until a subsequent year of income,

that loss or outgoing shall, for the purposes of this Act, be deemed to have been incurred by the taxpayer in the year of income in which, or in the years of income in which, goods to which the loss or outgoing relates are supplied or services to which the loss or outgoing relates are provided.

“(4) Where, by virtue of sub-section (3), a loss or outgoing incurred by a taxpayer in respect of the supply of goods or the provision of services is deemed to have been incurred by the taxpayer in each of 2 or more years of income, there shall be allowable as a deduction to the taxpayer in each such year of income so much only of the amount that, apart from this section, would be allowable as a deduction in respect of the loss or outgoing as the Commissioner considers reasonable having regard to the extent to which the goods in respect of which the loss or outgoing was incurred were supplied or the services in respect of which the loss or outgoing was incurred were provided, in each of those years of income.”.

7. (1) Section 90 of the Principal Act is repealed and the following section substituted:

Interpretation

“90. In this Division—

‘exempt income’, in relation to a partnership, means the exempt income of the partnership calculated as if the partnership were a taxpayer who was a resident;

‘net income’, in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership were a taxpayer who was a resident, less all allowable deductions except the concessional deductions and deductions allowable under section 80 or 80AA;

‘partnership loss’, in relation to a partnership, means the excess (if any) of the allowable deductions, other than the concessional deductions and deductions allowable under section 80 or 80AA, over the assessable income of the partnership calculated as if the partnership were a taxpayer who was a resident.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

8. (1) Section 92 of the Principal Act is repealed and the following section substituted:

“92. (1) The assessable income of a partner in a partnership shall include— Income and deductions of partner

- (a) so much of the individual interest of the partner in the net income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the net income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

“(2) Where a partnership loss is incurred by a partnership in a year of income, there shall be allowable as a deduction to a partner in the partnership—

- (a) so much of the individual interest of the partner in the partnership loss as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the partnership loss as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

“(3) The exempt income of a partner in a partnership shall include—

- (a) so much of the individual interest of the partner in the exempt income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the exempt income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

9. (1) Section 94 of the Principal Act is amended—

- (a) by inserting after sub-section (8) the following sub-section:

“(8A) In forming an opinion for the purposes of sub-section (8) as to whether it is unreasonable that this section should apply in relation to any of the net income of a trust estate, the Commissioner shall take into consideration the extent (if any) to which that net income represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia.”; and

- (b) by omitting from sub-section (13) the definition of “share in the net income of a partnership” and substituting the following definition:

“ ‘share in the net income of a partnership’, in relation to a partner, means—

Partner not having control and disposal of share in partnership income

- (a) so much of the individual interest of the partner in the net income of the partnership and of any income derived by the partner from the partnership otherwise than as a partner as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the net income of the partnership and of any income derived by the partner from the partnership otherwise than as a partner as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.”.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

Heading to
Division 6 of
Part III

10. (1) The heading to Division 6 of Part III of the Principal Act is omitted and the following heading substituted:

“Division 6—Trust Income”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

11. (1) Section 95 of the Principal Act is repealed and the following sections are substituted:

Interpret-
ation

“95. (1) In this Division—

‘exempt income’, in relation to a trust estate, means the exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident;

‘net income’, in relation to a trust estate, means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of that income and were a resident, less all allowable deductions, except the concessional deductions and deductions under Division 16C and except also, in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate, or in respect of any life tenant, the deductions allowable under section 80 or section 80AA in respect of such of the losses of previous years as are required to be met out of corpus.

“(2) For the purposes of this Division, a trust estate shall be taken to be a resident trust estate in relation to a year of income if—

- (a) a trustee of the trust estate was a resident at any time during the year of income; or
- (b) the central management and control of the trust estate was in Australia at any time during the year of income.

“95A. For the purposes of this Act, where a beneficiary of a trust estate is presently entitled to any income of the trust estate, the beneficiary shall be taken to continue to be presently entitled to that income notwithstanding that the income is paid to, or applied for the benefit of, the beneficiary.”

Special provisions relating to present entitlement

(2) Subject to sub-section (3), the amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

(3) For the purposes of the application of section 95A of the *Income Tax Assessment Act* 1936 for the purposes of section 100A of that Act, section 95A of that Act applies to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

12. (1) Section 97 of the Principal Act is repealed and the following section substituted:

“97. Where a beneficiary of a trust estate who is not under any legal disability is presently entitled to a share of the income of the trust estate—

Beneficiary not under any legal disability

(a) the assessable income of the beneficiary shall include—

- (i) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (ii) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia; and

(b) the exempt income of the beneficiary shall include—

- (i) so much of the individual interest of the beneficiary in the exempt income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (ii) so much of the individual interest of the beneficiary in the exempt income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia,

except to the extent to which the exempt income to which that individual interest relates was taken into account in calculating the net income of the trust estate.”

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

13. (1) Section 98 of the Principal Act is repealed and the following section substituted:

Beneficiary
under legal
disability

“98. Where a beneficiary of a trust estate who is under a legal disability is presently entitled to a share of the income of the trust estate, the trustee of the trust estate shall be assessed and liable to pay tax in respect of—

- (a) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was a resident; and
- (b) so much of that share of the net income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia,

as if it were the income of an individual and were not subject to any deduction other than the concessional deductions (if any) that would have been allowable to the beneficiary if the beneficiary had been assessed in respect of the amount, or the sum of the amounts, applicable by virtue of paragraphs (a) and (b).”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

Certain trust
income to be
taxed as
income of an
individual

14. (1) Section 99 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) Where there is no part of the net income of a resident trust estate—

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia,

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate as if it were the income of an individual who was a resident and were not subject to any deduction.

“(3) Where there is a part of the net income of a resident trust estate—

- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
- (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia,

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate as if it were the income of an individual who was a resident and were not subject to any deduction.

“(4) Where there is no part of the net income of a trust estate that is not a resident trust estate—

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that is attributable to sources out of Australia,

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate as if it were the income of an individual and were not subject to any deduction.

“(5) Where there is a part of the net income of a trust estate that is not a resident trust estate—

- (a) that is attributable to sources in Australia;
- (b) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97; and
- (c) in respect of which the trustee of the trust estate is not assessed and is not liable to pay tax in pursuance of section 98,

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate as if it were the income of an individual and were not subject to any deduction.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

15. (1) Section 99A of the Principal Act is amended—

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

Certain trust income to be taxed at special rate

“(4) Where there is no part of the net income of a resident trust estate—

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia,

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

“(4A) Where there is a part of the net income of a resident trust estate—

- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
- (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia,

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

“(4B) Where there is no part of the net income of a trust estate that is not a resident trust estate—

- (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
- (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or
- (c) that is attributable to sources out of Australia,

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.

“(4C) Where there is a part of the net income of a trust estate that is not a resident trust estate—

- (a) that is attributable to sources in Australia;
- (b) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97; and
- (c) in respect of which the trustee of the trust estate is not assessed and is not liable to pay tax in pursuance of section 98,

the trustee shall be assessed and is liable to pay tax on that part of the net income of the trust estate at the rate declared by the Parliament for the purposes of this section.”; and

- (b) by omitting from sub-section (5) “last preceding sub-section” and substituting “preceding provisions of this section”.

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

16. (1) After section 99A of the Principal Act the following sections are inserted:

“99B. (1) Where, at any time during a year of income, an amount, being property of a trust estate, is paid to, or applied for the benefit of, a beneficiary of the trust estate who was a resident at any time during the year of income, the assessable income of the beneficiary of the year of income shall, subject to sub-section (2), include that amount. Receipt of trust income not previously subject to tax

“(2) The amount that, but for this sub-section, would be included in the assessable income of a beneficiary of a trust estate under sub-section (1) by reason that an amount, being property of the trust estate, was paid to, or applied for the benefit of, the beneficiary shall be reduced by so much (if any) of the amount, as represents—

- (a) corpus of the trust estate (except to the extent to which it is attributable to amounts derived by the trust estate that, if they had been derived by a taxpayer being a resident, would have been included in the assessable income of that taxpayer of a year of income);
- (b) an amount that, if it had been derived by a taxpayer being a resident, would not have been included in the assessable income of that taxpayer of a year of income; or
- (c) an amount—
 - (i) that is or has been included in the assessable income of the beneficiary in pursuance of section 97; or
 - (ii) in respect of which the trustee of the trust estate is or has been assessed and liable to pay tax in pursuance of section 98, 99 or 99A.

“99C. (1) In determining for the purposes of section 99B whether any amount has been applied for the benefit of a beneficiary of a trust estate, regard shall be had to all benefits that have accrued at any time to the beneficiary (whether or not the beneficiary had rights at law or in equity in or to those benefits) as a result of the derivation of, or in relation to, that amount, irrespective of the nature or form of the benefits. Determining whether property is applied for benefit of beneficiary

“(2) Without limiting the generality of sub-section (1), an amount shall be taken, for the purposes of section 99B, to have been applied for the benefit of a beneficiary if—

- (a) whether by re-investment, accumulation, capitalization or otherwise, and whether directly or indirectly, the amount has been so dealt with that it will, at a future time, and whether in the form of income or not, enure for the benefit of the beneficiary;
- (b) the derivation of the amount has operated to increase the value to the beneficiary of any property or rights of any kind held by or for the benefit of the beneficiary;
- (c) the beneficiary has received or become entitled to receive any benefit (including a loan or a repayment, in whole or in part, of a loan, or any other payment of any kind) provided directly or

indirectly out of that amount or out of property or money that was available for the purpose by reason of the derivation of the amount;

- (d) the beneficiary has power, by means of the exercise by the beneficiary of any power of appointment or revocation or otherwise, to obtain, whether with or without the consent of any other person, the beneficial enjoyment of the amount; or
- (e) the beneficiary has directly or indirectly assigned to another person his interest in the amount or is able, in any manner whatsoever, and whether directly or indirectly, to control the application of that interest.

Refund of
tax to non-
resident
beneficiary

“99D. (1) Where—

- (a) a trustee of a trust estate has been assessed and was liable to pay tax in pursuance of sub-section (2) or (3) of section 99 or sub-section (4) or (4A) of section 99A in respect of the net income or a part of the net income of the trust estate of a year of income (in this sub-section referred to as the ‘relevant year of income’), being the year of income that commenced on 1 July 1978 or a subsequent year of income;
- (b) the amount (in this sub-section referred to as the ‘relevant tax amount’) of the tax so assessed in respect of that net income or that part of that net income has been paid;
- (c) the trustee of the trust estate has, in accordance with the terms of the trust, paid an amount (in this sub-section referred to as the ‘distributed amount’) of the income of the trust estate of the relevant year of income to a beneficiary of the trust estate;
- (d) before the expiration of 60 days after the date on which the payment was made, or within such further period as the Commissioner allows, the beneficiary, by writing signed by or on behalf of the beneficiary, makes an application to the Commissioner for a refund under this section in relation to the distributed amount; and
- (e) the beneficiary satisfies the Commissioner that the whole or a part (which whole or part, as the case may be, is in this sub-section referred to as the ‘non-Australian distributed amount’) of the distributed amount—
 - (i) is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia;
 - (ii) was taken into account in calculating the net income of the trust estate of the relevant year of income; and
 - (iii) is not income that, by the operation of section 100A, is deemed not to have been paid to or applied for the benefit of the beneficiary or to be income to which the beneficiary is not presently entitled,

the Commissioner shall, subject to sub-section (2), refund to the beneficiary so much (if any) of the relevant tax amount as is attributable to the non-Australian distributed amount, reduced by so much of any refund or credit to which the trustee is or was entitled in respect of the relevant tax amount as is attributable to the non-Australian distributed amount.

“(2) The Commissioner may refuse to make a refund of tax in relation to an amount paid to a beneficiary of a trust estate if the Commissioner considers that the whole or a part of that amount was paid to the beneficiary by the trustee for the purpose or for purposes that included the purpose of enabling the beneficiary to become entitled to a refund of tax under this section in relation to that amount.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

17. (1) Section 100 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

- “(1) The assessable income of any beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate or derives income from any other source, shall include—
- (a) so much of the individual interest of the beneficiary in the net income of the trust estate or of each of the trust estates as is attributable to a period when the beneficiary was a resident; and
 - (b) so much of the individual interest of the beneficiary in the net income of the trust estate or of each of the trust estates as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

18. (1) After section 100 of the Principal Act the following section is inserted:

“100A. (1) Where—

- (a) apart from this section, a beneficiary of a trust estate who is not under any legal disability is presently entitled to a share of the income of the trust estate; and
- (b) the present entitlement of the beneficiary to that share or to a part of that share of the income of the trust estate (which share or part, as the case may be, is in this sub-section referred to as the ‘relevant trust income’) arose out of a reimbursement agreement or arose by reason of any act, transaction or circumstance that occurred in connection with, or as a result of, a reimbursement agreement,

Beneficiary under disability deriving income from other sources

Present entitlement arising from reimbursement agreement

the beneficiary shall, for the purposes of this Act, be deemed not to be, and never to have been, presently entitled to the relevant trust income.

“(2) Where—

- (a) apart from this section, a beneficiary of a trust estate who is not under any legal disability would, by reason that income of the trust estate was paid to, or applied for the benefit of, the beneficiary, be deemed to be presently entitled to income of the trust estate; and
- (b) that income or a part of that income (which income or part, as the case may be, is in this sub-section referred to as the ‘relevant trust income’) was paid to, or applied for the benefit of, the beneficiary as a result of a reimbursement agreement or as a result of any act, transaction or circumstance that occurred in connection with, or as a result of, a reimbursement agreement,

the relevant trust income shall, for the purposes of this Act, be deemed not to have been paid to, or applied for the benefit of, the beneficiary.

“(3) In the preceding provisions of this section—

- (a) a reference to income of a trust estate to which a beneficiary is, apart from this section, presently entitled shall be read as not including a reference to—
 - (i) income of the trust estate to which the beneficiary is presently entitled in the capacity of a trustee of another trust estate; or
 - (ii) income that was paid to, or applied for the benefit of, the beneficiary before 12 June 1978; and
- (b) a reference to income of a trust estate that was paid to, or applied for the benefit of, a beneficiary of the trust estate shall be read as not including a reference to—
 - (i) income of the trust estate that was paid to, or applied for the benefit of, the beneficiary in the capacity of a trustee of another trust estate; or
 - (ii) income of the trust estate that was paid to, or applied for the benefit of, the beneficiary before 12 June 1978.

“(4) Where sub-section (1) or (2) applies in relation to any income of a trust estate of a year of income—

- (a) in the application of this Division in relation to the trust estate in relation to the year of income, section 99A shall be read as if sub-sections (2), (3) and (5) of that section were omitted; and
- (b) for the purposes of any application of section 99A in relation to the trust estate in relation to the year of income, the trust estate shall be deemed to be a resident trust estate.

“(5) For the purposes of sub-section (1), but without limiting the generality of that sub-section, where—

- (a) a reimbursement agreement was entered into at or after the time when a person became a beneficiary of a trust estate (whether the person became a beneficiary of the trust estate before or after the commencement of this section); and
- (b) the amount (in this sub-section referred to as the 'increased amount') of the share of the income of the trust estate to which the beneficiary is presently entitled exceeds the amount (in this sub-section referred to as the 'original amount') of the income of the trust estate to which the beneficiary would have been, or could reasonably be expected to have been, presently entitled if the reimbursement agreement had not been entered into or if an act, transaction or circumstance that occurred in connection with, or as a result of, the reimbursement agreement had not occurred,

the present entitlement of the beneficiary to so much of the increased amount as exceeds the original amount shall be taken to have arisen out of the reimbursement agreement.

“(6) For the purposes of sub-section (2), but without limiting the generality of that sub-section, where—

- (a) a reimbursement agreement was entered into at or after the time when a person became a beneficiary of a trust estate (whether the person became a beneficiary of the trust estate before or after the commencement of this section); and
- (b) income of the trust estate was paid to, or applied for the benefit of, the beneficiary and the amount (in this sub-section referred to as the 'increased amount') of that income exceeds the amount (in this sub-section referred to as the 'original amount') that would have been, or could reasonably be expected to have been, paid to, or applied for the benefit of, the beneficiary if the reimbursement agreement had not been entered into or if an act, transaction or circumstance that occurred in connection with, or as a result of, the reimbursement agreement had not occurred,

so much of the increased amount as exceeds the original amount shall be taken to be income of the trust estate that was paid to, or applied for the benefit of, the beneficiary as a result of the reimbursement agreement.

“(7) Subject to sub-section (8), a reference in this section, in relation to a beneficiary of a trust estate, to a reimbursement agreement shall be read as a reference to an agreement, whether entered into before or after the commencement of this section, that provides for the payment of money or the transfer of property to, or the provision of services or other benefits for, a person or persons other than the beneficiary or the beneficiary and another person or other persons.

“(8) A reference in sub-section (7) to an agreement shall be read as not including a reference to an agreement that was not entered into for the purpose, or for purposes that included the purpose, of securing that a

person who, if the agreement had not been entered into, 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 agreement had not been entered into.

“(9) For the purposes of sub-section (8), an agreement shall be taken to have been entered into for a particular purpose, or for purposes that included a particular purpose, if any of the parties to the agreement entered into the agreement for that purpose, or for purposes that included that purpose, as the case may be.

“(10) A reference in sub-section (7) to the payment of money to a person or persons shall be read as including a reference to the payment of money to a person or persons by way of loan.

“(11) A reference in this section to a person shall be read as including a reference to a person in the capacity of a trustee.

“(12) For the purposes of this section, an agreement that provides for a person to release, abandon, fail to demand payment of or postpone payment of, a debt owed by another person shall be deemed to be an agreement that provides for the payment of money to that other person.

“(13) In this section—

‘agreement’ means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, but does not include an agreement, arrangement or understanding entered into in the course of ordinary family or commercial dealing;

‘property’ includes a chose in action and also includes an estate, interest, right or power, whether at law or in equity, in or over property.”.

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

**Revocable
trusts**

19. (1) Section 102 of the Principal Act is amended by inserting after sub-section (2A) the following sub-section:

“(2B) In the application of sub-section (2) in determining the amount of tax that is payable by a trustee of a trust estate in pursuance of this section, the reference in that sub-section to the net income of the trust estate shall be read as a reference to that net income reduced by so much (if any) of that net income as is attributable to a period when the person who created the trust was not a resident and is also attributable to sources out of Australia.”.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1978 and in respect of income of all subsequent years of income.

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

- (a) by inserting in sub-section (10) “section 82KJ, section 82KK,” after “section 82D,”; and
- (b) by inserting in sub-section (10) “section 100A,” after “section 82SA,”.

Amendment
of
assessments

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

21. After section 252 of the Principal Act the following section is inserted:

“252A. (1) Where, at any time after the expiration of the period of 90 days after the commencement of this section—

Public officer
of trust estate

- (a) any business of a trust estate is carried on in Australia or any income from property (not being solely income in respect of which tax is payable under Division 11A of Part III) is derived by a trust estate from sources in Australia;
- (b) there is not a trustee of the trust estate who is a resident;
- (c) there is not in force in relation to the trust estate an exemption granted by the Commissioner under sub-section (3); and
- (d) there is not in force in relation to the trust estate an appointment of a public officer made in accordance with sub-section (5), being a public officer who is a resident,

each person who, at that time, is a trustee of the trust estate is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$4 for each day, after the expiration of 90 days after the commencement of this section and before the institution of proceedings in respect of the offence, on which the circumstances set out in paragraphs (a), (b), (c) and (d) were in existence, other than a day that has previously been taken into account in determining the maximum penalty that could be imposed in respect of another offence against this section of which the trustee was convicted in relation to the same trust estate.

“(2) A reference in sub-section (1) to the period of 90 days after the commencement of this section shall, in the application of that sub-section in relation to a trust estate that, before the commencement of this section, did not carry on any business in Australia or derive income from property (not being solely income in respect of which tax is payable under Division 11A of Part III) from sources in Australia, be read as a reference to the period of 90 days after the date on which any business of the trust estate is commenced to be carried on in Australia, or the date on which the trust estate commences to derive such income from sources in Australia, whichever first occurs.

“(3) The Commissioner may, by writing signed by him, grant to the trustee of a trust estate an exemption from the provisions of sub-section (1) in relation to the trust estate.

“(4) An exemption under sub-section (3) may be granted unconditionally or on such conditions as the Commissioner thinks fit and may be granted without limitation as to time or may be granted in respect of a period specified in the exemption.

“(5) An appointment of a public officer of a trust estate for the purposes of this section shall be made by giving notice in writing to the Commissioner—

- (a) that is signed by a trustee of the trust estate or by a duly authorized agent or attorney of a trustee of a trust estate; and
- (b) that specifies the name of the public officer and an address in Australia for service upon the public officer of any documents that are required or permitted by or under this Act or the regulations to be served upon the public officer of the trust estate.

“(6) The appointment of a public officer of a trust estate ceases to be in force if the public officer dies or lodges with the Commissioner a notice of his resignation as public officer of the trust estate.

“(7) Where, by or under this Act or the regulations—

- (a) a document is permitted to be served upon or given to the trustee of a trust estate; or
- (b) a requisition is permitted or required to be made upon the trustee of a trust estate,

that document shall be deemed to have been served upon or given to the trustee if it is served upon the public officer of the trust estate or at the address for service of the public officer of the trust estate, or that requisition shall be deemed to have been made upon the trustee if it is made upon the public officer of the trust estate, as the case may be.

“(8) A reference in sub-section (7) to the service of a document upon the public officer of a trust estate, or the making of a requisition upon the public officer of a trust estate, shall, if there is not in force an appointment under this section of a public officer in relation to the trust estate, be read as a reference to any person acting or appearing to act in the business of the trust estate.

“(9) The public officer of a trust estate shall be answerable for the doing of all such things as are required to be done by the trustee of the trust estate under this Act or the regulations, and in case of default shall be liable to the same penalties.

“(10) Where any proceedings for an offence against this Act or the regulations are taken against the public officer, those proceedings shall be deemed to have also been taken against the trustee or trustees of the

trust estate and the trustee or trustees shall be liable jointly with the public officer for any penalty in respect of the offence.

“(11) Notwithstanding the preceding provisions of this section and without affecting any of the obligations or liabilities of the public officer of a trust estate, any notice, process or proceeding that, under this Act or the regulations, may be given to, served upon or taken against the trustee or public officer of the trust estate may, if the Commissioner thinks fit, be given to, served upon or taken against any agent or attorney of the trustee of the trust estate and that agent or attorney shall have the same liability in respect of that notice, process or proceeding as the trustee or public officer would have had if it had been given to, served upon or taken against the trustee or public officer.

“(12) Everything done by the public officer of a trust estate that he is required to do in his capacity of public officer shall be deemed to have been done by the trustee of the trust estate.

“(13) The absence or non-appointment of a public officer shall not excuse the trustee of a trust estate from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply with any of those provisions, but the trustee shall be liable to the provisions of this Act and the regulations as if there were no requirement to appoint a public officer.”

NOTES

1. Act No. 12, 1979; assented to 13 March 1979.
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. 36, 57, 87, 123, 171 and 172, 1978.