



# **Income Tax Assessment Amendment Act (No. 3) 1984**

**No. 47 of 1984**

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# Income Tax Assessment Amendment Act (No. 3) 1984

No. 47 of 1984

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## An Act to amend the law relating to income tax

[Assented to 25 June 1984]

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

### Short title, &c.

1. (1) This Act may be cited as the *Income Tax Assessment Amendment Act (No. 3) 1984*.

(2) The *Income Tax Assessment Act 1936*<sup>1</sup> is in this Act referred to as the Principal Act.

### Commencement

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

### Interpretation

3. Section 6 of the Principal Act is amended—

- (a) by omitting “or 77D” from paragraph (a) of the definition of “apportionable deductions” in sub-section (1) and substituting “, 77D or 77F”; and
- (b) by omitting “, section 79” from paragraph (a) of the definition of “apportionable deductions” in sub-section (1).

**Cost of certain shares**

4. Section 6BA of the Principal Act is amended by omitting from sub-section (1) “and sub-section 79 (23)”.

**Officers to observe secrecy**

5. Section 16 of the Principal Act is amended—

- (a) by omitting from sub-section (5B) “and Resources”;
- (b) by inserting after sub-section (5B) the following sub-section:

“(5BA) Where the Treasurer is satisfied that it is desirable to do so for the purpose of enabling the Government of the Commonwealth to review the operation of the provisions of this Act providing for allowable deductions in respect of moneys paid on shares in companies that hold licences in force under the *Management and Investment Companies Act 1983*, he may, by writing signed by him, request the Commissioner to communicate to him or to another person specified in the request, being a Minister of State, the Secretary to the Department of the Treasury or the Secretary to the Department of Science and Technology, information relating to such matters as are specified in the request, and, notwithstanding anything contained in this section, the Commissioner, or an officer authorized by him, shall communicate information relating to those matters to the person specified in the request.”;

- (c) by omitting from sub-section (5C) “Trade and Resources” and substituting “Trade, the Secretary to the Department of Science and Technology”; and
- (d) by inserting in paragraph (5C) (a) “or (5BA)” after “sub-section (5B)”.

**Exemptions**

6. Section 23 of the Principal Act is amended by inserting after paragraph (kd) the following paragraph:

- “(ke) payments by way of rent subsidy made by, or by an authority of, the Commonwealth, a State or a Territory pursuant to the scheme known as the Mortgage and Rent Relief Scheme, where the payment is made to a person by reason that the person pays, or is liable to pay, rent;”.

**Exemption of income of certain superannuation funds established for benefit of employees**

7. Section 23F of the Principal Act is amended—

- (a) by inserting “or section 23FA” after “this section” in sub-paragraph (2) (h) (iii);
- (b) by omitting from sub-paragraph (2) (h) (iii) “and” (last occurring); and

- (c) by inserting after sub-paragraph (2) (h) (iii) the following sub-paragraph:

“(iiiia) the benefits that have been, are being or may be provided for the employee or his dependants from roll-over annuities within the meaning of Subdivision AA of Division 2; and”.

8. After section 23F of the Principal Act the following sections are inserted:

**Exemption of income of certain approved deposit funds**

“23FA. (1) For the purposes of this section, a fund is an eligible approved deposit fund in relation to a year of income if, at all times during the year of income when the fund is in existence—

- (a) the fund is an indefinitely continuing fund;
- (b) the fund is maintained by an approved trustee, or approved trustees, within the meaning of Subdivision AA of Division 2, solely for approved purposes within the meaning of that Subdivision; and
- (c) the rules of the fund are approved rules within the meaning of that Subdivision.

“(2) Subject to sub-section (3), where—

- (a) but for this sub-section, a fund would not be an eligible approved deposit fund in relation to a year of income by reason that a requirement or requirements of sub-section (1) were not complied with in relation to the year of income; and
- (b) the trustee of the fund satisfies the Commissioner that, by reason of special circumstances that existed in relation to the fund during the year of income, it would be reasonable for the fund to be treated as an eligible approved deposit fund in relation to the year of income,

the fund is an eligible approved deposit fund in relation to the year of income.

“(3) Sub-section (2) does not enable a fund to be treated as an eligible approved deposit fund in relation to a year of income if, at any time during the year of income when the fund was in existence, the fund was not maintained by an approved trustee or approved trustees.

“(4) Where the rules of a fund contain a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, the provision does not prevent the fund from being treated as an indefinitely continuing fund for the purposes of paragraph (1) (a).

“(5) The income derived during the year of income by a fund that is an eligible approved deposit fund in relation to the year of income is exempt from income tax.

**Exemption of income of certain superannuation funds**

“23FB. (1) In this section—

‘dependant’, in relation to a member of a superannuation fund, includes the spouse and any child of the member;

**'superannuation fund', means a provident, benefit, superannuation or retirement fund, not being—**

- (a) a fund of a kind referred to in paragraph 23 (jaa);**
- (b) a fund the income of which is, or, but for Divisions 9B and 9C, would be, exempt from income tax by virtue of paragraph 23 (ja), irrespective of whether that income would be so exempt by virtue of any other paragraph of section 23; or**
- (c) a fund to which section 23F applies in relation to the year of income.**

**“(2) Subject to the succeeding provisions of this section, this section applies, in relation to a year of income, to a superannuation fund if—**

- (a) the fund is an indefinitely continuing fund established and maintained solely for either or both of the following purposes:**
  - (i) the provision of superannuation benefits for each of the members of the fund in the event of the retirement of the member from any business, trade, profession, vocation, calling, occupation or employment in which he is engaged; and**
  - (ii) the provision of superannuation benefits for dependants of each of the members of the fund in the event of the death of the member,**

**or for either or both of those purposes and for such incidental and ancillary purposes as the Commissioner approves;**

- (b) the rights of members of the fund and dependants of members to receive benefits from the fund are fully secured;**
- (c) the right of each member of the fund and his dependants to receive benefits from the fund is defined by the terms and conditions applicable to the fund and notice in writing of the existence of that right was given to the member not later than the time when contributions were first paid to the fund in respect of the member or of his dependants or 31 March 1966, whichever is the later, or before such later date as the Commissioner approves in relation to the member;**
- (d) where a right of a member of the fund or of the dependants of a member to receive benefits from the fund has ceased during the year of income and, at the time of the cessation of the right, a specific part of the amount of the fund was appropriated for the provision of benefits for the member or his dependants—the amount of the benefits the right to receive which has so ceased is applied in the year of income or in the period of 2 months after the year of income, or is to be applied after the year of income in accordance with an undertaking by the trustee of the fund given to, and approved by, the Commissioner, being an undertaking that has effect in relation to the year of income, for all or any of the following purposes:**
  - (i) the provision of the benefits that other members of the fund or their dependants have rights to receive from the fund;**

- (ii) the provision for other members of the fund or their dependants who have rights to receive benefits from the fund of additional benefits on a basis that is reasonable, having regard to all the circumstances; and
    - (iii) any other purposes approved by the Commissioner;
  - (e) where a right of a member of the fund or of the dependants of a member to receive benefits from the fund has ceased during the year of income and, at the time of the cessation of the right, a specific part of the amount of the fund was not appropriated for the provision of benefits for the member or his dependants—any additional benefits that have been, or are to be, provided from the fund for other members of the fund or their dependants by reason of the cessation of the right have been, or are to be, provided on a basis that is reasonable, having regard to all the circumstances; and
  - (f) at all times during the year of income, the terms and conditions that were applicable to the fund—
    - (i) did not permit a member of the fund or dependants of a member to receive, otherwise than in the event of the death, sickness or permanent incapacity for work of the member or in such other circumstances as the Commissioner approves, any benefits from the fund before the fifty-fifth anniversary of the birth of the member;
    - (ii) required that any pension or annuity that a member had a right to receive from the fund was to commence to be paid, and any other benefits that a member had a right to receive from the fund were to be paid, not later than the seventieth anniversary of the birth of the member; and
    - (iii) required that any pensions or annuities that dependants of a member had a right to receive from the fund were to commence to be paid, and any other benefits that dependants of a member had a right to receive from the fund were to be paid, not later than the seventieth anniversary of the birth of the member or were to commence to be paid or were to be paid, as the case may be, in the event of the death of the member before that anniversary,
- and the terms and conditions applicable to the fund during the year of income have been approved by the Commissioner having regard to—
- (g) the reasonableness of the benefits that have been, are being or may be provided for members of the fund or their dependants from the fund, or from any other fund being—
    - (i) a fund of a kind referred to in paragraph 23 (jaa);
    - (ii) a fund any income of which is or has been, or, but for Divisions 9B and 9C, would be or would have been exempt from income tax by virtue of paragraph 23 (ja); or



- (iii) a fund to which this section or section 23F or 23FA applies in relation to the year of income or has applied in relation to a previous year of income;
  - (h) the reasonableness of the benefits that have been, are being or may be provided for members of the fund or their dependants from roll-over annuities within the meaning of Subdivision AA of Division 2;
  - (j) the amount of the fund in relation to the benefits that are being or may be provided for its members; and
  - (k) such other matters as the Commissioner thinks fit,
- and were complied with by the trustee of the fund during the year of income.

“(3) Where a deed or instrument relating to a superannuation fund contains a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, the provision does not prevent the fund from being treated as an indefinitely continuing fund for the purpose of paragraph (2) (a).

“(4) Where the trustee of a superannuation fund has given an undertaking in relation to the fund for the purposes of paragraph (2) (d), he may at any time give a fresh undertaking in relation to that fund for the purposes of that paragraph in substitution for the first-mentioned undertaking but the fresh undertaking does not have effect unless it is approved by the Commissioner.

“(5) An undertaking by the trustee of a superannuation fund for the purposes of paragraph (2) (d)—

- (a) shall be in writing signed by or on behalf of the trustee;
- (b) shall make provision that any amounts to which the undertaking relates will be applied in accordance with the undertaking within a time that is reasonable having regard to all the circumstances of the fund; and
- (c) shall be lodged with the Commissioner.

“(6) Subject to this section, an undertaking approved by the Commissioner in relation to a superannuation fund for the purposes of paragraph (2) (d) has effect in relation to a year of income of the fund if the undertaking was lodged with the Commissioner before or during that year of income of the fund or within 2 months, or such further period as the Commissioner allows, after that year of income of the fund.

“(7) Subject to sub-section (9), where an undertaking approved by the Commissioner in relation to a superannuation fund for the purposes of paragraph (2) (d) was not complied with during a year of income of the fund in relation to which it had effect—

- (a) for the purposes of sub-section (12) and of this Act other than this section, this section shall be deemed not to have applied to the fund in relation to that year of income of the fund; and
- (b) the undertaking does not have effect, and shall be deemed not to have had effect, in relation to any succeeding year of income of the fund.

“(8) Where it appears to the Commissioner that an undertaking referred to in sub-section (7) was not complied with during a year of income, he shall inform the trustee of the fund in writing of the respect in which, in the opinion of the Commissioner, the undertaking was not complied with.

“(9) For the purposes of sub-section (7), the Commissioner shall disregard any failure by a trustee of a superannuation fund to comply during a year of income of the fund with an undertaking if he is satisfied that the trustee of the fund endeavoured in good faith during that year of income to comply with the undertaking and that, in all the circumstances, it would be reasonable to disregard the failure.

“(10) The application of paragraph (7) (b) to an undertaking in relation to a superannuation fund does not prevent the Commissioner approving a fresh undertaking given in relation to the fund.

“(11) Where, by virtue of the terms and conditions that were applicable to a superannuation fund at all times during a year of income—

- (a) a pension or annuity was to commence to be paid from the fund to a member not later than the seventieth anniversary of his birth; and
- (b) a pension or annuity was to commence to be paid from the fund to a dependant of the member in the event of the death of the member,

those terms and conditions shall be deemed, in relation to the last-mentioned pension or annuity, to have complied with the requirements of sub-paragraph (2) (f) (iii) notwithstanding that that pension or annuity might not commence to be paid before the seventieth anniversary of the birth of the member.

“(12) Subject to sub-sections (13), (14) and (15), the income derived during the year of income by a superannuation fund to which this section applies in relation to the year of income is exempt from income tax.

“(13) A dividend paid to a superannuation fund by a company that is a private company in relation to the year of income of the company in which the dividend was paid is not exempt from income tax by virtue of sub-section (12) unless the Commissioner is of the opinion that it would be reasonable to exempt the dividend from income tax, having regard to—

- (a) the paid-up value of the shares in that company that are assets of the fund;
- (b) the cost to the fund of the shares on which the dividend was paid by the company;
- (c) the rate of the dividend paid to the fund by the company on the shares in the company that are assets of the fund;
- (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend;
- (e) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (f) any other matters that the Commissioner considers relevant.

“(14) For the purposes of sub-section (13), income that, in the opinion of the Commissioner, was derived by a superannuation fund indirectly from a dividend paid by a company, being a private company in relation to the year of income of the company in which the dividend was paid, shall be deemed to have been a dividend paid to the fund by the company.

“(15) Income (other than a dividend to which sub-section (13) applies) derived by a superannuation fund from a transaction is not exempt from income tax by virtue of sub-section (12) if the parties to the transaction were not dealing with each other at arm's length in relation to the transaction and that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm's length in relation to the transaction.”.

**Gross income from certain sources**

9. Section 25 of the Principal Act is amended by adding at the end of sub-section (1) “, an amount to which section 26AC or 26AD applies or an eligible termination payment within the meaning of Subdivision AA.”.

10. After section 25 of the Principal Act the following section is inserted:

**Assessable income to include certain profits**

“25A. (1) The assessable income of a taxpayer shall include profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme.

“(2) Subject to sub-section (3), where—

(a) after 23 August 1983, a taxpayer sold or sells property (in this sub-section referred to as the ‘relevant property’) being—

- (i) shares in a private company;
- (ii) an interest in a partnership; or
- (iii) an interest in a private trust estate; and

(b) at the time of sale of the relevant property—

(i) the company, partnership or trustee of the trust estate, as the case may be, held property that—

(A) was acquired for the purpose of profit-making by sale by the company, partnership or trustee, as the case may be; and

(B) was not excepted property of the company, partnership or trust estate, as the case may be; or

(ii) the company, partnership or trustee of the trust estate, as the case may be, held an interest, through one or more interposed companies, partnerships or trusts, in property that—

(A) was acquired for the purpose of profit-making by sale by another private company, partnership or trustee of a private trust estate; and

(B) was not excepted property of that other company, partnership or trust estate, as the case may be, the taxpayer shall, for the purposes of the application of this Act (including any application of any other provision of this section), be deemed to have acquired the relevant property for the purpose of profit-making by sale.

“(3) Sub-section (2) does not apply in relation to the sale by a taxpayer of property where the Commissioner, having regard to—

- (a) the extent to which the assets of the company, partnership or trust estate, as the case may be, referred to in paragraph (2) (a), immediately before the time of sale, consisted of the property referred to in sub-paragraph (2) (b) (i) or the interest referred to in sub-paragraph (2) (b) (ii), as the case may be;
  - (b) the nature and extent, immediately before the time of sale, of the taxpayer’s control of the company, partnership or trust estate, as the case may be, referred to in paragraph (2) (a) including, in the case of a company, the nature and extent of the taxpayer’s shareholding in the company;
  - (c) the circumstances surrounding any other sale, whether or not by the taxpayer, of shares in the company, or an interest in the partnership or trust estate, as the case may be, referred to in paragraph (2) (a), being a sale at a time when the property of that company, partnership or trust estate included the property referred to in sub-paragraph (2) (b) (i) or the interest referred to in sub-paragraph (2) (b) (ii), as the case may be; and
  - (d) such other matters as the Commissioner considers relevant,
- considers that it is not appropriate that that sub-section should apply in relation to the sale of the property by the taxpayer.

“(4) Where—

- (a) a taxpayer acquired or acquires property, being shares in a company, for the purpose of profit-making by sale; and
  - (b) after 23 August 1983—
    - (i) the company issued or issues other shares (in this sub-section referred to as the ‘bonus shares’) to the taxpayer in satisfaction of a dividend (including an amount debited against an amount standing to the credit of a share premium account) payable to the taxpayer in respect of the shares referred to in paragraph (a); or
    - (ii) by reason that the taxpayer was the owner of the shares referred to in paragraph (a), the company issued or issues to the taxpayer rights to acquire other shares in the company,
- the taxpayer shall, for the purposes of the application of this Act (including any other application of this sub-section and any application of any other provision of this section), be deemed to have acquired the bonus shares or the rights, as the case may be, for the purpose of profit-making by sale.

“(5) Where, after 23 August 1983, property was or is acquired by a taxpayer as a result of a transfer in the prescribed manner by a person who acquired the property for the purpose of profit-making by sale, the taxpayer shall, for the purposes of the application of this Act (including any other application of this sub-section and any application of any other provision of this section), be deemed to have acquired the property for the purpose of profit-making by sale.

“(6) Where—

(a) after 23 August 1983, a taxpayer sold or sells property; and

(b) the property sold was—

(i) an interest in property, being property acquired by the taxpayer for the purpose of profit-making by sale; or

(ii) property, or an interest in property, in which was merged an interest in property, being an interest acquired by the taxpayer for the purpose of profit-making by sale,

the taxpayer shall, for the purposes of the application of this Act (including any application of any other provision of this section), be deemed to have acquired the property sold for the purpose of profit-making by sale.

“(7) For the purposes of sub-section (2), where a company, partnership or trustee of a trust estate holds or held property (in this sub-section referred to as the ‘underlying property’) consisting of—

(a) an interest in property, being property acquired by the company, partnership or trustee for the purpose of profit-making by sale; or

(b) property, or an interest in property, in which was merged an interest in property, being an interest acquired by the company, partnership or trustee for the purpose of profit-making by sale,

the company, partnership or trustee, as the case may be, shall be deemed to have acquired the underlying property for the purpose of profit-making by sale.

“(8) Where—

(a) property (in this sub-section referred to as the ‘acquired property’) was or is acquired for the purpose of profit-making by sale; and

(b) after 23 August 1983, property (in this sub-section referred to as the ‘transferred property’) being—

(i) an interest in the acquired property; or

(ii) property, or an interest in property, in which was merged an interest in the acquired property,

was or is transferred to a taxpayer in the prescribed manner,

the taxpayer shall, for the purposes of the application of this Act (including any other application of this sub-section and any application of any other provision of this section), be deemed to have acquired the transferred property for the purpose of profit-making by sale.

“(9) Where a taxpayer sold or sells property that, by virtue of any of the preceding provisions of this section, is deemed to have been acquired by the taxpayer for the purpose of profit-making by sale, so much (if any) of the proceeds of sale as, in the opinion of the Commissioner, is appropriate shall, for the purposes of this Act, be deemed to be profit arising from the sale by the taxpayer of the property.

“(10) For the purposes of the application of sub-section (9) in relation to the sale of property (in this sub-section referred to as the ‘relevant property’) by a taxpayer—

(a) if—

(i) the relevant property is deemed by sub-section (2) to have been acquired by the taxpayer for the purpose of profit-making by sale;

(ii) the property (in this paragraph referred to as the ‘underlying property’) to which sub-sub-paragraph (2) (b) (i) (A) or (2) (b) (ii) (A), as the case may be, applies was actually acquired for the purpose of profit-making by sale by the company, partnership or trustee referred to in that sub-sub-paragraph (which company, partnership or trustee is in this paragraph referred to as the ‘underlying owner’); and

(iii) the relevant property was not transferred to the taxpayer in the prescribed manner,

the Commissioner shall have regard to the extent to which, in his opinion, the proceeds of sale of the relevant property are attributable to the amount of any increase in the value of the underlying property during the period (in this paragraph referred to as the ‘relevant period’) when the underlying property was held by the underlying owner and the relevant property was held by the taxpayer reduced by the amount of any capital expenditure incurred by the underlying owner in respect of the underlying property during the relevant period (not including expenditure in respect of which a deduction has been allowed, or is allowable, to the underlying owner);

(b) if the relevant property is deemed by sub-section (5) to have been acquired by the taxpayer for the purpose of profit-making by sale and the relevant property was actually acquired for the purpose of profit-making by sale by the person (in this paragraph referred to as the ‘transferor’) who transferred the relevant property to the taxpayer in the prescribed manner—the Commissioner shall have regard to the extent to which the amount (if any) that would have been included in the assessable income of the transferor if the transferor had sold the relevant property at the time when it was sold by the taxpayer for an amount of consideration equal to the amount of the consideration

received or receivable by the taxpayer in respect of the sale of the relevant property by the taxpayer exceeds the sum of—

- (i) any expenditure incurred by the taxpayer in respect of the relevant property, not including—
    - (A) any consideration given by the taxpayer in respect of the transfer of the relevant property to the taxpayer; or
    - (B) expenditure to which sub-paragraph (ii) applies;
  - (ii) where the taxpayer incurred expenditure of a capital nature in respect of the relevant property otherwise than—
    - (A) in acquiring property for the purpose of profit-making by sale; or
    - (B) as part of a profit-making undertaking or scheme, an amount equal to so much of the consideration received or receivable by the taxpayer in respect of the sale of the relevant property by the taxpayer as exceeds the amount that, in the opinion of the Commissioner, would have been the consideration received or receivable by the taxpayer if the taxpayer had not incurred that capital expenditure; and
  - (iii) the amount of any profit included in the assessable income of the transferor in respect of the transfer of the relevant property to the taxpayer;
- (c) if the relevant property is deemed to have been acquired by the taxpayer by virtue of the application of this section (either directly or indirectly) in relation to property (in this paragraph referred to as the ‘related property’) that was actually acquired by the taxpayer or by another person or other persons for the purpose of profit-making by sale—the Commissioner shall have regard to the extent to which the relevant property consists of, or is attributable to, the related property;
  - (d) if the relevant property consists of rights to acquire shares in a company, being rights that the taxpayer is deemed by sub-section (4) to have acquired for the purpose of profit-making by sale—the relevant property shall be deemed to have been acquired by the taxpayer at no cost; and
  - (e) if the relevant property consists of bonus shares that the taxpayer is deemed by sub-section (4) to have acquired for the purpose of profit-making by sale—the cost to the taxpayer of the relevant property shall be ascertained in accordance with section 6BA.

“(11) For the purposes of this section, property shall be taken to have been transferred to a person (in this sub-section referred to as the ‘transferee’) in the prescribed manner if—

- (a) the following conditions are satisfied:
  - (i) the property is transferred by way of gift or for consideration the amount or value of which is less than the amount that, in the opinion of the Commissioner, is the value of the property immediately before the time of transfer;

- (ii) the property is transferred otherwise than as a result of—
  - (A) a will, a codicil or an order of a court that varied or modified the provisions of a will or a codicil; or
  - (B) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate; and
- (iii) the Commissioner is satisfied that the transferee and the person who transferred the property were not dealing with each other at arm's length in relation to the transfer of the property; or
- (b) the property—
  - (i) is transferred by way of a distribution of property of a private company or private trust estate made (whether in the course of the winding up of the company or trust estate or otherwise) to the transferee in his capacity as a shareholder in the company or a beneficiary of the trust estate, as the case may be; and
  - (ii) is not excepted property of the company or trust estate, as the case may be.

“(12) In this section—

- (a) a reference to excepted property of a company, partnership or trust estate is a reference to—
  - (i) trading stock of the company, partnership or trustee; or
  - (ii) property being plant or articles within the meaning of section 54 purchased for use by the company, partnership or trustee of the trust estate for the purpose of producing assessable income;
- (b) a reference to a private company is a reference to a company other than a company the shares in which are listed for quotation in the official list of a stock exchange in Australia or elsewhere;
- (c) a reference to a private trust estate is a reference to a trust estate other than a unit trust the units in which are listed for quotation in the official list of a stock exchange in Australia or elsewhere or are ordinarily available for subscription or purchase by the public; and
- (d) a reference to property generally or to a particular kind of property includes a reference to an estate or interest in property or in that kind of property, as the case may be.”.

### **Certain items of assessable income**

**11.** Section 26 of the Principal Act is amended—

- (a) by omitting paragraph (a); and
- (b) by omitting paragraphs (d) and (e) and substituting the following paragraph:

“(e) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or



indirectly to, any employment of or services rendered by him, whether so allowed, given or granted in money, goods, land, meals, sustenance, the use of premises or quarters or otherwise, not being—

- (i) an eligible termination payment within the meaning of Subdivision AA;
- (ii) an amount to which section 26AC or 26AD applies; or
- (iii) an amount that, under any provision of this Act, is deemed to be a dividend paid to the recipient;”.

**Repeal of section 26AA**

12. Section 26AA of the Principal Act is repealed.

**Repeal of section 26AE**

13. Section 26AE of the Principal Act is repealed.

**Assessable income to include value of certain benefits received from or in connection with certain superannuation funds**

14. Section 26AF of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “79” and substituting “23FB”;
- (b) by omitting from sub-section (1) “, notwithstanding paragraph 26 (d),”;
- (c) by omitting from sub-section (2) “79” and substituting “23FB”;
- (d) by omitting “79” (wherever occurring) from paragraph (b) of the definition of “approved terms and conditions” in sub-section (3) and substituting “23FB”;
- (e) by inserting “and Division 9C” after “section 121C” in the definition of “paragraph 23 (ja) fund” in sub-section (3); and
- (f) by omitting from sub-section (3) the definition of “section 79 fund” and substituting the following definition:

“ ‘section 23FB fund’ means—

- (a) a fund the income of which of any year of income is or has been exempt from tax by virtue of section 23FB or would, but for the provisions of Division 9C, be, or have been, exempt from tax by virtue of that section; and
- (b) a fund that was a section 79 fund for the purposes of this section as in force at any time before the commencement of the *Income Tax Assessment Amendment Act (No. 3) 1984*.”.

15. After section 27 of the Principal Act the following Subdivision is inserted:

***“Subdivision AA—Superannuation, termination of employment and kindred payments***

**Interpretation**

“27A. (1) In this Subdivision, unless the contrary intention appears—

‘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;

‘approved deposit fund’ means a fund—

- (a) that was established as an indefinitely continuing fund;
- (b) that was established solely for approved purposes; and
- (c) the rules of which, immediately after the establishment of the fund, were approved rules;

‘approved early retirement scheme payment’, in relation to a taxpayer, means an approved early retirement scheme payment in relation to the taxpayer ascertained under section 27E;

‘approved purposes’, in relation to a fund, means the purposes of—

- (a) receiving on deposit amounts that will be deemed by section 27D to have been expended out of eligible termination payments;
- (b) dealing with such amounts, in accordance with the rules of the fund, in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the fund; and
- (c) repaying to depositors, or the legal personal representatives of depositors, upon request amounts deposited with the fund together with accumulated earnings on such amounts;

‘approved rules’, in relation to a fund, means rules that—

- (a) require the trustee or trustees of the fund to maintain a register of depositors containing the name and current residential address of each depositor;
- (b) require the trustee or trustees of the fund to keep such accounting records as correctly record and explain the transactions of the fund and the financial position of the fund and to keep those accounting records in such manner as will enable—
  - (i) the preparation from time to time of true and fair accounts of the fund; and
  - (ii) the accounts of the fund to be conveniently and properly audited;
- (c) require the repayment to a depositor or the legal personal representative of a depositor of the whole of the amount deposited with the fund by the depositor, together with

accumulated earnings on such amount, not later than the sixty-fifth anniversary of the birth of the depositor;

- (d) prohibit the trustee or trustees of the fund from borrowing money;
- (e) prohibit the trustee or trustees of the fund from lending moneys to, or otherwise investing moneys in, a related entity other than a related entity that is an eligible bank;
- (f) prohibit the trustee or trustees of the fund from paying pensions or annuities to depositors;
- (g) do not permit a depositor or the legal personal representative of a depositor to receive, otherwise than in the form of a repayment of the whole or a part of an amount deposited with the fund by the depositor or accumulated earnings on such an amount, any amount from the fund;
- (h) do not permit a depositor to assign, transfer, mortgage or encumber his interest in an amount deposited with the fund or any accumulated earnings on such an amount; and
- (j) require a certificate of a registered auditor to be obtained, in relation to each financial year or other accounting period of the fund, stating whether, at all times during the financial year or other accounting period—
  - (i) the rules applicable to the fund were approved rules; and
  - (ii) the rules of the fund that were approved rules were complied with;

‘approved trustee’ means a trustee that is—

- (a) a life assurance company;
- (b) an eligible bank;
- (c) an eligible financial corporation;
- (d) a registered organization;
- (e) a corporation authorized by or under a law of a State or Territory to act as executor, administrator and trustee; or
- (f) a body that is, or is included in a class of bodies that is, prescribed for the purposes of this paragraph;

‘bona fide redundancy payment’, in relation to a taxpayer, means a bona fide redundancy payment in relation to the taxpayer ascertained under section 27F;

‘concessional component’, in relation to an eligible termination payment, means so much of the eligible termination payment as consists of or is attributable to a bona fide redundancy payment, an approved early retirement scheme payment or an invalidity payment;

‘deferred annuity’ means an annuity other than an immediate annuity;

‘dependant’, in relation to a taxpayer, includes—

- (a) a person who is or was a spouse of the taxpayer; and

(b) any child of the taxpayer;

‘depositor’, in relation to a fund, means a person who has paid an amount to the fund;

‘eligible annuity’ means—

- (a) an annuity payable under a superannuation policy within the meaning of Division 8;
- (b) an immediate annuity; or
- (c) a roll-over annuity;

‘eligible bank’ means—

- (a) a savings bank or trading bank as defined by sub-section 5 (1) of the *Banking Act 1959*; or
- (b) a public authority constituted by a law of a State or Territory, being a public authority that carries on banking business;

‘eligible financial corporation’ means a registered corporation within the meaning of the *Financial Corporations Act 1974*, being a corporation that is—

- (a) a corporation to which that Act applies by reason of paragraph 8 (1) (a) or (b) of that Act; and
- (b) a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;

‘eligible service period’, in relation to an eligible termination payment (in this definition referred to as the ‘relevant eligible termination payment’), means—

- (a) where the relevant eligible termination payment is an eligible termination payment by virtue of paragraph (a) of the definition of ‘eligible termination payment’—the period, or the aggregate of the periods, of the employment to which the relevant eligible termination payment relates;
- (b) where the relevant eligible termination payment is an eligible termination payment by virtue of paragraph (b) or (c) of the definition of ‘eligible termination payment’—the period that is the relevant service period, or the aggregate of the periods that are relevant service periods, in relation to the relevant eligible termination payment;
- (c) where the relevant eligible termination payment is an eligible termination payment by virtue of paragraph (d), (e) or (f) of the definition of ‘eligible termination payment’—the aggregate of—

(i) the period that, if—

- (A) an eligible termination payment (in this sub-paragraph referred to as the ‘notional eligible termination payment’) had been made in lieu of the superannuation pension referred to in that paragraph; and

- (B) the notional eligible termination payment had been an eligible termination payment by virtue of paragraph (b) of the definition of 'eligible termination payment',  
would have been the eligible service period in relation to the notional eligible termination payment; and
    - (ii) the period commencing on the date of commencement of the period in respect of which the superannuation pension was first payable (whether or not in relation to the person in relation to whom the eligible termination payment was made) and ending on the date on which the relevant eligible termination payment was made;
  - (d) where the relevant eligible termination payment is an eligible termination payment by virtue of paragraph (g), (h) or (j) of the definition of 'eligible termination payment'—
    - (i) where there is a rolled-over amount, or there are rolled-over amounts, in relation to the purchase price of the eligible annuity referred to in that paragraph—the aggregate of—
      - (A) the eligible service period in relation to the eligible termination payment by reference to which the rolled-over amount was ascertained or, if there are 2 or more rolled-over amounts in relation to that eligible annuity, the aggregate of the eligible service periods in relation to the eligible termination payments by reference to which those rolled-over amounts were ascertained; and
      - (B) the period commencing on the date on which the eligible annuity was purchased and ending on the date on which the relevant eligible termination payment was made; and
    - (ii) in any other case—the period commencing on the date on which the eligible annuity referred to in that paragraph was purchased and ending on the date on which the relevant eligible termination payment was made;
- 'eligible termination payment', in relation to a taxpayer, means—
- (a) any payment made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer, other than a payment—
    - (i) to which paragraph (b) applies;
    - (ii) of an annuity, or supplement, to which section 27H applies;
    - (iii) from a fund in relation to which section 121DA applies, or has applied, in relation to the year of income

commencing on 1 July 1984 or any subsequent year of income;

- (iv) of an amount to which section 26AC or 26AD applies; or
- (v) of an amount that, under any provision of this Act, is deemed to be a dividend paid to the taxpayer;
- (b) any payment made from a superannuation fund in respect of the taxpayer by reason that the taxpayer is or was a member of the fund, not being a payment that is—
  - (i) income of the taxpayer; or
  - (ii) a benefit to which sub-section 26AF (1) applies, reduced by any amount that has been or will be included in the assessable income of the taxpayer under sub-section 26AF (2) in respect of the transfer by the taxpayer of a right to receive the payment or any part of the payment;
- (c) any payment made by the trustee of an approved deposit fund in respect of the taxpayer by reason that the taxpayer is or was a depositor with the fund, not being a payment that is income of the taxpayer;
- (d) any payment made in respect of the taxpayer in relation to the commutation, in whole or in part, of a superannuation pension that was payable to the taxpayer, reduced by the unused undeducted purchase price in relation to the superannuation pension;
- (e) any payment made in respect of the taxpayer of the residual capital value of a superannuation pension that was payable to the taxpayer, reduced by the unused undeducted purchase price in relation to the superannuation pension;
- (f) any payment made to the taxpayer of the residual capital value of a superannuation pension where—
  - (i) the residual capital value is paid to the taxpayer after the death of the person to whom the pension was payable; and
  - (ii) the payment is made to the taxpayer otherwise than as trustee of the estate of the person to whom the pension was payable,reduced by the unused undeducted purchase price in relation to the pension;
- (g) any payment made in respect of the taxpayer in relation to the commutation, in whole or in part, of an eligible annuity that was payable to the taxpayer, reduced by the unused undeducted purchase price in relation to the annuity;
- (h) any payment made in respect of the taxpayer of the residual capital value of an eligible annuity that was payable to the taxpayer, reduced by the unused undeducted purchase price in relation to the eligible annuity; or

(j) any payment made to the taxpayer of the residual capital value of an eligible annuity where—

(i) the residual capital value is paid to the taxpayer after the death of the person to whom the annuity was payable; and

(ii) the payment is made to the taxpayer otherwise than as trustee of the estate of the person to whom the annuity was payable,

reduced by the unused undeducted purchase price in relation to the annuity,

but does not include—

(k) a payment by way of advance or loan, being an advance or loan made on terms and conditions similar to the terms and conditions that could reasonably be expected to apply in respect of an advance or loan to the payee by a person with whom the payee was dealing at arm's length in relation to the advance or loan;

(m) consideration of a capital nature for, or in respect of, a legally enforceable contract in restraint of trade by the taxpayer, to the extent to which the amount or value of the consideration is, in the opinion of the Commissioner, reasonable having regard to the nature and extent of the restraint; or

(n) consideration of a capital nature for, or in respect of, personal injury to the taxpayer, to the extent to which the amount or value of the consideration is, in the opinion of the Commissioner, reasonable having regard to the nature of the personal injury and its likely effect on the capacity of the taxpayer to derive income from personal exertion;

'employment' includes the holding of an office;

'immediate annuity' means an annuity that is presently payable to a natural person;

'invalidity payment', in relation to a taxpayer, means an invalidity payment in relation to the taxpayer ascertained under section 27G;

'last retirement date', in relation to any employment of a taxpayer, means—

(a) where there is a date on which the termination of that employment will necessarily occur by reason of the taxpayer attaining a particular age or completing a particular period of service—that date; or

(b) in any other case—the sixty-fifth anniversary of the birth of the taxpayer;

'legal personal representative' means an executor or administrator of the estate of a deceased depositor, the trustee of the estate of a depositor under a legal disability or a person who holds a general power of attorney granted by a depositor;

‘life assurance company’ means—

- (a) a company registered under section 19 of the *Life Insurance Act 1945*; or
- (b) a public authority constituted by a law of a State or Territory, being a public authority that carries on life insurance business within the meaning of that expression in sub-section 4 (1) of the *Life Insurance Act 1945*;

‘property’ includes—

- (a) a chose in action; and
- (b) any estate, interest, right or power, whether at law or in equity, in or over property;

‘purchase price’ means—

- (a) in relation to a superannuation pension—the sum of—
  - (i) contributions made by any person to a superannuation fund to obtain superannuation benefits consisting only of the superannuation pension; and
  - (ii) so much as the Commissioner considers reasonable of contributions made by any person to a superannuation fund to obtain superannuation benefits including the superannuation pension; and
- (b) in relation to an eligible annuity—the sum of—
  - (i) payments made solely to purchase the annuity; and
  - (ii) so much as the Commissioner considers reasonable of payments made to purchase the annuity and to obtain other benefits;

‘registered auditor’ means a person registered as an auditor, or deemed to be registered as an auditor, under the *Companies Act 1981* or a law of a State or Territory relating to companies;

‘registered organization’ means—

- (a) an association registered under a law of a State or Territory as a trade union;
- (b) a society registered under a law of a State or Territory providing for the registration of friendly or benefit societies; and
- (c) an association of employees that is registered as an organization under the *Conciliation and Arbitration Act 1904*;

‘related entity’, in relation to a fund, means a corporation that is, by virtue of sub-section 7 (5) of the *Companies Act 1981*, deemed to be related to the trustee or to any of the trustees, as the case may be, of the fund for the purposes of that Act;

‘relevant service period’, in relation to an eligible termination payment in relation to a taxpayer, means—

- (a) where—
  - (i) the eligible termination payment accrued in whole or in part during a period or periods during which the taxpayer was in employment; and



- (ii) during the whole or a part of the period, or of any of the periods, referred to in sub-paragraph (i), the taxpayer was a member of a superannuation fund in relation to that employment,  
the period, or the aggregate of the periods, of the employment to which the eligible termination payment relates;
- (b) where the eligible termination payment accrued in whole or in part during a period during which the taxpayer was a member of a superannuation fund—
  - (i) in a case to which sub-paragraph (ii) does not apply—the period during which the taxpayer was a member of the fund; or
  - (ii) in a case where paragraph (a) applies in relation to the eligible termination payment—any period, not being a period referred to in that paragraph, during which the taxpayer was a member of the fund;
- (c) where the eligible termination payment accrued in whole or in part during a period during which the taxpayer was a depositor with an approved deposit fund—the period during which the taxpayer was a depositor with that fund; and
- (d) where the eligible termination payment is attributable in whole or in part to an earlier eligible termination payment or earlier eligible termination payments—the period that is the eligible service period in relation to that earlier eligible termination payment, or the aggregate of the periods that are the eligible service periods in relation to the earlier eligible termination payments, as the case may be;

**‘residual capital value’**, in relation to an annuity or superannuation pension, means the capital amount payable on the termination of the annuity or superannuation pension, as the case may be;

**‘rolled-over amount’**, in relation to the purchase price of an annuity or superannuation pension, means so much of an eligible termination payment as is deemed by the application of section 27D to have been applied in payment of any part of the purchase price;

**‘roll-over annuity’** means a deferred annuity the purchase price of which consists wholly of a rolled-over amount or rolled-over amounts;

**‘roll-over period’**, in relation to an eligible termination payment, means the period of 90 days commencing on the day on which the eligible termination payment is made, or such longer period as the Commissioner, in special circumstances, allows;

**‘scheme’** includes arrangement;

**‘superannuation fund’ means—**

- (a) a provident, benefit, superannuation or retirement fund, being—**
  - (i) a fund to which paragraph 23 (ja), (jaa) or (jb) or section 23F, 23FB or 121DAB applies, or has applied, in relation to any year of income; or**
  - (ii) a fund to which section 79 of this Act, as in force at any time before the commencement of the *Income Tax Assessment Amendment Act (No. 3) 1984*, applied in relation to the year of income that commenced on 1 July 1983 or a preceding year of income; and**
- (b) a scheme for the payment of benefits upon retirement or death, being a scheme constituted by or under a law of the Commonwealth or of a State or Territory;**

**‘superannuation pension’ means a pension payable from a superannuation fund;**

**‘undeducted contributions’, in relation to an eligible termination payment made in relation to a taxpayer, means so much of the eligible termination payment as is attributable to contributions made by the taxpayer, or by any other person, after 30 June 1983 to a superannuation fund in order to obtain superannuation benefits, being contributions in respect of which no deduction is allowable or has been allowed to the taxpayer or the other person;**

**‘undeducted purchase price’, in relation to an annuity or superannuation pension, means the sum of—**

- (a) so much of the purchase price of the annuity or superannuation pension as was paid before 1 July 1983 and—**
  - (i) has not been, and will not be, an allowable deduction;**
  - (ii) has not been, and is not to be, treated as a rebatable amount for the purpose of section 159N; and**
  - (iii) is not an amount in respect of which a rebate of income tax has been allowed, or is allowable, in assessments for income tax under this Act or any previous law of the Commonwealth; and**
- (b) so much of the purchase price of the annuity or superannuation pension as was paid on or after 1 July 1983 and has not been, and will not be, an allowable deduction, reduced by so much of the purchase price of the annuity or superannuation pension as is taken, by virtue of section 27D, to consist of an amount to which sub-sub-paragraph 27D (1) (b) (iii) (A) applies;**

**‘unused undeducted purchase price’, in relation to an annuity or superannuation pension, means so much of the undeducted purchase price of the annuity or superannuation pension as has not been**

excluded from the assessable income of any taxpayer of any year of income—

- (a) under section 26AA of this Act as in force before the commencement of the *Income Tax Assessment Amendment Act (No. 3) 1984* (including that section as continued in force by that last-mentioned Act); or
- (b) under section 27H.

“(2) Where the rules of a fund contain a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, the provision does not prevent the fund from being treated as having been established as an indefinitely continuing fund for the purposes of paragraph (a) of the definition of ‘approved deposit fund’ in sub-section (1).

“(3) A reference in the definition of ‘eligible termination payment’ in sub-section (1) to a payment made in respect of a taxpayer is a reference to a payment made (whether voluntarily, by agreement or by compulsion of law)—

- (a) during the life of the taxpayer—
  - (i) to or for the benefit of the taxpayer;
  - (ii) to or for the benefit of a dependant of the taxpayer; or
  - (iii) to another person at the direction or request of the taxpayer; or
- (b) after the death of the taxpayer—to the trustee of the estate of the taxpayer.

“(4) The amount that, but for this sub-section, would, in relation to a deceased taxpayer, be the amount of an eligible termination payment to which paragraph (a), (b) or (c) of the definition of ‘eligible termination payment’ in sub-section (1) applies by virtue of having been made to the trustee of the estate of the deceased taxpayer shall be reduced by such amount (if any) as the Commissioner considers appropriate having regard to the extent to which the dependants of the deceased taxpayer may reasonably be expected to benefit from the estate.

“(5) For the purposes of the application of the definition of ‘eligible termination payment’ in sub-section (1) in relation to a payment that would, but for this sub-section, be an eligible termination payment in relation to a taxpayer by virtue of having been paid to or for the benefit of a dependant of the taxpayer, the payment shall, to the extent to which it is income of the dependant or is deemed, under any provision of this Act, to be a dividend paid to the dependant, be deemed to be income of the taxpayer or a dividend paid to the taxpayer, as the case may be.

“(6) For the purposes of the application of the definition of ‘roll-over period’ in sub-section (1) in relation to an eligible termination payment made before the date of commencement of this section, the reference in that definition to a period of 90 days commencing on the day on which the eligible termination payment was made shall be read as a reference to the period commencing on the day on which the eligible termination payment was made and ending 90 days after the date of commencement of this section.

“(7) For the purposes of the definition of ‘undeducted contributions’ in sub-section (1), a payment made to a superannuation fund shall be disregarded to the extent to which an eligible termination payment is deemed by section 27D to have been applied in making the payment to the fund.

“(8) For the purposes of this Subdivision, a transfer of property to, or for the benefit of, a person shall be deemed to be a payment to, or for the benefit of, the person of an amount equal to the value of the property immediately before the transfer.

“(9) A reference in sub-section (1) to the aggregate of periods of a particular kind or particular kinds is a reference to the period commencing on the date of commencement of the first such period and ending on the expiration of the last such period, excluding any period that is not a period of that kind, or of any of those kinds, as the case may be.

“(10) Where—

- (a) in a year of income an eligible termination payment is made in relation to a taxpayer;
- (b) the eligible service period (in this sub-section referred to as the ‘original eligible service period’) in relation to the eligible termination payment commenced before 1 July 1983;
- (c) an amount (in this sub-section referred to as the ‘actual 27C amount’) is included in the assessable income of the taxpayer of the year of income under sub-section 27C (1) in relation to the eligible termination payment; and
- (d) but for the application of section 27D, a greater amount (in this sub-section referred to as the ‘notional 27C amount’) would have been so included in that assessable income in relation to the eligible termination payment,

then, for the purposes of the application of this Act in relation to any subsequent eligible termination payment that is made in relation to the taxpayer and is attributable to the eligible termination payment, there shall be deducted from the beginning of the original eligible service period the number of whole days included in the original eligible service period that is

ascertained in accordance with the formula  $\frac{A \ B}{C}$ , where—

- A is the number of whole days in the original eligible service period that occurred before 1 July 1983;
- B is the number of dollars in the actual 27C amount; and
- C is the number of dollars in the notional 27C amount.

“(11) A reference in this Subdivision to the termination of any employment of a person includes a reference to the retirement of the person from that employment and the cessation of that employment by reason of the death of the person.

“(12) For the purposes of this Subdivision, an eligible termination payment made in relation to a taxpayer is a qualifying eligible termination

payment if, during the roll-over period in relation to the eligible termination payment, an amount is—

- (a) paid to a superannuation fund for either or both of the following purposes:
  - (i) the provision of superannuation benefits for the taxpayer in the event of his retirement or in other circumstances of a kind approved by the Commissioner;
  - (ii) the provision of superannuation benefits for dependants of the taxpayer in the event of the death of the taxpayer;
- (b) paid for the benefit of the taxpayer to an approved deposit fund that, at the time when the amount is paid, is maintained by an approved trustee or approved trustees; or
- (c) paid to a life assurance company or registered organization in respect of the purchase of an annuity for the benefit of the taxpayer or for dependants of the taxpayer in the event of the death of the taxpayer.

“(13) For the purposes of this Subdivision—

- (a) an amount shall be deemed to have been applied in accordance with section 27D if, by virtue of that section, the amount is taken to have been expended in making a payment as mentioned in paragraph (12) (a), (b) or (c) of this section; and
- (b) an eligible termination payment shall be deemed to be attributable to an earlier eligible termination payment, or to a particular component of an earlier eligible termination payment, if, and only if, the first-mentioned eligible termination payment is attributable by an application of section 27D, or indirectly attributable by 2 or more applications of that section, to the earlier eligible termination payment or to the particular component of the earlier eligible termination payment, as the case may be.

**Assessable income to include certain superannuation and kindred payments**

“27B. (1) Subject to sub-section (2), where in a year of income an eligible termination payment is made in relation to a taxpayer, the assessable income of the taxpayer of the year of income shall include the amount (if any) ascertained by deducting from the amount (in this sub-section referred to as the ‘relevant amount’) ascertained in accordance with the formula 
$$A - \frac{A \cdot B}{C} - D,$$

where—

- A** is the amount or value of the eligible termination payment reduced by the amount of the concessional component in relation to the eligible termination payment;
- B** is the number of whole days (if any) in the eligible service period that occurred before 1 July 1983;
- C** is the number of whole days in the eligible service period; and
- D** is the amount of undeducted contributions in relation to the eligible termination payment,

so much of the relevant amount as is deemed to have been applied in accordance with section 27D.

“(2) For the purposes of the application of sub-section (1) in relation to an eligible termination payment made in relation to a taxpayer, where the Commissioner, having regard to—

- (a) if the eligible termination payment relates to employment in which the taxpayer was engaged on 30 June 1983—the amount of an eligible termination payment that could, in the opinion of the Commissioner, reasonably be expected to have been made in relation to the taxpayer in consequence of the termination of that employment if that employment had been terminated on that date;
- (b) if the eligible termination payment relates to membership of the taxpayer of a superannuation fund on 30 June 1983—the amount of an eligible termination payment that could, in the opinion of the Commissioner, reasonably be expected to have been made in relation to the taxpayer from the fund in consequence of the termination of the taxpayer’s membership of the fund if that membership had terminated on that date;
- (c) any previous application of this sub-section in relation to the taxpayer; and

(d) such other matters as the Commissioner considers relevant, considers that it is appropriate that a greater amount be substituted for the amount represented by the component  $\frac{A \ B}{C}$  in the formula in that sub-section, that sub-section applies as if the greater amount were substituted for the amount represented by that component.

**Assessable income to include 5% of certain amounts**

“27C. (1) Where—

- (a) in a year of income an eligible termination payment is made in relation to a taxpayer; and
- (b) the eligible service period in relation to the eligible termination payment commenced before 1 July 1983,

the assessable income of the taxpayer of the year of income shall include—

- (c) 5% of the amount (if any) ascertained in accordance with the formula  $X - Y$ , where—

$X$  is—

- (i) the amount represented by the component  $\frac{A \ B}{C}$  in the

formula in sub-section 27B (1) or, if an amount has been substituted for that amount by the application of sub-section 27B (2), the amount so substituted; or

- (ii) the amount represented by component  $A$  in that formula reduced by the amount represented by component  $D$  in that formula,

whichever is the less; and

- Y** is so much of the amount represented by component **X** as is deemed to have been applied in accordance with section 27D; or
- (d) if the Commissioner, having regard to the extent to which the eligible termination payment would have been included in the assessable income of the taxpayer if the amendments made by the *Income Tax Assessment Amendment Act (No. 3) 1984* had not been made, considers that it is appropriate that a lesser amount be substituted for the amount ascertained in accordance with paragraph (c)—that lesser amount.

“(2) Where an eligible termination payment is made in relation to a taxpayer, the assessable income of the taxpayer of the year of income in which the eligible termination payment is made shall include 5% of the amount ascertained in accordance with the formula  $A \div B$ , where—

- A** is the amount of the concessional component in relation to the eligible termination payment; and
- B** is so much of the amount represented by component **A** as is deemed to have been applied in accordance with section 27D.

### **Roll-over of eligible termination payments**

“27D. (1) For the purposes of this Subdivision, where—

- (a) in a year of income a qualifying eligible termination payment is made in relation to a taxpayer; and
- (b) the taxpayer makes an election in relation to the qualifying eligible termination payment specifying—
- (i) details of each amount (in this paragraph referred to as a ‘qualifying roll-over payment’) paid, during the roll-over period in relation to the qualifying eligible termination payment, as mentioned in paragraph 27A (12) (a), (b) or (c);
  - (ii) the amount or amounts (in this paragraph referred to as the ‘applied amount’ or the ‘applied amounts’) of the qualifying eligible termination payment that the taxpayer wishes to have regarded as having been expended in making a particular qualifying roll-over payment or particular qualifying roll-over payments; and
  - (iii) if the qualifying eligible termination payment consists of 2 or more components (in this sub-paragraph referred to as the ‘eligible components’) of the following kinds:
    - (A) an amount referred to in sub-section 27B (1) as the relevant amount;
    - (B) an amount represented by component **X** in the formula in paragraph 27C (1) (c);
    - (C) undeducted contributions in relation to the eligible termination payment;
    - (D) a concessional component,

the extent to which the taxpayer wishes the applied amount or applied amounts to be regarded as consisting of the eligible components,

the qualifying eligible termination payment shall, subject to this section, be taken to have been applied in accordance with the election.

“(2) Where the amount, or the sum of the amounts, specified by a taxpayer in accordance with sub-paragraph (1) (b) (ii) in an election or elections made by the taxpayer under sub-section (1) in relation to a year of income as an amount or amounts that the taxpayer wishes to have regarded as having been expended in making a particular qualifying roll-over payment exceeds the amount of that qualifying roll-over payment, no election made by the taxpayer under that sub-section in relation to the year of income is of any effect.

“(3) An election under sub-section (1) shall—

- (a) be in a form approved by the Commissioner; and
- (b) be lodged with the Commissioner within such time, and in such manner, as is prescribed.

#### **Approved early retirement scheme payments**

“27E. (1) A scheme that provides for the termination of employment of employees is, for the purpose of this section, an approved early retirement scheme if, and only if—

- (a) employees of the employer in one of the following categories, and no other employees of the employer, may participate in the scheme:
  - (i) all employees of the employer;
  - (ii) all employees of the employer who have attained a particular age;
  - (iii) all employees of the employer who have a particular occupational skill;
  - (iv) all employees of the employer who have a particular occupational skill and who have attained a particular age;
  - (v) all employees of the employer who constitute a class of employees approved by the Commissioner for the purposes of this paragraph;
- (b) the scheme is, or is to be, implemented by the employer with a view to rationalising or re-organising the operations of the employer by means of one or more of the following:
  - (i) replacement of employees having a particular occupational skill with employees having a different occupational skill;
  - (ii) replacement of employees of, or over, a particular age or ages, being an age or ages not less than 55 years, with employees of a younger age or ages;
  - (iii) cessation, or reduction in output, of, or of part of, the operations of the employer;



- (iv) moving the location of, or of part of, the operations of the employer;
  - (v) introduction of new technology, processes or systems, or increases in productivity;
  - (vi) any other change to the operations of the employer or to the nature of the work-force of the employer approved by the Commissioner for the purposes of this paragraph; and
- (c) the Commissioner has, before the scheme is implemented, approved the scheme as an approved early retirement scheme for the purposes of this section.

“(2) Where a requirement specified in sub-section (1) is not complied with in relation to a scheme and the Commissioner is satisfied that, by reason of special circumstances that exist in relation to the scheme, it would be reasonable for that requirement to be taken to have been complied with, sub-section (1) has effect as if that requirement had been complied with.

“(3) For the purposes of the application of sub-section (2) in relation to a scheme, a reference to special circumstances includes a reference to the circumstance that the scheme was implemented before the commencement of this section.

“(4) Where—

- (a) an eligible termination payment is made in relation to a taxpayer in consequence of the termination of any employment of the taxpayer at a particular time (in this sub-section referred to as the ‘termination time’) in accordance with an approved early retirement scheme;
- (b) the termination time was before—
  - (i) where, apart from the scheme, there was a date or there were dates on which the termination of the employment of the taxpayer could occur by reason of the taxpayer attaining a particular age or completing a particular period of service—that date or the earliest of those dates, as the case may be; or
  - (ii) in any other case—the sixty-fifth anniversary of the birth of the taxpayer;
- (c) if the Commissioner, having regard to any connection between the employer and the taxpayer and to any other relevant circumstances, is satisfied that the employer and the taxpayer were not dealing with each other at arm’s length in relation to the termination of the employment of the taxpayer—the amount of the eligible termination payment is not greater than the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer if the employer and the taxpayer had been dealing with each other at arm’s length in relation to the termination of the employment of the taxpayer; and

- (d) there was, at the termination time, no agreement in force between the taxpayer and the employer, or the employer and another person, to employ the taxpayer,

so much of the eligible termination payment as exceeds the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer if the termination of the employment had occurred at the termination time, otherwise than in accordance with the approved early retirement scheme, is an approved early retirement scheme payment in relation to the taxpayer.

**Bona fide redundancy payments**

“27F. Where—

- (a) an eligible termination payment is made in relation to a taxpayer in consequence of the dismissal of the taxpayer from any employment at any time (in this sub-section referred to as the ‘termination time’) by reason of the bona fide redundancy of the taxpayer;
- (b) the termination time was before—
  - (i) where there was a date or there were dates on which the termination of the employment of the taxpayer could occur by reason of the taxpayer attaining a particular age or completing a particular period of service—that date or the earliest of those dates, as the case may be; or
  - (ii) in any other case—the sixty-fifth anniversary of the birth of the taxpayer;
- (c) if the Commissioner, having regard to any connection between the employer and the taxpayer and to any other relevant circumstances, is satisfied that the employer and the taxpayer were not dealing with each other at arm’s length in relation to the termination of the employment of the taxpayer—the amount of the eligible termination payment does not exceed the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer if the employer and the taxpayer had been dealing with each other at arm’s length in relation to the termination of the employment of the taxpayer; and
- (d) there was, at the termination time, no agreement between the taxpayer and the employer, or the employer and another person, to employ the taxpayer,

so much of the eligible termination payment as exceeds the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the taxpayer had he voluntarily retired from that employment at the termination time is a bona fide redundancy payment in relation to the taxpayer.

**Invalidity payments**

“27G. Where—

- (a) an eligible termination payment is made in relation to a taxpayer in consequence of the termination of any employment of the taxpayer; and
  - (b) the termination of the employment of the taxpayer occurred—
    - (i) by reason of the taxpayer’s physical or mental incapacity to engage in that employment; and
    - (ii) before the last retirement date in relation to the employment,
- so much of the eligible termination payment as is equal to the amount ascertained in accordance with the formula  $\frac{A \times B}{C}$ , where—

**C**

**A** is the amount of the eligible termination payment;

**B** is the number of whole days in the period from the date on which the termination occurred to the last retirement date; and

**C** is the aggregate of the number of whole days in the eligible service period in relation to the eligible termination payment and the number of whole days represented by component **B**,

is an invalidity payment in relation to the taxpayer.

**Assessable income to include annuities and superannuation pensions**

“27H. (1) The assessable income of a taxpayer of a year of income shall include—

- (a) the amount of any annuity derived by the taxpayer during the year of income excluding, in the case of an annuity that has been purchased, any amount that, in accordance with sub-section (2) or (3), is the deductible amount in relation to the annuity in relation to the year of income; and
- (b) the amount of any payment made to the taxpayer during the year of income as a supplement to an annuity, whether the payment is made voluntarily, by agreement or by compulsion of law and whether or not the payment is one of a series of recurrent payments.

“(2) Subject to sub-section (3), the deductible amount in relation to an annuity derived by a taxpayer during a year of income is the amount (if any) ascertained in accordance with the formula  $A \times (B - C)$ , where—

**D**

**A** is the relevant share in relation to the annuity in relation to the taxpayer in relation to the year of income;

**B** is the amount of the undeducted purchase price of the annuity;

**C** is—

- (a) if there is a residual capital value in relation to the annuity and that residual capital value is specified in the agreement by virtue of which the annuity is payable or is capable of being ascertained

from the terms of that agreement at the time when the annuity is first derived—that residual capital value; or

(b) in any other case—nil; and

**D** is the relevant number in relation to the annuity.

“(3) Where—

(a) the deductible amount ascertained under sub-section (2) in relation to an annuity derived by the taxpayer during the year of income is calculated by reference to a relevant number ascertained in accordance with paragraph (a) or (b) of the definition of ‘relevant number’ in sub-section (4); and

(b) the Commissioner is of the opinion that the deductible amount so ascertained is inappropriate having regard to—

(i) the terms and conditions applying to the annuity; and

(ii) such other matters as the Commissioner considers relevant,

the deductible amount in relation to the annuity derived by the taxpayer during the year of income is so much of the annuity as, in the opinion of the Commissioner, represents the undeducted purchase price having regard to—

(c) the terms and conditions applying to the annuity;

(d) any certificate or certificates of an approved actuary or approved actuaries stating the extent to which, in the opinion of the approved actuary or approved actuaries, the amount of the annuity derived by the taxpayer during the year of income represents the undeducted purchase price; and

(e) such other matters as the Commissioner considers relevant.

“(4) In this section—

‘annuity’ includes a superannuation pension;

‘approved actuary’ means a person referred to in sub-section 4A (2) of the *Life Insurance Act 1945*;

‘life expectation factor’, in relation to a person in relation to an annuity, means the number of years in the complete expectation of life of the person as ascertained by reference to the prescribed Life Tables at the time when the annuity first commenced to be payable;

‘relevant number’, in relation to an annuity in relation to a year of income, means—

(a) where the annuity is payable for a term of years certain—the number of years in the term;

(b) where the annuity is payable during the lifetime of a person and not thereafter—the life expectation factor of the person; and

(c) in any other case—the number that the Commissioner considers appropriate having regard to—

(i) the terms and conditions applying to the annuity;

- (ii) the number of years in the total period during which the annuity will be, or may reasonably be expected to be, payable;
  - (iii) any certificate or certificates of an approved actuary or approved actuaries stating the extent to which, in the opinion of the approved actuary or approved actuaries, the amount of the annuity derived by the taxpayer during the year of income represents the undeducted purchase price;
  - (iv) any change during the year of income in the circumstances that were taken into account in ascertaining the relevant number in relation to the annuity in relation to the immediately preceding year of income; and
  - (v) such other matters as the Commissioner considers relevant;
- ‘relevant share’, in relation to an annuity derived by a taxpayer during a year of income, means—
- (a) in a case where the annuity derived by the taxpayer is a share of an annuity (which annuity is in this paragraph referred to as the ‘total annuity’) payable to the taxpayer and another person or other persons—the fraction ascertained by dividing the number of whole dollars in the amount of the annuity derived by the taxpayer during the year of income by the number of whole dollars in the amount of the total annuity derived during the year of income by the taxpayer and the other person or persons; or
  - (b) in any other case—the number 1.

### **Amendment of assessments**

“27J. Nothing in section 170 prevents the amendment at any time of an assessment made in relation to a taxpayer if the amendment is for the purpose of giving effect to section 27D and effects a reduction in the liability of the taxpayer.”.

### **Divisible deductions**

**16.** Section 50G of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “77F,” after “section 75A,”; and
- (b) by inserting after paragraph (2) (j) the following paragraph:
  - “(ja) where a divisible deduction is allowable to the company in relation to the year of income under section 77F in respect of moneys paid on shares within the meaning of that section, 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;”.

**Loss on property acquired for profit-making**

17. Section 52 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(2) Where—

- (a) a taxpayer sells property (in this sub-section referred to as the ‘relevant property’) that is deemed by sub-section 25A (5) or (8) to have been acquired by the taxpayer for the purpose of profit-making by sale;
- (b) the Commissioner is satisfied that the relevant property has not been held or used by the taxpayer in a manner inconsistent with such a purpose; and
- (c) the Commissioner, having regard to—
  - (i) the amount of the consideration paid by the person who transferred the relevant property or, in a case to which sub-section 25A (8) applies, the property referred to in paragraph 25A (8) (b), to the taxpayer in respect of the purchase of the property so transferred; and
  - (ii) such other matters as the Commissioner considers relevant,considers that it is appropriate that a loss be deemed to be incurred by the taxpayer upon the sale of the relevant property,

the taxpayer shall be deemed, for the purposes of this section, to have incurred a loss upon the sale of the relevant property of such amount as the Commissioner considers appropriate.

“(3) Except as provided by sub-section (2), a deduction is not allowable to a taxpayer under this section in respect of a loss incurred upon a sale of property to which paragraph (2) (a) applies.

“(4) Where—

- (a) a loss is incurred by a taxpayer upon the sale of property (in this sub-section referred to as the ‘relevant property’); and
- (b) the taxpayer is deemed to have acquired the relevant property for the purpose of profit-making by sale by virtue of the application of sub-section 25A (6) in accordance with sub-paragraph (b) (ii) of that sub-section,

the deduction that would, but for this sub-section, be allowable to the taxpayer under sub-section (1) in respect of the loss shall be reduced by such amount (if any) as the Commissioner considers reasonable having regard to the extent to which the relevant property is attributable to the interest in property that was acquired by the taxpayer for the purpose of profit-making by sale as mentioned in that sub-paragraph.

“(5) A deduction is not allowable to a taxpayer under sub-section (1) in respect of a loss incurred by the taxpayer upon the sale of property if—

- (a) the sale is a transfer in the prescribed manner by the taxpayer for the purposes of section 25A; or
- (b) the property is deemed by sub-section 25A (2) to have been acquired by the taxpayer for the purposes of profit-making by sale and was not actually acquired by the taxpayer for that purpose.”.

### **Repairs**

**18.** Section 53 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) Where the premises, part of premises, plant, machinery, implements, utensils, rolling stock or articles referred to in sub-section (1) were held, occupied or used by the taxpayer only partly for the purpose of producing assessable income, or only partly in carrying on a business for that purpose, so much only of the expenditure that, but for this sub-section, would be an allowable deduction under sub-section (1) as, in the opinion of the Commissioner, is reasonable in the circumstances shall be an allowable deduction.”.

### **Expenses of borrowing**

**19.** Section 67 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) Where a taxpayer incurs expenditure in the year of income in borrowing money used by the taxpayer only partly for the purpose of producing assessable income, the taxpayer shall be deemed, for the purposes of the preceding provisions of this section, to have incurred only so much of that expenditure as, in the opinion of the Commissioner, is reasonable in the circumstances.”.

**20.** Sections 68 and 68A of the Principal Act are repealed and the following sections are substituted:

### **Expenses relating to lease documents**

“68. Where a taxpayer incurs expenditure in the year of income for the preparation, registration and stamping of a lease, or of an assignment or surrender of a lease, of property that is to be, or has been, held by the taxpayer for the purpose of producing assessable income—

- (a) if the property is to be, or has been, held by the taxpayer wholly for that purpose—the whole of the expenditure shall be an allowable deduction; or
- (b) if the property is to be, or has been, held by the taxpayer only partly for that purpose—so much only of the expenditure as, in the opinion of the Commissioner, is reasonable in the circumstances shall be an allowable deduction.

**Expenses relating to grant of patents, &c.**

“68A. Where a taxpayer incurs expenditure (whether by payment of fees or otherwise) in the year of income in obtaining, or seeking to obtain, for the purpose of producing assessable income—

- (a) the grant, or the extension of the term, of a patent for an invention;
- (b) the registration, or the extension of the period of registration, of a design; or
- (c) the registration of a copyright,

the following provisions have effect:

- (d) if the expenditure was incurred in obtaining, or seeking to obtain, the grant, extension or registration wholly for the purpose of producing assessable income—the whole of the expenditure shall be an allowable deduction;
- (e) if the expenditure was incurred in obtaining, or seeking to obtain, the grant, extension or registration only partly for the purpose of producing assessable income—so much only of the expenditure as, in the opinion of the Commissioner, is reasonable in the circumstances shall be an allowable deduction.”.

**21.** After section 77E of the Principal Act the following section is inserted:

**Moneys paid on shares in management and investment companies**

“77F. (1) In this section—

‘Act’ means the *Management and Investment Companies Act 1983*;

‘agreement’ means—

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

‘approved capital’ has the same meaning as in the Act;

‘Board’ means the Management and Investment Companies Licensing Board established by section 5 of the Act;

‘licence’ has the same meaning as in the Act;

‘licensee’ means a company holding a licence;

‘owner’ includes a beneficial owner;

‘prescribed share capital’ has the same meaning as in the Act;

‘private company’ and ‘private trust estate’ have the same respective meanings as in section 26AAA.

“(2) In this section—

- (a) a reference to a fully paid-up share, in the case of a share issued at a premium, is a reference to a share the nominal value of which and the premium on which have been paid;



- (b) a reference to moneys paid on shares, in relation to a company, is a reference to moneys that were or are paid to the company after 13 September 1983 in respect of shares in the company (whether on account of the nominal values of the shares or by way of premiums) by the owners of the shares, but does not include moneys paid to the company—
  - (i) in respect of shares issued on or before 13 September 1983; or
  - (ii) in respect of shares issued after 13 September 1983, if the terms of the issue were announced on or before, or the shares were issued pursuant to an agreement (other than the constituent document of the company) entered into on or before, that day;
- (c) a reference to moneys unpaid on a share, in the case of a share issued at a premium, includes a reference to any amount of the premium that is unpaid;
- (d) a reference to paying off a share, in the case of a share issued at a premium, includes a reference to paying off money paid as a premium on the share; and
- (e) a reference to a share in a licensee is a reference to a share in the prescribed share capital of the licensee.

“(3) Where moneys paid on a share in a company (whether on application for or allotment of the share, to meet calls or otherwise) were not or are not applied by the company towards the paid-up value of the share or as a premium on the share, the moneys shall, for the purposes of this section, be deemed not to have been paid on the share.

“(4) The amount of any moneys paid on shares by a taxpayer in a year of income to a licensee is, subject to this section, an allowable deduction to the taxpayer in respect of the year of income.

“(5) Where under this section a deduction in respect of moneys paid on a share in a licensee by a taxpayer in a year of income has been allowed or would, but for this sub-section, be allowable, to the taxpayer in respect of the year of income and—

- (a) the taxpayer sells or otherwise disposes of the share before the expiration of 2 years after the day that is the prescribed day in relation to the sale or disposal;
- (b) the taxpayer sells or otherwise disposes of the share on the expiration of 2 years, or after the expiration of 2 years and before the expiration of 3 years, after the day that is the prescribed day in relation to the sale or disposal; or
- (c) the taxpayer sells or otherwise disposes of the share on the expiration of 3 years, or after the expiration of 3 years and before the expiration of 4 years, after the day that is the prescribed day in relation to the sale or disposal,

the amount of the deduction in respect of the moneys paid on the share so allowed or allowable, as the case may be, to the taxpayer in respect of the year of income shall be reduced by an amount equal to—

- (d) if paragraph (a) applies in relation to the share—the amount of the deduction;
- (e) if paragraph (b) applies in relation to the share—one-half of the amount of the deduction; or
- (f) if paragraph (c) applies in relation to the share—one-quarter of the amount of the deduction.

“(6) A reference in sub-section (5) to the prescribed day, in relation to the sale or disposal by a taxpayer of a share in a licensee, is a reference to—

- (a) where, immediately before the day on which the licence was granted, the share was a fully paid-up share—the day on which the licence was granted; or
- (b) where paragraph (a) does not apply—
  - (i) if, immediately before the sale or disposal, the share was a fully paid-up share—the day on which the share became fully paid-up; or
  - (ii) if, immediately before the sale or disposal, the share was not a fully paid-up share—the latest day before the sale or disposal on which money was paid on the share.

“(7) Where shares are sold or otherwise disposed of pursuant to an option or agreement, this section has effect as if the shares had been sold or otherwise disposed of, as the case may be, on the day on which the option was granted or the agreement was entered into.

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

- (a) where a company redeems shares in the company, the owner of the shares shall be deemed to have disposed of the shares on the day on which the shares were redeemed;
- (b) where a company reduces its share capital and, by reason of the reduction, shares are cancelled or wholly paid-off, the owner of the shares shall be deemed to have disposed of the shares on the day on which the shares were cancelled or wholly paid-off;
- (c) where a company reduces its share capital and, by reason of the reduction, shares are partly paid-off, the owner of the shares shall be deemed to have disposed of, on the day on which the shares were partly paid-off, so many of the shares as bears to the total number of the shares the same proportion as the amount of moneys paid-off on the shares bears to the amount of moneys paid on the shares; and
- (d) where a share in a company is forfeited by reason of a failure to pay a call on the share, the owner of the share shall be deemed to have disposed of the share on the day on which the share was forfeited.

“(9) For the purposes of sub-section (5), where the Board—

- (a) revokes a licence pursuant to section 23 of the Act; or
- (b) refuses to renew a licence pursuant to section 25 of the Act,

every owner of shares in the licensee shall be deemed to have disposed of his shares on such day as is determined by the Board in writing for the purposes of the application of this sub-section in relation to the revocation of, or refusal to renew, the licence, being a day—

- (c) not earlier than the earliest day on which an event occurred, or a state of affairs came into existence, constituting the ground, or one of the grounds, for the revocation of, or refusal to renew, the licence; and
- (d) not later than the day on which the licence is revoked or expires, as the case may be.

“(10) Where—

- (a) under this section a deduction in respect of moneys paid on shares in a licensee in a year of income has been allowed or would, but for this sub-section, be allowable, to a private company, a partnership or the trustee of a private trust estate in respect of the year of the income; and
- (b) on a day (in this sub-section referred to as the ‘relevant day’) after those moneys were paid, a person (in this sub-section referred to as the ‘vendor’) who, at the time when those moneys were paid, was the owner of shares, or of an interest in shares, in the private company, or was the owner of an interest in the partnership or trust estate, sells or otherwise disposes of all or any of his shares or the whole or a part of his interest in the shares, or in the partnership or trust estate, as the case may be,

then, for the purposes of sub-section (5), the private company, the partnership or the trustee, as the case requires, shall be deemed to have disposed of, on the relevant day, so many of the shares in the licensee referred to in paragraph (a) as the Commissioner considers appropriate, having regard to—

- (c) the period during which the vendor was the owner of the shares, or of the interest, sold or disposed of by him;
- (d) the nature and extent, both before and after that sale or other disposition, of the vendor’s ownership of, and of any interest in, shares in the private company, or interest in the partnership or trust estate, as the case requires;
- (e) any benefit derived, or that would be derived, directly or indirectly, by the vendor by reason of the allowing of the deduction referred to in paragraph (a);
- (f) the extent to which, on the relevant day, the assets of the private company, partnership or trust estate, as the case requires, consisted of shares in the licensee; and
- (g) such other matters as the Commissioner considers relevant.

“(11) A reference in sub-section (10) to an interest in a share or in a partnership or trust estate includes an interest that is held indirectly through one or more interposed companies, partnerships or trusts.

“(12) Where, by reason of the death of a person, a change in the ownership of a share or an interest occurs, the person shall not, for the purposes of this section, be taken to have disposed of the share or the interest.

“(13) Notwithstanding any other provision of this section—

- (a) where, immediately before moneys were paid on shares in a licensee by a taxpayer, the aggregate of the amount of paid-up prescribed share capital of the licensee and of all the amounts paid as premiums on shares in the licensee (and not paid-off by the licensee by way of a reduction of share capital) exceeded the approved capital of the licensee, a deduction in respect of those moneys is not allowable, and shall be deemed not to have been allowable, under this section to the taxpayer in respect of any year of income; and
- (b) where, by reason of the payment of moneys on shares in a licensee by a taxpayer, the aggregate of the amount of paid-up prescribed share capital of the licensee and of all the amounts paid as premiums on shares in the licensee (and not paid-off by the licensee by way of a reduction of share capital) exceeds the approved capital of the licensee, so much of the amount of the moneys paid on the shares as is equal to the amount of that excess is not allowable, and shall be deemed not to have been allowable, as a deduction under this section to the taxpayer in respect of any year of income.

“(14) Where—

- (a) a deduction in respect of moneys paid on a share in a licensee has been allowed, or is allowable, under this section to a taxpayer in respect of any year of income; and
  - (b) the taxpayer sells or otherwise disposes of the share,
- a deduction under this section is not allowable in respect of any moneys paid on the share by a person who becomes the owner of the share by reason of that or any subsequent sale or disposal.

“(15) Where—

- (a) at a time before a company is granted a licence under section 21 of the Act, moneys were paid on a share in the company; and
- (b) after the grant of the licence, the Board notifies the Commissioner in writing that, in the opinion of the Board, the moneys were paid in anticipation of, or to ensure that the company would be eligible for, the grant of a licence,

this section has effect as if the moneys had been paid on a share in a licensee.

“(16) In forming an opinion for the purposes of sub-section (15) with respect to moneys paid on a share in a company, the Board shall have regard to—

- (a) the date or dates on which the moneys were paid;
- (b) the date on which an application for a licence by the company was made under sub-section 20 (1) of the Act;

- (c) the business or businesses in which the company was engaged on the dates referred to in paragraphs (a) and (b); and
- (d) such other matters as the Board considers relevant.

“(17) Where—

- (a) by reason of sub-section (15), a deduction is allowable under this section in respect of moneys paid by a taxpayer on a share in a company at a time before the company was granted a licence under section 21 of the Act; and
- (b) the moneys were paid in any year of income of the taxpayer (in this sub-section referred to as the ‘payment year’) preceding the year of income of the taxpayer in which the licence was granted (in this sub-section referred to as the ‘licence year’),

the deduction is not allowable to the taxpayer in respect of the payment year but is allowable to the taxpayer in respect of the licence year.”.

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

**22.** Section 78 of the Principal Act is amended—

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

“; (lxxix) the I.D.E.C. African Famine Appeal,”; and

- (b) by inserting after sub-section (6AE) the following sub-section:

“(6AF) A gift to the fund to which sub-paragraph (1) (a) (lxxix) applies is not an allowable deduction by virtue of that sub-paragraph unless the gift was made on or after 27 June 1983 and before 1 December 1983.”.

#### **Repeal of section 79**

**23.** Section 79 of the Principal Act is repealed.

#### **Limitation on certain deductions**

**24.** Section 79C of the Principal Act is amended by omitting “, 79”.

#### **Deduction for contributions to fund for employees**

**25.** Section 82AAC of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) A deduction is not allowable under this Subdivision in respect of an amount or amounts paid to a fund in a year of income, being the year of income commencing on 1 July 1984 or a subsequent year of income, if section 121DA applies to the fund in relation to the year of income.”.

#### **Interpretation**

**26.** Section 82AAS of the Principal Act is amended—

- (a) by inserting “and Division 9C” after “section 121C” in paragraph (a) of the definition of “qualifying superannuation fund” in sub-section (1); and

- (b) by omitting “79” from the definition of “qualifying superannuation fund” in sub-section (1) and substituting “23FB”.

#### **Income of deceased received after death**

**27.** Section 101A of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) Where in the year of income an amount is included in the assessable income of a deceased taxpayer under Subdivision AA of Division 2 in respect of an eligible termination payment, within the meaning of that Subdivision, received by the trustee of the estate of the deceased taxpayer, that amount shall be included in the assessable income of that year of income of the trust estate and shall be deemed to be income to which no beneficiary is presently entitled.”.

#### **Private companies**

**28.** Section 103A of the Principal Act is amended by inserting after sub-paragraph (2) (d) (ii) the following sub-paragraph:

“(ia) a registered organization as defined by section 116E;”.

#### **Interpretation**

**29.** Section 110 of the Principal Act is amended—

- (a) by inserting before the definition of “Australian policy” the following definition:

“ ‘annuity business’ means business of, or in relation to, the granting of, or the undertaking of liability in respect of, annuities;”;

- (b) by omitting “insurance business” from the definition of “Australian statutory fund” and substituting “assurance business”;

- (c) by inserting after the definition of “Australian statutory fund” the following definitions:

“ ‘deferred annuity’ means an annuity other than an immediate annuity;

“ ‘eligible policy’ means—

(a) a superannuation policy;

(b) a life assurance policy in relation to an immediate annuity; or

(c) a life assurance policy in relation to a roll-over annuity;

“ ‘exempt statutory fund’, in relation to a company, means an Australian statutory fund, or any other fund, maintained by the company solely in respect of a class of life assurance business that consists of business of, or in relation to, the issuing of, or the undertaking of liability under, eligible policies;”;

- (d) by omitting “79” from paragraph (c) of the definition of “exempt superannuation fund” and substituting “23FB”;

- (e) by inserting “life assurance” before “policies” in the definition of “future premiums”;
- (f) by inserting after the definition of “future premiums” the following definitions:
  - “ ‘immediate annuity’ means an annuity that is presently payable to a natural person;
  - “ ‘life assurance business’ includes annuity business;”;
- (g) by inserting after the definition of “life assurance company” the following definition:
  - “ ‘life assurance policy’ includes an instrument securing the grant of an annuity, whether or not for a term dependent upon human life;”;
- (h) by inserting after the definition of “overseas policy” the following definitions:
  - “ ‘premium’ includes consideration received or receivable in respect of the grant of, or undertaking of liabilities in respect of, an annuity;
  - “ ‘roll-over annuity’ means a deferred annuity the purchase price of which consists wholly of a rolled-over amount or rolled-over amounts within the meaning of Subdivision AA of Division 2;”;
- (j) by omitting the definition of “superannuation statutory fund”; and
- (k) by inserting “life assurance” before “policies” in the definition of “valuation of liabilities”.

**30.** Section 111 of the Principal Act is repealed and the following section is substituted:

**Premiums not assessable income**

“111. (1) The assessable income of a life assurance company shall not include premiums received in respect of life assurance policies.

“(2) For the purposes of sub-sections 113 (2) and 116AA (1), the total income of a life assurance company shall include premiums received in respect of life assurance policies.”.

**Deductions not allowed**

**31.** Section 112 of the Principal Act is amended by omitting “or considerations”.

**Exemption of income attributable to superannuation policies and certain annuities**

**32.** Section 112A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “superannuation” and substituting “eligible”;
- (b) by omitting from sub-section (2) “superannuation” and substituting “eligible”; and

- (c) by adding at the end thereof the following sub-section:  
“(5) In this section, ‘policy’ means a life assurance policy.”.

**Deductions in relation to calculated liabilities**

33. Section 115 of the Principal Act is amended by omitting from sub-section (2) “superannuation statutory” (wherever occurring) and substituting “exempt statutory”.

**Adjustment of cost of assets**

34. Section 115A of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “superannuation statutory” (wherever occurring) and substituting “exempt statutory”;
- (b) by omitting from paragraph (3) (b) “superannuation policies” and substituting “eligible policies”; and
- (c) by omitting from sub-section (4) “superannuation” and substituting “exempt”.

**When calculated liabilities exceed assets**

35. Section 116 of the Principal Act is amended by omitting “the business of life assurance” and substituting “life assurance business”.

36. After section 116D of the Principal Act the following Division is inserted:

***“Division 8A—Annuity and insurance business of certain organizations***

**Interpretation**

“116E. In this Division—

‘annuity business’ means business of, or in relation to, the granting of, or the undertaking of liability in respect of, annuities;

‘deferred annuity’ means an annuity other than an immediate annuity;

‘eligible annuity’ has the same meaning as in Subdivision AA of Division 2;

‘eligible insurance business’ means business of, or in relation to, the issuing of, or the undertaking of liability under, eligible insurance policies;

‘eligible insurance policy’ means an insurance policy that is—

- (a) a life assurance policy;
- (b) an accident policy; or
- (c) a disability policy,

but does not include so much of a policy referred to in paragraph (a), (b) or (c) as is a sickness policy, a funeral policy or an eligible policy;

‘eligible policy’ means—

- (a) a superannuation policy;
- (b) a policy in relation to an immediate annuity; or
- (c) a policy in relation to a roll-over annuity;



‘immediate annuity’, in relation to a registered organization, means an annuity that is presently payable by the organization to a natural person;

‘life assurance policy’ includes an instrument securing the grant of an annuity, whether or not for a term dependent upon human life;

‘premium’ includes consideration received or receivable in respect of the grant of, or undertaking of liabilities in respect of, an annuity;

‘registered organization’ means—

- (a) an association registered under any State Act or law of a Territory as a trade union;
- (b) a friendly society; and
- (c) an association of employees that is registered as an organization under the *Conciliation and Arbitration Act 1904*,

being an association or society the income of which would, but for this Division, be exempt from tax by virtue of paragraph 23 (f) or sub-paragraph 23 (g) (i), whether or not that income would be exempt from tax by virtue of any other provision of this Act;

‘roll-over annuity’ means a deferred annuity the purchase price of which consists wholly of a rolled-over amount or rolled-over amounts within the meaning of Subdivision AA of Division 2;

‘superannuation policy’ has the same meaning as in Division 8;

‘total income’, in relation to a registered organization, means income, profits or other amounts that would, but for any exempting provision, be assessable income of the registered organization.

### **Division to have exclusive operation in ascertaining assessable income of registered organizations**

“116F. Notwithstanding any other provision of this Act (other than the provisions of Part IVA), the assessable income of a registered organization shall be ascertained in accordance with, and only in accordance with, this Division.

### **Assessable income of registered organizations**

“116G. (1) The assessable income of the year of income of a registered organization being a friendly society shall include so much of the total income (other than premiums) of the society of the year of income as is derived from eligible insurance business of the society.

“(2) The assessable income of the year of income of a registered organization not being a friendly society shall include so much of the total income (other than premiums) of the organization of the year of income as is derived from annuity business of the organization other than annuity business in respect of eligible annuities.

**Deductions allowable from assessable income of registered organizations**

“116H. Notwithstanding any other provision of this Act, the deductions allowable to a registered organization in relation to the year of income are—

- (a) any deductions that, apart from this section, would be allowable to the organization in relation to the year of income, being deductions that relate exclusively to the assessable income of the organization; and
- (b) so much of any other deductions that, apart from this section, would be allowable to the organization in relation to the year of income (other than deductions that relate exclusively to exempt income of the organization) as bears to the amount of those other deductions the same proportion as the assessable income of the organization of the year of income bears to the total income of the organization of the year of income.

**Effect of Division on rebate under section 46 or 46A**

“116J. A registered organization is not entitled to a rebate under section 46 or 46A in respect of dividends included in its assessable income by virtue of this Division.”.

**Heading to Division 9B of Part III**

37. The heading to Division 9B of Part III of the Principal Act is amended by adding at the end thereof “*and Ineligible Approved Deposit Funds*”.

**Definitions**

38. Section 121B of the Principal Act is amended by inserting before the definition of “investment income” the following definition:

“ ‘ineligible approved deposit fund’, in relation to a year of income, means a fund—

- (a) that is an approved deposit fund within the meaning of Subdivision AA of Division 2;
- (b) that, on the last day of the year of income, was maintained by an approved trustee or approved trustees within the meaning of that Subdivision; and
- (c) the income of which of the year of income is not exempt from income tax under section 23FA;”.

**Repeal of section 121BA**

39. Section 121BA of the Principal Act is repealed.

40. Section 121CB of the Principal Act is repealed and the following section is substituted:

**Assessment of income of superannuation funds established for benefit of employees and other persons**

“121CB. The trustee of a superannuation fund to which section 23FB applies in relation to the year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon so

much of the assessable income derived by the fund in the year of income as remains after deducting any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature.”.

**Assessment of income of other superannuation funds**

**41.** Section 121DA of the Principal Act is amended by omitting “or 121D” and substituting “, 121D or 121DAB”.

**42.** After section 121DA of the Principal Act the following sections are inserted:

**Assessment of income of ineligible approved deposit funds**

“121DAA. The trustee of an ineligible approved deposit fund shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon the amount remaining after deducting from the assessable income of the fund of the year of income, calculated as if the trustee were a taxpayer in respect of that income, all allowable deductions other than concessional deductions.

**Assessment of income of certain superannuation funds**

“121DAB. The trustee of a superannuation fund that—

(a) is an indefinitely continuing fund established and maintained solely for either or both of the following purposes:

(i) the provision of superannuation benefits for each of the members of the fund in the event of the retirement of the member from any business, trade, profession, vocation, calling, occupation or employment in which he is engaged; and

(ii) the provision of superannuation benefits for dependants of each of the members of the fund in the event of the death of the member,

or for either or both of those purposes and for such incidental and ancillary purposes as the Commissioner approves; and

(b) is not a superannuation fund to which section 121CA, 121CB or 121D applies in relation to the year of income,

shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon the amount remaining after deducting from the assessable income of the fund of the year of income, other than contributions to the fund, calculated as if the trustee were a taxpayer in respect of that income, all allowable deductions other than concessional deductions and deductions in respect of benefits.”.

**Income of superannuation funds and ineligible approved deposit funds to be taxed exclusively under this Division**

**43.** Section 121DB of the Principal Act is amended by inserting “or ineligible approved deposit fund” after “fund”.

**Taxable income**

**44.** Section 121DC of the Principal Act is amended—

- (a) by inserting “or ineligible approved deposit fund” after “superannuation fund”; and
- (b) by omitting “or section 121DA” and substituting “, section 121DA, section 121DAA or section 121DAB”.

**45.** Section 121DD is repealed and the following section is substituted:

**Rebates and provisional tax**

“121DD. The trustee of a superannuation fund or ineligible approved deposit fund—

- (a) is entitled to a rebate in his assessment as provided by section 160AB;
- (b) is not entitled to a rebate as provided by section 46 or 46A; and
- (c) except where the fund is a fund in respect of the income of which the trustee is liable to be assessed and to pay tax as provided by section 121DA, 121DAA or 121DAB, is not liable to pay provisional tax in respect of income of the fund.”.

**Interpretation**

**46.** Section 121F of the Principal Act is amended by inserting “, 23FA or 23FB” after “23F” in paragraph (b) of the definition of “relevant exempting provision” in sub-section (1).

**Interpretation**

**47.** Section 123 of the Principal Act is amended—

- (a) by inserting after the definition of “petroleum” in sub-section (1) the following definition:
  - “ ‘prescribed body’ means—
  - (a) the Commonwealth, a State or the Administration of a Territory; or
  - (b) a public authority—
    - (i) that is constituted by or under a law of the Commonwealth, of a State or of a Territory; and
    - (ii) the income of which is wholly exempt from income tax;”;
- (b) by omitting from paragraph (2) (b) “or” (last occurring);
- (c) by inserting after paragraph (2) (c) the following word and paragraph:
  - “; or (ca) where the person is a prescribed body—on railway rolling-stock,”; and
- (d) by omitting paragraph (2) (d) and substituting the following paragraphs:
  - “(d) road vehicles or ships;

- (da) except as mentioned in paragraph (ca)—railway rolling-stock; or”.

### **Application of Division**

48. Section 123A of the Principal Act is amended by inserting after sub-section (1D) the following sub-sections:

“(1E) This Division does not apply, in relation to a taxpayer, to capital expenditure incurred by the taxpayer by way of contribution to capital expenditure of a prescribed body on railway rolling-stock unless the capital expenditure is incurred by the taxpayer after 9 March 1984.

“(1F) Where—

- (a) on or before 9 March 1984, a person incurred an amount of capital expenditure (in this sub-section referred to as the ‘original expenditure’) by way of contribution to the capital expenditure or proposed capital expenditure of a prescribed body on railway rolling-stock;
- (b) after that date a taxpayer (whether or not the person referred to in paragraph (a)) incurred or incurs an amount of capital expenditure (in this sub-section referred to as the ‘substituted expenditure’) by way of contribution to the capital expenditure of a prescribed body on railway rolling-stock; and
- (c) the Commissioner is of the opinion that—
  - (i) the substituted expenditure was incurred by the taxpayer in lieu of the original expenditure; and
  - (ii) the taxpayer incurred the substituted expenditure for the purpose, or for purposes that included the purpose, of obtaining a deduction under this Division,

the Commissioner may refuse to allow a deduction under this Division in respect of the substituted expenditure.

“(1G) A reference in sub-section (1F) to an amount of capital expenditure shall be read as including a reference to a part of an amount of capital expenditure.”.

### **Interpretation**

49. Section 124ZA of the Principal Act is amended by inserting “, 23FA or 23FB” after “23F” in paragraph (b) of the definition of “exempt body” in sub-section (1).

### **Life insurance premiums, &c.**

50. Section 159R of the Principal Act is amended—

- (a) by omitting from paragraph (8) (b) “79” and substituting “23FB”; and
- (b) by omitting “79” from sub-paragraph (b) (ii) of the definition of “policy of life insurance” in sub-section (9) and substituting “23FB”.

**Rebate in respect of amounts assessable under section 26AH**

**51.** Section 160AAB of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) In this section, ‘eligible 26AH amount’, in relation to a year of income, means an amount included in assessable income under section 26AH in relation to an eligible policy within the meaning of that section issued by—

- (a) a life assurance company within the meaning of Division 8, not being a life assurance company the whole of the income of which of the year of income is exempt from tax; or
- (b) a friendly society.”.

**52.** Section 160AA of the Principal Act is repealed and the following section is substituted:

**Rebate in respect of annual leave, long service leave and eligible termination payments**

“160AA. (1) Where—

- (a) an amount or amounts (which amount, or the aggregate of which amounts, as the case may be, is in this sub-section referred to as the ‘lump sum amount’) is or are included in the assessable income of the taxpayer of a year of income under one or more of the following provisions:
  - (i) section 26AC;
  - (ii) sub-sections 26AD (2), (3) and (4);
  - (iii) sub-section 27B (1);
- (b) if the taxpayer is a resident taxpayer in relation to the year of income and Division 16 does not apply to the income of the taxpayer of the year of income—the taxable income of the taxpayer of the year of income exceeds \$4,595;
- (c) the relevant tax amount in relation to the taxpayer in relation to the year of income exceeds the notional tax amount in relation to the taxpayer in relation to the year of income; and
- (d) the additional tax amount in relation to the taxpayer in relation to the year of income exceeds the sum of—
  - (i) 15% of an amount (in this paragraph referred to as the ‘qualifying amount’) equal to so much (if any) of the lump sum amount as—
    - (A) is included in the assessable income of the taxpayer of the year of income under sub-section 27B (1) in respect of an eligible termination payment or eligible termination payments made on or after the date on which the taxpayer attained the age of 55 years; and
    - (B) does not exceed the residual amount in relation to the taxpayer in relation to the year of income, or the relevant income amount in relation to the taxpayer in relation to the year of income, whichever is the less; and

- (ii) 30% of so much of the relevant income amount in relation to the taxpayer in relation to the year of income as exceeds the qualifying amount (if any),

the taxpayer is entitled in his assessment in respect of the year of income to a rebate of tax of an amount equal to the excess referred to in paragraph (d).

“(2) For the purposes of the application of this section in relation to a taxpayer in relation to a year of income—

‘additional tax amount’ means the amount remaining after deducting from the relevant tax amount the notional tax amount;

‘eligible termination payment’ has the same meaning as that expression has in Subdivision AA of Division 2;

‘non-resident taxpayer’, in relation to a year of income, means a person who is, in relation to the year of income, a non-resident taxpayer within the meaning of sub-section 3 (1) of the *Income Tax (Rates) Act 1982*;

‘notional tax amount’ means the amount of tax that would be payable by the taxpayer in respect of income of the year of income, apart from this section and apart from any rebates or credits (other than a rebate under section 156 calculated by reference to the amount that would have been the taxable income of the taxpayer if no amount had been included in the assessable income of the taxpayer of the year of income under section 26AC, sub-section 26AD (2), (3) or (4) or sub-section 27B (1)) to which the taxpayer is entitled, if no amount had been included in the assessable income of the taxpayer of the year of income under section 26AC, sub-section 26AD (2), (3) or (4) or sub-section 27B (1);

‘relevant income amount’ means—

- (a) in the case of a taxpayer who is a resident taxpayer in relation to the year of income, not being a taxpayer in relation to whose income of the year of income Division 16 applies—

- (i) if the taxable income of the taxpayer of the year of income exceeds the sum of—

- (A) \$4,595; and

- (B) the amount that was included in the assessable income of the taxpayer of the year of income by virtue of section 26AC, sub-section 26AD (2), (3) or (4) or sub-section 27B (1) or, if 2 or more amounts were included in the assessable income of the taxpayer of the year of income by virtue of that section and those sub-sections, the aggregate of the amounts so included,

the amount that was so included, or the aggregate of the amounts that were so included, as the case may be; and

- (ii) if the taxable income of the taxpayer exceeds \$4,595 but does not exceed the sum referred to in sub-paragraph

- (i)—so much of that taxable income as exceeds \$4,595; and
- (b) in any other case—
  - (i) the amount that was included in the assessable income of the taxpayer of the year of income by virtue of section 26AC, sub-section 26AD (2), (3) or (4) or sub-section 27B (1) or, if 2 or more amounts were included in the assessable income of the taxpayer of the year of income by virtue of that section and those sub-sections, the aggregate of the amounts so included; or
  - (ii) the taxable income of the taxpayer of the year of income,whichever is the less;
- ‘relevant tax amount’ means the amount of tax that would be payable by the taxpayer in respect of income of the year of income apart from this section and apart from any rebates or credits (other than a rebate under section 156) to which the taxpayer is entitled;
- ‘resident taxpayer’, in relation to a year of income, means a person who is, in relation to the year of income, a resident taxpayer within the meaning of sub-section 3 (1) of the *Income Tax (Rates) Act 1982*;
- ‘residual amount’, in relation to a taxpayer in relation to a year of income, means—
  - (a) in a case to which paragraph (b) does not apply—\$50,000; and
  - (b) where, in a preceding year of income or preceding years of income, an eligible termination payment or eligible termination payments was or were made in relation to the taxpayer on or after the date on which the taxpayer attained the age of 55 years—\$50,000 reduced by the amount, or the sum of the amounts, included in the assessable income of the taxpayer under sub-section 27B (1) in respect of that eligible termination payment or those eligible termination payments, as the case may be.”.

#### **Amendment of assessments**

**53.** Section 170 of the Principal Act is amended by omitting from sub-section (10) “, 77E, 78A” and substituting “or 77E, sub-section 77F (5), section 78A”.

#### **Interpretation**

**54.** Section 221A of the Principal Act is amended—

- (a) by inserting after the definition of “deduction” in sub-section (1) the following definition:
  - “ ‘eligible termination payment’ means a payment that is an eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III in relation to the person who receives, or is entitled to receive, the payment;”;



- (b) by inserting “, eligible termination payments” after “this definition” in the definition of “salary or wages” in sub-section (1);
- (c) by omitting from paragraph (2) (c) “and”; and
- (d) by adding at the end of sub-section (2) the following word and paragraph:
  - “; and (e) no part of an eligible termination payment shall be taken to be exempt income.”.

**Deductions by employer from salary or wages**

**55.** Section 221C of the Principal Act is amended—

- (a) by inserting after sub-section (1AC) the following sub-section:
  - “(1AD) Regulations made for the purposes of sub-section (1) may—
  - (a) prescribe rates of deductions in respect of eligible termination payments that are different from the rates of deductions that are prescribed in respect of payments of other salary or wages; and
  - (b) prescribe different rates of deductions in respect of different classes of eligible termination payments.”; and
- (b) by inserting after sub-section (2B) the following sub-section:
  - “(2C) For the purposes of this section and of the regulations made for the purposes of this section, where an employee receives from an employer salary or wages, being an eligible termination payment, the employee shall be deemed to have received the salary or wages in respect of a week.”.

**Group employers**

**56.** Section 221F of the Principal Act is amended—

- (a) by inserting after sub-section (2) the following sub-section:
  - “(2A) A person who, during any period of 12 months commencing on or after 1 July 1983, has made 10 or more eligible termination payments (whether before or after the commencement of this sub-section) shall, unless he is already registered as a group employer, apply to the Commissioner, not later than 14 days after the expiration of that period, in a form authorized by the Commissioner, for registration as a group employer.”;
- (b) by adding at the end of paragraph (5) (c) “and amounts deducted from eligible termination payments”; and
- (c) by inserting after paragraph (5) (c) the following paragraph:
  - “(ca) within 7 days after making a deduction from an eligible termination payment to an employee, issue to that employee a group certificate setting out the amount of the deduction;”.

**Employers other than group employers**

**57.** Section 221G of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-sections:

“(2A) Sub-sections (1) and (2) do not apply in relation to eligible termination payments.

“(2B) Where an employer, other than a group employer, makes an eligible termination payment to an employee from which he is required to make a deduction, the employer shall—

- (a) in respect of that employee, enter in the spaces provided for the purpose on a tax deduction sheet in a form authorized by the Commissioner the amount of the eligible termination payment before making the deduction and the amount of the deduction;
- (b) purchase, and securely affix in the space provided for the purpose on the tax stamps sheet, on the day on which the eligible termination payment is made, tax stamps of a face value equal to the amount of the deduction;
- (c) at the time of affixing the tax stamps—
  - (i) securely affix the corresponding tax check in the space provided for the purpose on the tax check sheet; and
  - (ii) cancel the tax stamp and tax check by writing his name on them in ink;
- (d) complete and sign the tax stamp certificate and deliver it, together with the tax stamps sheet, to the employee on the day on which the eligible termination payment is made; and
- (e) not later than 14 days after the end of each year ending on 30 June—
  - (i) sign the tax check sheets in respect of eligible termination payments made by the employer during that year; and
  - (ii) forward those sheets to the Commissioner together with a summary, in a form authorized by the Commissioner, of the eligible termination payments referred to in the sheets.”; and

(b) by inserting in sub-section (6) “or (2B) (b)” after “paragraph (1) (b)”.

**Application of deductions in payment of tax**

**58.** Section 221H of the Principal Act is amended by inserting after sub-section (5) the following sub-sections:

“(5A) Where—

- (a) the Commissioner receives from a person a tax stamps sheet, or a group certificate, in respect of a deduction made from an eligible termination payment that the person has received or was entitled to receive;

- (b) the Commissioner is satisfied that the whole or a part of the eligible termination payment (which whole or part is in this sub-section referred to as the 'applied amount')—
  - (i) is deemed for the purposes of Subdivision AA of Division 2 of Part III to have been applied in accordance with section 27D; or
  - (ii) will, by virtue of an amount or amounts being paid to a person or persons (in this sub-section referred to as the 'eligible payee' or 'eligible payees') as mentioned in sub-section 27A (12), be deemed to have been so applied; and
- (c) where the applied amount is part only of the eligible termination payment—the amount of the deduction referred to in paragraph (a) exceeds the amount of the deduction that would have been required to be made from the eligible termination payment if the eligible termination payment had not included the applied amount,

the Commissioner shall, as he considers appropriate—

- (d) pay to the person an amount equal to the amount of the deduction referred to in paragraph (a), or the excess referred to in paragraph (c), as the case requires;
- (e) pay to the person and to the eligible payee or eligible payees on behalf of the person amounts equal in the aggregate to the amount of the deduction referred to in paragraph (a), or the excess referred to in paragraph (c), as the case requires; or
- (f) pay to the eligible payee or eligible payees on behalf of the person an amount equal to, or amounts equal in the aggregate to, the amount of the deduction referred to in paragraph (a), or the excess referred to in paragraph (c), as the case requires.

“(5B) Where the Commissioner has applied sub-section (5A) in relation to a tax stamps sheet or group certificate, no person is entitled to receive any further benefit in respect of the tax stamps sheet or group certificate except to the extent to which the amount represented by the face value of the tax stamps duly affixed to the tax stamps sheet or the deductions shown in the group certificate exceeds the amount paid or applied by the Commissioner in accordance with that sub-section.”.

### **Repeal of section 221YHE**

**59.** Section 221YHE of the Principal Act is repealed.

### **Application of certain amendments**

**60. (1)** The amendment made by section 6 applies to payments made after 17 August 1982.

**(2)** Section 23FA of the Principal Act as amended by this Act applies to assessments in respect of income of the year of income that commenced on 1 July 1983 and of all subsequent years of income.

**(3)** Section 23FB of the Principal Act as amended by this Act applies to assessments in respect of income of the year of income commencing on 1 July 1984 and of all subsequent years of income.

**(4)** The amendments made by section 7, paragraph 14 (b), sections 28, 29 (other than paragraph (c)), 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, paragraph 44 (a), paragraph 44 (b) (insofar as it relates to section 121DAA of the Principal Act as amended by this Act), section 45 (insofar as it relates to section 121DAA of the Principal Act as amended by this Act), section 46 (insofar as it relates to section 23FA of the Principal Act as amended by this Act), section 49 (insofar as it relates to section 23FA of the Principal Act as amended by this Act) and section 51 apply to assessments in respect of income of the year of income that commenced on 1 July 1983 and of all subsequent years of income.

**(5)** Section 121DAA of the Principal Act as amended by this Act applies to assessments in respect of income of the year of income that commenced on 1 July 1983 and of all subsequent years of income.

**(6)** Section 121DAB of the Principal Act as amended by this Act applies to assessments in respect of income of the year of income commencing on 1 July 1984 and of all subsequent years of income.

**(7)** The amendments made by paragraph 3 (b), section 4, paragraphs 14 (a), (c), (d) and (f), sections 23 and 24, paragraphs 26 (b) and 29 (c), sections 39, 40 and 41, paragraph 44 (b) (insofar as it relates to section 121DAB of the Principal Act as amended by this Act), section 46 (insofar as it relates to section 23FB of the Principal Act as amended by this Act), section 49 (insofar as it relates to section 23FB of the Principal Act as amended by this Act), and section 50 apply to assessments in respect of income of the year of income commencing on 1 July 1984 and of all subsequent years of income.

**(8)** The amendments made by section 10, paragraph 11 (a) and section 17 (except insofar as those amendments relate to the carrying on or carrying out of any profit-making undertaking or scheme) apply to sales of property after 23 August 1983, whether the property was acquired before or after that date.

**(9)** The amendment made by paragraph 11 (b) applies to allowances, gratuities, compensations, benefits, bonuses and premiums derived on or after 1 July 1983.

**(10)** The amendment made by section 12 applies to any annuity derived on or after 1 July 1983.

**(11)** The amendment made by section 13 applies to benefits received on or after 1 July 1983.

**(12)** The amendments made by sections 9 and 27 apply to eligible termination payments made on or after 1 July 1983.

**(13)** The amendment made by section 15, insofar as it relates to eligible termination payments and annuities, applies to eligible termination payments made, and annuities derived, on or after 1 July 1983.

(14) The amendment made by section 15, insofar as it relates to payments of a supplement to an annuity (not being payments of an annuity), applies to payments made after 30 May 1984.

(15) The amendments made by sections 18, 19 and 20 apply in relation to expenditure incurred by a taxpayer after 18 April 1984.

(16) The amendment made by section 52 applies to assessments in respect of income of the year of income in which 1 July 1983 occurred and of all subsequent years of income.

(17) The amendments made by sections 54, 55 and 56 apply to eligible termination payments made on or after 1 August 1984.

### **Transitional**

61. (1) Notwithstanding the amendments made by sections 12 and 15, where the period in respect of which an annuity was first payable commenced before 1 July 1983, section 26AA of the Principal Act continues to apply in relation to the annuity and, subject to sub-section (2) of this section, section 27H of the Principal Act as amended by this Act does not apply in relation to the annuity.

(2) Nothing in sub-section (1) affects the application of section 27H of the Principal Act as amended by this Act to a payment of a supplement to an annuity, being a payment that is not a payment of an annuity.

### **Amendment of assessments**

62. Nothing in section 170 of the Principal Act prevents the amendment of an assessment made before the commencement of this Act for the purpose of giving effect to the amendments made by this Act.

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### **NOTE**

1. No. 27, 1936, as amended. For previous amendments, see 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; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; and No. 14, 1984.