Fringe Benefits Tax Assessment Act 1986

No. 39, 1986

Compilation No. 26

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About this compilation

This compilation

This is a compilation of the *Fringe Benefits Tax Assessment Act 1986* that shows the text of the law as amended and in force on 23 June 1993 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the assessment and collection of the tax imposed by the *Fringe Benefits Tax Act 1986*, and for related purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Fringe Benefits Tax Assessment Act 1986.*

2 Commencement

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

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Part II—Administration

3 General administration of Act

The Commissioner has the general administration of this Act.

4 Annual report

(1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.

(2) The Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

5 Secrecy

(1) In this section, ***officer*** means a person:

(a) who is or has been appointed or employed by the Commonwealth; or

(b) to whom powers or functions have been delegated by the Commissioner,

and who, by reason of the appointment or employment or in the course of the employment, or by reason of, or in the course of the exercise of powers or the performance of functions under, the delegation, as the case may be, may acquire or has acquired

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information with respect to the affairs of any other person disclosed or obtained under or for the purposes of this Act.

(2) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.

(3) Subject to subsection (5), a person who is or has been an officer shall not, except for the purposes of this Act or otherwise than in the performance of the person's duties as an officer, directly or indirectly:

(a) make a record of any information with respect to the affairs of a second person; or

(b) divulge or communicate to a second person any information with respect to the affairs of a third person,

being information disclosed or obtained under or for the purposes of this Act and acquired by the person by reason of the person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in the course of the exercise of such powers or performance of such functions, as the case may be.

Penalty: $10,000 or imprisonment for 2 years, or both.

(4) Except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act, a person who is or has been an officer shall not be required:

(a) to produce in court any document made or given under or for the purposes of this Act; or

(b) to divulge or communicate to a court a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act,

being a document or information acquired by the person by reason of the person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in

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the course of the exercise of such powers or the performance of such functions, as the case may be.

(5) Nothing in subsection (3) shall be taken to prohibit the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner from communicating any information to:

(a) the Tribunal in connection with proceedings under an Act of which the Commissioner has the general administration; or

(b) a person performing, as an officer, duties arising under an Act of which the Commissioner has the general administration, or regulations under such an Act, for the purpose of enabling the person to perform those duties.

(6) For the purposes of subsection (3), an officer shall be deemed to have communicated information to another person in contravention of that subsection if the officer communicates the information to any Minister.

(7) An officer shall, if and when required by the Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in conformity with the provisions of this section.

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Part III—Fringe Benefits

Division 1—Preliminary

6 Part not to limit generality of *benefit*

The provisions of this Part do not limit the generality of the expression ***benefit***.

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Division 2—Car Fringe Benefits

Subdivision A—Car Benefits

7 Car benefits

(1) Where:

(a) at any time on a day, in respect of the employment of an employee, a car held by a person (in this subsection referred to as the ***provider***):

(i) is applied to a private use by the employee or an associate of the employee; or

(ii) is taken to be available for the private use of the employee or an associate of the employee; and

(b) either of the following conditions is satisfied:

(i) the provider is the employer, or an associate of the employer, of the employee;

(ii) the car is so applied or available, as the case may be, under an arrangement between:

(A) the provider or another person; and

(B) the employer, or an associate of the employer, of the employee,

that application or availability of the car shall be taken to constitute a benefit provided on that day by the provider to the employee or associate in respect of the employment of the employee.

(2) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

(a) a car is held by a person, being:

(i) the employer;

(ii) an associate of the employer; or

(iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;

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(b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee,

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

(3) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:

(a) a car is held by a person, being:

(i) the employer;

(ii) an associate of the employer; or

(iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;

(b) the car is not at business premises of:

(i) the employer;

(ii) an associate of the employer; or

(iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;

(c) any of the following conditions is satisfied:

(i) the employee is entitled to apply the car to a private use;

(ii) the employee is not performing the duties of his or her employment and has custody or control of the car;

(iii) an associate of the employee is entitled to use, or has custody or control of, the car,

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

(4) For the purposes of subsection (3), where a prohibition on the application of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person shall be

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deemed to be entitled to use the car, or to apply the car to a private use, notwithstanding the prohibition.

(5) For the purposes of this Act, a car shall be deemed to be applied by a person if it is applied in accordance with the directions, instructions or wishes of the person.

(6) For the purposes of this Division, a car that is let on hire to a person under a hire-purchase agreement shall be deemed:

(a) to have been purchased by the person at the time when the person first took the car on hire; and

(b) to have been owned by the person at all material times.

(7) A reference in this Division to a car held by a person (in this subsection referred to as the ***provider***) does not include a reference to:

(a) a taxi let on hire to the provider; or

(b) a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis unless the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

8 Exempt car benefits

(1) Except insofar as section 7 provides that the application or availability of a car held by a person is a benefit, the application or availability of a car held by a person is an exempt benefit.

(2) A car benefit provided in a year of tax in respect of the employment of a current employee is an exempt benefit in relation to the year of tax if:

(a) the car is:

(i) a taxi, panel van or utility truck; or

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(ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and

(b) there was no private use of the car during the year of tax and at a time when the benefit was provided other than:

(i) work-related travel of the employee; and

(ii) other private use by the employee or an associate of the employee, being other use that was minor, infrequent and irregular.

(3) Where:

(a) a car benefit relating to a particular car is provided by a particular person (in this subsection called the ***provider***) in a year of tax in respect of the employment of a current employee of an employer;

(b) at all times during the year of tax when the car was held by the provider, the car was unregistered; and

(c) during the period in the year of tax when the car was held by the provider, the car was wholly or principally used directly in connection with business operations of:

(i) the employer; or

(ii) if the employer is a company—the employer or a company that is related to the employer;

the car benefit is an exempt benefit in relation to the year of tax.

Subdivision B—Taxable Value of Car Fringe Benefits

9 Taxable value of car fringe benefits—statutory formula

(1) Subject to this Part, where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a particular car held by a particular person (in this section referred to as the ***provider***), the taxable value of that fringe benefit, or the aggregate of the taxable values of those fringe benefits, as the case may be, in relation to that year of tax, is the amount calculated in accordance with the formula $\frac{\mathbf{ABC}}{\mathbf{D}} - \mathbf{E}$ where:

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A is the base value of the car;

B is the statutory fraction;

C is the number of days during that year of tax on which the car fringe benefits were provided by the provider;

D is the number of days in that year of tax; and

E is the amount (if any) of the recipient's payment.

(2) For the purposes of this section:

(a) the base value of the car is the sum of:

(i) where, at the earliest holding time, the car was owned by the provider or an associate of the provider, the amount calculated in accordance with the formula **AB**, where:

A is the cost price of the car to the provider or associate, as the case may be; and

B is:

(A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time—2/3; or

(B) in any other case—1;

(ii) in a case to which subparagraph (i) does not apply—the amount calculated in accordance with the formula **AB**, where:

A is the leased car value of the car at the earliest holding time; and

B is:

(A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time—2/3; or

(B) in any other case—1; and

(iii) the cost price of each non-business accessory that:

(A) was fitted to the car after the earliest holding time and before the end of the year of tax; and

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(B) remained fitted to the car at a time during the year of tax when the car was held by the provider;

(b) the earliest holding time, in relation to a car held by the provider at a particular time (in this paragraph referred to as the ***current time***), is the earliest time before the current time when the car was held by the provider or an associate of the provider;

(c) the statutory fraction is:

(i) in the case of the transitional year of tax:

(A) where the annualised number of whole kilometres travelled by the car during the year of tax was more than 30,000—0.045;

(B) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 18,750 and not more than 30,000—0.075;

(C) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 11,250 and not more than 18,749—0.135; or

(D) in any other case—0.18; and

(ii) in relation to a standard year of tax:

(A) where the annualised number of whole kilometres travelled by the car during the year of tax was more than 40,000—0.06;

(B) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 25,000 and not more than 40,000—0.1;

(C) where the annualised number of whole kilometres travelled by the car during the year of tax was not less than 15,000 and not more than 24,999—0.18; or

(D) in any other case—0.24;

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(d) the annualised number of whole kilometres travelled by the car during the year of tax is the number calculated in accordance with the formula $\frac{\mathbf{AB}}{\mathbf{C}}$, where:

A is the number of whole kilometres travelled by the car during the period in the year of tax when the car was held by the provider (in this subsection referred to as the ***holding period***);

B is the number of days in the year of tax; and

C is the number of days in the holding period; and

(e) the amount of the recipient's payment is the sum of:

(i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses;

(ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and:

(A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of those expenses; or

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ii) in a case where:

(A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car)

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were incurred during the holding period by recipients of the car fringe benefits; and

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date,

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.

10 Taxable value of car fringe benefits—cost basis

(1) An employer may, in relation to a particular car, elect that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to that car.

(2) Subject to this Part, where an election is made under subsection (1), the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits in relation to the employer in relation to the year of tax that relate to the car while it was held by a particular person (in this section referred to as the ***provider***) during a particular period (in this section referred to as the ***holding period***) in the year of tax is the amount calculated in accordance with the formula:

$$\left(C \times \left(100\% - BP\right)\right) - R$$

where:

C is the operating cost of the car during the holding period;

BP is:

(a) if, under section 10A or 10B, the employer is not entitled to a reduction in the operating cost of the car on account of business journeys undertaken in the car during the holding period—nil;

(b) if, under section 10A or 10B, the employer is entitled to such a reduction and the percentage calculated in accordance with the formula:

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$$\frac{N - U}{}$$

where:

N is the percentage applicable to the car specified in the employer's car records for the year of tax as mentioned in section 10A or 10B; and

U is the percentage (in this paragraph called the ***reasonable percentage***) that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the provider for the holding period;

is a percentage that:

(i) if either of the following sub-subparagraphs applies:

(A) the year of tax is a log book year of tax of the employer in relation to the car;

(B) the year of tax is not a log book year of tax of the employer in relation to the car and the car is a low business kilometre car of the provider in relation to the year of tax;

exceeds nil; or

(ii) in any other case—exceeds 10%;

the reasonable percentage; or

(c) in any other case—the percentage applicable to the car specified in the employer's car records for the year of tax as mentioned in section 10A or 10B; and

R is the amount (if any) of the recipient's payment.

(3) For the purposes of subsection (2):

(a) the operating cost of the car during the holding period is the sum of:

(i) any car expenses (other than insured repair expenses or expenses in respect of registration and insurance) relating to the car incurred during the holding period (whether the expenses are incurred by the provider or by any other person), not including, in a case where the car is leased to the provider, any car expenses incurred by the lessor pursuant to the lease agreement;

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(ii) so much of any expense paid or payable in respect of the registration of, or insurance in respect of, the car as is attributable to the holding period (whether the expenses are incurred by the provider or by any other person), not including:

(A) in a case where the car is owned by the provider—any expense incurred before the provider became the owner of the car; or

(B) in a case where the car is leased to the provider—any expense incurred by the lessor pursuant to the lease agreement;

(iii) in a case where the car is owned by the provider:

(A) the amount of depreciation that is deemed to have been incurred by the provider in respect of the car in respect of the holding period; and

(B) the amount of interest that is deemed to have been incurred by the provider in respect of the car in respect of the holding period;

(iv) in a case where the car is owned by the provider and a non-business accessory was fitted to the car during the period when the car was owned by the provider and remained fitted to the car at a time during the holding period:

(A) the amount of depreciation that would be deemed to have been incurred by the provider in respect of the accessory in respect of the holding period if the accessory were a car; and

(B) the amount of interest that would be deemed to have been incurred by the provider in respect of the accessory in respect of the holding period if the accessory were a car;

(v) in a case where the car is leased to the provider:

(A) where sub-subparagraph (B) does not apply—so much of the charges paid or payable under the lease agreement as are attributable to the holding period; or

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(B) where the lessor was entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the lessor purchased the car—the amount that could reasonably be expected to have been applicable under sub-subparagraph (A) if the lessor had not been entitled to those privileges or exemptions; and

(vi) in a case where the car is neither owned by, nor leased to, the provider—the amount of depreciation and interest that would be deemed to have been incurred by the provider in respect of the car in respect of the holding period if the car had been purchased by the provider at the time when the provider commenced to hold the car for a consideration equal to the leased car value of the car at that time; and

(c) the amount of the recipient's payment is the sum of:

(i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses;

(ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and:

(A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of those expenses; or

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

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the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ii) in a case where:

(A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date,

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.

(3A) A reference in subparagraph (3)(a)(i) to an insured repair expense relating to a car is a reference to:

(a) so much of an expense incurred in respect of repairs to the car as does not exceed an amount:

(i) received by way of insurance in respect of the repairs by the person incurring the expense;

(ii) paid by way of insurance in respect of the repairs in discharge of the obligation of the insured to pay the expense;

(iii) received by way of compensation in respect of the repairs by the person incurring the expense from the person legally responsible for the damage to the car; or

(iv) paid by way of compensation in respect of the repairs by the person legally responsible for the damage to the car in discharge of the obligation of the person incurring the expense to pay the expense; or

(b) an expense incurred in respect of repairs to the car:

(i) by an insurer under a contract of insurance; or

(ii) by way of compensation by the person legally responsible for the damage to the car.

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(3B) Where, in accordance with subsection 162K(2), the identity of a car changes one or more times during the period (in this subsection called the ***overall holding period***) that, apart from that subsection, would be the holding period, the operating cost of the car during each period (in this subsection called a ***statutory holding period***) that is a holding period in relation to the car when the car had a separate identity is so much of the amount that would have been the operating cost of the car during the overall holding period (assuming that the identity of the car had not changed during the overall holding period) as is attributable to the statutory holding period.

(3C) Where, in accordance with subsection 162K(2), the identity of a car changes one or more times during the period (in this subsection called the ***overall holding period***) that, apart from that subsection, would be the holding period, the recipient's payment in relation to each period (in this subsection called a ***statutory holding period***) that is a holding period in relation to the car when the car had a separate identity is so much of the amount that would have been the recipient's payment in relation to the overall holding period (assuming that the identity of the car had not changed during the overall holding period) as is attributable to the statutory holding period.

(3D) In determining, for the purposes of this section, whether:

(a) an expense is paid or payable in respect of the registration of, or insurance in respect of, a car;

(b) a charge is paid or payable under a lease agreement in respect of a car; or

(c) a lessor of a car is entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the lessor purchased the car;

a change, in accordance with subsection 162K(2) or 162M(2), to the identity of the car shall be disregarded.

(4) An election by an employer under subsection (1) in relation to a year of tax:

(a) shall be made by notice in writing to the Commissioner; and

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(b) shall be lodged with the Commissioner on or before the declaration date.

(5) Where:

(a) an employer elects that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to a particular car; and

(b) the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits that relate to the car ascertained under subsection (2) of this section exceeds the taxable value, or the aggregate of the taxable values, as the case requires, that would have been ascertained under section 9 if that election had not been made;

this Act (other than section 162G) applies, and shall be deemed always to have applied, for the purposes of ascertaining that taxable value, or the aggregate of those taxable values, as the case requires, as if that election had not been made.

(6) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (5).

10A No reduction of operating cost in a log book year of tax unless log book records and odometer records are maintained

Where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a car while it was held by a particular person (in this section called the ***provider***) during a particular period (in this section called the ***holding period***) in a year of tax that is a log book year of tax of the employer in relation to the car, the employer is entitled to a reduction in the operating cost of the car on account of business journeys undertaken in the car during the holding period if, and only if:

(a) if either of the following subparagraphs applies:

(i) the provider commenced to hold the car during the last 12 weeks of the year of tax;

(ii) the Commissioner is satisfied, having regard to the provider's circumstances, that it would be unreasonable to expect log book records and odometer records in

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relation to the car to have been maintained by or on behalf of the provider for an applicable log book period in relation to the car;

the employer, in the employer's car records for the year of tax, specifies a percentage as the nominated business percentage applicable to the car in relation to the provider for the holding period; or

(b) in any other case—both of the following conditions are satisfied:

(i) log book records and odometer records are maintained by or on behalf of the provider for the applicable log book period in relation to the car and, if the provider is not the employer, are given to the employer before the declaration date; and

(ii) the employer, in the employer's car records for the year of tax, specifies a percentage as the nominated business percentage applicable to the car in relation to the provider for the holding period, not being a percentage that exceeds the business percentage established during the applicable log book period.

10B No reduction of operating cost in a non-log book year of tax unless log book records and odometer records are maintained in log book year of tax

Where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a car while it was held by a particular person (in this section called the ***provider***) during a particular period (in this section called the ***holding period***) in a year of tax that is not a log book year of tax of the employer in relation to the car, the employer is entitled to a reduction in the operating cost of the car on account of business journeys undertaken during the holding period in the car if, and only if:

(a) odometer records are maintained by or on behalf of the provider in relation to the car for the holding period and, if the provider is not the employer, are given to the employer before the declaration date; and

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(b) the employer, in the employer's car records for the year of tax, specifies whichever of the following percentages is applicable:

(i) the percentage that was:

(A) the nominated business percentage applicable to the car in relation to the provider for the period that was the holding period in the year of tax that was the last log book year of tax of the employer in relation to the car; and

(B) specified in the employer's car records for that last log book year of tax;

(ii) if the percentage referred to in subparagraph (i) would otherwise be applicable but the employer is of the opinion that the percentage calculated in accordance with the formula:

$$\mathbf{N - U}$$

where:

N is the percentage referred to in subparagraph (i); and

U is the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the provider for the holding period;

is a percentage that:

(A) if the car is a low business kilometre car of the provider in relation to the year of tax—exceeds nil; or

(B) in any other case—exceeds 10%;

a percentage as the nominated business percentage applicable to the car in relation to the provider for the holding period.

10C Nominated business percentage to be reduced if it exceeds business percentage established during applicable log book period or if it is unreasonable

(1) Where:

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(a) an employer, in the employer's car records for a year of tax, specifies, or purports to specify, a percentage (in this subsection called the ***excessive percentage***) of the kind mentioned in subparagraph 10A(b)(ii) in respect of a car held by the provider of a car fringe benefit in relation to the employer in respect of the car during a period (in this subsection called the ***holding period***) in the year of tax; and

(b) the excessive percentage exceeds the percentage (in this subsection called the ***reduced percentage***) that is the lesser of the following percentages:

(i) the business percentage applicable to the car that was established during the applicable log book period referred to in subparagraph 10A(b)(ii);

(ii) the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the provider for the holding period;

the following provisions have effect:

(c) the employer shall be treated as if he or she had, in the car records, specified, in respect of the car, the reduced percentage instead of the excessive percentage;

(d) if the employer, in the employer's car records for a subsequent year of tax, specifies, or purports to specify, in respect of the car, the excessive percentage in accordance with the condition set out in subparagraph 10B(b)(i)—the employer shall be treated as if he or she had, in the car records for that subsequent year of tax, specified, in respect of the car, the reduced percentage instead of the excessive percentage.

(2) For the purposes of this Act, where:

(a) subparagraph 10B(b)(ii) applies in relation to a car held by a provider of a car fringe benefit during a period (in this subsection called the ***holding period***) in a year of tax; and

(b) the employer concerned fails to specify, in the employer's car records for the year of tax, a percentage as the nominated business percentage applicable to the car in relation to the provider for the holding period;

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the employer shall be treated as if he or she had, in the car records, specified, in respect of the car, as that nominated business percentage, the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the provider for the holding period.

11 Calculation of depreciation and interest

(1A) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of the period (in this subsection called the ***holding period***) during a year of tax while the car was held by the person is the amount calculated in accordance with the formula:

$$\mathbf{DEP} \times \frac{\mathbf{DHP}}{\mathbf{DCO}}$$

where:

DEP is the amount of depreciation that is deemed to have been incurred by the person in respect of the car in respect of the year of tax;

DHP is the number of days in the holding period during which the car was owned by the person; and

DCO is the number of days in the period in the year of tax during which the car was owned by the person.

(1) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula $\frac{\mathbf{ABC}}{\mathbf{D}}$, where:

A is—

(a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time; or

(b) in any other case—the cost price of the car to the person;

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B is 0.225;

C is the number of days in the period in the year of tax during which the car was owned by the person; and

D is:

(c) in the case of the transitional year of tax—365; or

(d) in the case of a standard year of tax—the number of days in the year of tax.

(1B) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of the period (in this subsection called the ***holding period***) during a year of tax while the car was held by the person is the amount calculated in accordance with the formula:

$$\mathbf{INT} \times \frac{\mathbf{DHP}}{\mathbf{DCO}}$$

where:

INT is the amount of interest that is deemed to have been incurred by the person in respect of the car in respect of the year of tax;

DHP is the number of days in the holding period during which the car was owned by the person; and

DCO is the number of days in the period in the year of tax during which the car was owned by the person.

(2) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula $\frac{\mathbf{ABC}}{\mathbf{D}}$, where:

A is:

(a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time; or

(b) in any other case—the cost price of the car to the person;

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B is the statutory interest rate in relation to the year of tax;

C is the number of days in the period in the year of tax during which the car was owned by the person; and

D is:

(c) in the case of the transitional year of tax—365; or

(d) in the case of a standard year of tax—the number of days in the year of tax.

12 Depreciated value

A reference in this Subdivision to the depreciated value of a car at a particular time (in this section referred to as the ***relevant time***) is a reference to:

(a) if the relevant time is the beginning of the transitional year of tax—the cost price of the car to the person who owns the car at the relevant time reduced by the total amount of depreciation that would have been deemed to have been incurred by the person in respect of the car for the period (in this paragraph referred to as the ***relevant period***) before that time when it was owned by the person if:

(i) the depreciation deemed to have been incurred for the relevant period were calculated in accordance with subsection 11(1); and

(ii) each year commencing on 1 July were a standard year of tax; and

(b) if the relevant time is the beginning of a standard year of tax—the amount calculated in accordance with the formula $\mathbf{A - B}$, where:

A is:

(i) if the car was owned by the person at the beginning of the transitional year of tax—the depreciated value of the car at the beginning of the transitional year of tax; or

(ii) in any other case—the cost price of the car to the person; and

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B is the total amount of depreciation (if any) that would have been deemed to have been incurred by the person in respect of the car for the period (in this paragraph referred to as the ***relevant period***) after the beginning of the transitional year of tax and before the relevant time when the car was owned by the person if the depreciation deemed to have been incurred for the relevant period were calculated in accordance with subsection 11(1).

13 Expenditure to be increased in certain circumstances

(1) The following provisions apply for the purpose of determining the base value of a car for the purposes of section 9 or the operating cost of a car for the purposes of section 10.

(2) Where the amount (if any) of expenditure incurred by a person under a transaction that is not an arm's length transaction is less than the amount (in this subsection referred to as the ***increased amount***) of expenditure that could reasonably have been expected to have been incurred by the person under the transaction if it had been an arm's length transaction, the person shall be deemed, under the transaction, to have incurred the increased amount of expenditure.

(3) The reference in subsection (2) to expenditure does not include a reference to expenditure by a recipient of a car benefit in relation to the car by way of reimbursement of expenditure incurred by another person.

(4) Where, in a case to which subsection (2) does not apply:

(a) a person acquires any property, or is provided with any benefit; and

(b) the person incurs no expenditure in respect of the acquisition of that property or the provision of that benefit,

the person shall be deemed to have incurred, in respect of the acquisition of that property or the provision of that benefit, expenditure equal to the amount that the person could reasonably

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be expected to have been required to pay to purchase that property, or obtain the provision of that benefit, on the open market.

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Division 3—Debt Waiver Fringe Benefits

Subdivision A—Debt Waiver Benefits

14 Debt waiver benefits

Where, at a particular time, a person (in this section referred to as the ***provider***) waives the obligation of another person (in this section referred to as the ***recipient***) to pay or repay to the provider an amount, the waiver shall be taken to constitute a benefit provided at that time by the provider to the recipient.

Subdivision B—Taxable Value of Debt Waiver Fringe Benefits

15 Taxable value of debt waiver fringe benefits

Subject to this Part, the taxable value in relation to a year of tax of a debt waiver fringe benefit provided in the year of tax is the amount the payment or repayment of which is waived.

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Division 4—Loan Fringe Benefits

Subdivision A—Loan Benefits

16 Loan benefits

(1) Where a person (in this subsection referred to as the ***provider***) makes a loan to another person (in this subsection referred to as the ***recipient***), the making of the loan shall be taken to constitute a benefit provided by the provider to the recipient and that benefit shall be taken to be provided in respect of each year of tax during the whole or a part of which the recipient is under an obligation to repay the whole or any part of the loan.

(2) For the purposes of this Act, where:

(a) a person (in this subsection referred to as the ***debtor***) is under an obligation to pay or repay an amount (in this subsection referred to as the ***principal amount***) to another person (in this subsection referred to as the ***creditor***);

(b) the principal amount is not the whole or a part of the amount of a loan; and

(c) after the due date for payment or repayment of the principal amount, the whole or part of the principal amount remains unpaid,

the following provisions have effect:

(d) the creditor shall be deemed, immediately after the due date, to have made a loan (in this subsection referred to as the ***deemed loan***) of the principal amount to the debtor;

(e) at any time when the debtor is under an obligation to repay any part of the principal amount, the debtor shall be deemed to be under an obligation to repay that part of the deemed loan;

(f) the deemed loan shall be deemed to have been made:

(i) if interest accrues on so much of the principal amount as remains from time to time unpaid—at the rate of interest at which that interest accrues; or

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(ii) in any other case—at a nil rate of interest.

(3) For the purposes of this Act, where a person (in this subsection referred to as the ***provider***) makes a deferred interest loan (in this subsection referred to as the ***principal loan***) to another person (in this subsection referred to as the ***recipient***):

(a) the provider shall be deemed, at the end of:

(i) the period of 6 months commencing on the day on which the principal loan was made; and

(ii) each subsequent period of 6 months,

(being in either case a period ending on or after 1 July 1986 during the whole of which the recipient is under an obligation to repay the whole or any part of the principal loan) to have made a loan (in this subsection referred to as the ***deemed loan***) to the recipient of an amount equal to the amount by which the interest (in this subsection referred to as the ***accrued interest***) that has accrued on the principal loan in respect of that period exceeds the amount (if any) paid in respect of the accrued interest before the end of that period;

(b) where any part of the accrued interest becomes payable or is paid after the time when the deemed loan is deemed to have been made, the deemed loan shall be reduced accordingly; and

(c) the deemed loan shall be deemed to have been made at a nil rate of interest.

(4) In subsection (3), ***deferred interest loan*** means a loan in respect of which interest is payable at a rate exceeding nil, other than:

(a) a loan where the whole of the interest is due for payment within 6 months after the loan is made; or

(b) a loan where:

(i) the interest is payable by instalments;

(ii) the intervals between instalments do not exceed 6 months; and

(iii) the first instalment is due for payment within 6 months after the loan is made.

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(5) For the purposes of this Act, where no interest is payable in respect of a loan, a nil rate of interest shall be taken to be payable in respect of the loan.

17 Exempt loan benefits

(1) Where:

(a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and

(b) the rate of interest payable in respect of the loan:

(i) is specified in a document in existence at the time the loan is made;

(ii) is not less than the rate of interest in respect of a similar arm's length loan made by the person, at or about that time, to a member of the public in the ordinary course of carrying on that business; and

(iii) cannot be varied,

the making of the loan is an exempt benefit.

(2) Where:

(a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and

(b) the rate of interest from time to time payable in respect of the loan in respect of a year of tax is not less than the rate of interest applicable at the time concerned in respect of a similar arm's length loan made by the person, at or about the time the loan referred to in paragraph (a) is made, to a member of the public in the ordinary course of carrying on that business, the making of the loan is an exempt benefit in relation to that year of tax.

(3) Where:

(a) a loan consists of an advance by an employer to a current employee of the employer in respect of his or her employment;

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(b) the sole purpose of the making of the loan is to enable the employee to meet expenses incurred by the employee:
  (i) in the course of performing the duties of that employment; and
  (ii) not later than 6 months after the loan is made;
(c) the amount of the loan does not substantially exceed the amount of those expenses that could reasonably be expected to be incurred by the employee; and
(d) the employee is required:
  (i) to account to the employer, not later than 6 months after the loan is made, for expenses met from the loan; and
  (ii) to repay (whether by set-off or otherwise) any amount not so accounted for,

the making of the loan is an exempt benefit.

(4) Where:
(a) the making of a loan consisting of an advance by an employer to an employee of the employer constitutes a benefit in respect of the employment of the employee in respect of a year of tax (in this subsection called the ***current year of tax***);
(b) the sole purpose of the making of the loan is to enable the employee to pay any of the following amounts payable by the employee in respect of accommodation:
  (i) a rental bond;
  (ii) a security deposit in respect of electricity, gas or telephone services;
  (iii) any similar amount;
(c) the employee is required to repay (whether by set-off or otherwise) the loan not later than 12 months after the loan is made;
(d) any of the following benefits is provided in, or in respect of, any year of tax to the employee in respect of that employment:

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(i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of that accommodation;

(ii) a housing benefit where the housing right is in respect of that accommodation;

(iii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation; and

(e) either of the following subparagraphs apply:

(i) by virtue of section 21 or subsection 47 (5), the benefit referred to in paragraph (d) is an exempt benefit in relation to the year of tax referred to in that paragraph;

(ii) the benefit referred to in paragraph (d) is a fringe benefit in relation to the year of tax referred to in that paragraph and, under section 61C, the taxable value of the fringe benefit is reduced by the extent to which that taxable value is attributable to the subsistence of a lease or licence in respect of the accommodation during a particular period in that year of tax;

the making of the loan is an exempt benefit in relation to the current year of tax.

Subdivision B—Taxable Value of Loan Fringe Benefits

18 Taxable value of loan fringe benefits

(1) Subject to this Part, the taxable value, in relation to a year of tax, of a loan fringe benefit provided in respect of the year of tax is the amount (if any) by which the notional amount of interest in relation to the loan in respect of the year of tax exceeds the amount of interest that has accrued on the loan in respect of the year of tax.

19 Reduction of taxable value—"otherwise deductible" rule

(1) Where:

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(a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) if the recipient had, on the last day of the period (in this subsection called the ***loan period***) during the year of tax when the recipient was under an obligation to repay the whole or any part of the loan, incurred and paid unreimbursed interest (in this subsection called the ***gross interest***), in respect of the loan, in respect of the loan period, equal to the notional amount of interest in relation to the loan in relation to the year of tax—both of the following conditions would have been satisfied:

(i) a once-only deduction (in this subsection called the ***gross deduction***), not being a foreign income deduction, would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of the gross interest;

(ii) in the case of the transitional year of tax—the gross deduction would not be:

(A) a deduction in respect of rental property loan interest within the meaning of Subdivision G of Division 3 of Part III of that Act; or

(B) an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

(ba) the amount (in this subsection called the ***notional deduction***) calculated in accordance with the formula:

GD − RD

where:

GD is the gross deduction; and

RD is:

(i) if no interest accrued on the loan in respect of the loan period—nil; or

(ii) if interest accrued on the loan in respect of the loan period—the amount (if any) that would, or that would

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but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable:

(A) as a once-only deduction other than a foreign income deduction; and

(B) in the case of the transitional year of tax—otherwise than as a deduction in respect of rental property loan interest within the meaning of Subdivision G of Division 3 of Part III of that Act and otherwise than as an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

to the recipient under that Act in respect of that interest if that interest had been incurred and paid by the recipient on the last day of the loan period;

exceeds nil;

(c) except where the fringe benefit is:

(i) an employee credit loan benefit in relation to the year of tax; or

(ii) an employee share loan benefit in relation to the year of tax;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the loan concerned;

(ca) where:

(i) in the case of the transitional year of tax or the first standard year of tax—the loan was used by the recipient to purchase a car held by the recipient during a period (in this subsection called the ***holding period***) in the year of tax;

(ii) in the case of the second standard year of tax or a subsequent year of tax—the loan fringe benefit is a car loan benefit in respect of a car held by the recipient during a period (in this subsection also called the ***holding period***) in the year of tax; and

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(iii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iv) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

(v) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and

(d) where paragraph (ca) does not apply and:

(ia) in the case of the transitional year of tax or the first standard year of tax—the loan was used by the recipient to purchase a car held by the recipient during a period (in this subsection also called the ***holding period***) in the year of tax; or

(ib) in the case of the second standard year of tax or a subsequent year of tax—the loan fringe benefit is a car loan benefit in respect of a car held by the recipient during a period (in this subsection also called the ***holding period***) in the year of tax;

the recipient gives to the employer, before the declaration date:

(i) a declaration, in a form approved by the Commissioner, that purports to set out:

(A) the holding period;

(B) the number of whole business kilometres travelled by the car during the holding period; and

(C) the number of whole kilometres travelled by the car during the holding period; or

(ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:

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(A) a declaration referred to in subparagraph (i); or

(B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for Division 14, of the loan fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

TV − ND

where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax; and

ND is:

(e) if neither paragraph (ca) nor (d) applies—the notional deduction;

(f) if paragraph (ca) applies—whichever of the following amounts is applicable:

(i) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient—the car deduction percentage, ascertained under section 65G, of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;

(ii) if subparagraph (i) does not apply—the car deduction percentage, ascertained under section 65G, of the notional amount of interest in relation to the loan in relation to the year of tax;

(g) where:

(i) paragraph (d) applies; and

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(ii) a declaration referred to in subparagraph (d)(i) has been given to the employer;

whichever of the following amounts is the least:

(iii) the notional deduction;

(iv) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;

(v) if subparagraph (iv) does not apply—33⅓% of the notional amount of interest in relation to the loan in relation to the year of tax; or

(h) where:

(i) subparagraph (d)(ii) applies; and

(ii) a declaration referred to in subparagraph (d)(i) has not been given to the employer;

whichever of the following amounts is applicable:

(iii) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;

(iv) if subparagraph (iii) does not apply—33⅓% of the notional amount of interest in relation to the loan in relation to the year of tax.

(2) Where a part of a loan to which a loan fringe benefit relates is used by an employee to:

(a) in all cases—purchase a particular car; or

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(b) in the case of the second standard year of tax or a subsequent year of tax—pay a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*;

subsection (1) and the definition of ***car loan benefit*** in subsection 136(1) apply as if that part of the loan had been a separate loan.

(3) Where:

(a) apart from this subsection, paragraph (1)(ca) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in the year of tax; and

(b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(f) as representing the component ***ND*** in the formula in subsection (1):

(i) in all cases—the amount that would have been ascertained under paragraph (1)(g) as representing that component if:

(A) paragraph (1)(d) had applied in relation to the fringe benefit; and

(B) a declaration of the kind referred to in subparagraph (1)(d)(i) had been given to the employer;

(ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:

(A) subparagraph (1)(d)(ii) had applied in relation to that fringe benefit;

(B) a declaration of the kind referred to in subparagraph (1)(d)(i) had not been given to the employer; and

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(C) a declaration of the kind referred to in sub-subparagraph (1)(d)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

(4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).

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Division 5—Expense Payment Fringe Benefits

Subdivision A—Expense Payment Benefits

20 Expense payment benefits

Where a person (in this section referred to as the ***provider***):

(a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the ***recipient***) to pay an amount to a third person in respect of expenditure incurred by the recipient; or

(b) reimburses another person (in this section also referred to as the ***recipient***), in whole or in part, in respect of an amount of expenditure incurred by the recipient,

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

21 Exempt accommodation expense payment benefits

Where:

(a) an expense payment benefit is provided in a year of tax to a current employee of an employer in respect of his or her employment;

(b) the recipients expenditure is in respect of accommodation for eligible family members;

(ba) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment;

(c) the accommodation is required solely by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; and

(d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

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(i) the employee's usual place of residence; and
(ii) the place at which the employee actually resided while living away from his or her usual place of residence,

the benefit is an exempt benefit in relation to the year of tax.

22 Exempt car expense payment benefits

Where:

(a) an expense payment benefit provided to an employee of an employer in respect of his or her employment is constituted by the reimbursement of the employee, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the employee in relation to a car owned by, or leased to, the employee;

(b) in a case where the car is leased to the employee—the recipients expenditure is not attributable to a period when the lessor is the provider of a car benefit in relation to the car in relation to the employee;

(c) the benefit is not in respect of relocation transport;

(ca) the benefit is not in respect of an employment interview or selection test;

(cb) the benefit is not associated with:
(i) a work-related medical examination of the employee;
(ii) work-related medical screening of the employee;
(iii) work-related preventative health care of the employee;
(iv) work-related counselling of the employee or of an associate of the employee; or
(v) migrant language training of the employee or of an associate of the employee;

(cc) neither of the following subparagraphs applies in relation to the transport to which the benefit relates:
(i) the transport was provided wholly or partly to enable the employee, or an associate of the employee, to have a holiday;

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(ii) the transport was provided at a time when the employee had ceased to perform the duties of that employment; and

(d) the reimbursement is calculated by reference to the distance travelled by the car,

the expense payment benefit is an exempt benefit.

Subdivision B—Taxable Value of Expense Payment Fringe Benefits

22A Taxable value of in-house expense payment fringe benefits

(1) Subject to this Part, the taxable value in relation to a year of tax of an in-house property expense payment fringe benefit (in this subsection called the ***actual fringe benefit***) provided during the year of tax is the amount that, if:

(a) the provision of property to which the actual fringe benefit relates were an in-house property fringe benefit (in this subsection called the ***notional fringe benefit***); and

(b) the recipients contribution in relation to the notional fringe benefit were equal to the recipients expenditure reduced by whichever of the following amounts is applicable:

(i) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution in relation to the actual fringe benefit;

(ii) the amount of the reimbursement referred to in paragraph 20(b);

would have been calculated under section 42 as the taxable value, but for section 44 and Division 14, of the notional fringe benefit in relation to the year of tax.

(2) Subject to this Part, the taxable value in relation to a year of tax of an in-house residual expense payment fringe benefit (in this subsection called the ***actual fringe benefit***) provided during the year of tax is the amount that, if:

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(a) the provision of the residual benefit to which the actual fringe benefit relates were an in-house residual fringe benefit (in this subsection called the ***notional fringe benefit***); and

(b) the recipients contribution in relation to the notional fringe benefit were equal to the recipients expenditure reduced by whichever of the following amounts is applicable:

(i) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution in relation to the actual fringe benefit;

(ii) the amount of the reimbursement referred to in paragraph 20(b);

would have been calculated under whichever of sections 48 and 49 is applicable as the taxable value, but for section 52 and Division 14, of the notional fringe benefit in relation to the year of tax.

(3) For the purposes of subsection (2), section 49 has effect as if:

(a) "the current identical benefit in relation to" were omitted from paragraph 49(a);

(b) the reference in paragraph 49(b) to the recipients current benefit were a reference to the recipients overall benefit; and

(c) "insofar as it relates to the recipients current benefit" were omitted from section 49.

(4) Where the recipients expenditure in relation to each of 2 or more in-house expense payment fringe benefits (whether or not in relation to the same year of tax) is the same expenditure, this Act applies, and shall be deemed to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise.

(5) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (4).

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23 Taxable value of external expense payment fringe benefits

Subject to this Part, the taxable value in relation to a year of tax of an external expense payment fringe benefit provided during the year of tax is the amount of the payment referred to in paragraph 20(a), or the reimbursement referred to in paragraph 20(b), as the case requires, reduced, in a case to which paragraph 20(a) applies, by the amount of the recipients contribution.

24 Reduction of taxable value—"otherwise deductible" rule

(1) Where:

(a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) if the recipient had, at the time when the recipients expenditure was incurred, incurred and paid unreimbursed expenditure (in this subsection called the ***gross expenditure***), in respect of the same matter in respect of which the recipients expenditure was incurred, equal to:

(i) in the case of an in-house expense payment fringe benefit—the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or

(ii) in the case of an external expense payment fringe benefit—the amount of the recipients expenditure;

both of the following conditions would have been satisfied:

(iii) a once-only deduction (in this subsection called the ***gross deduction***), not being a foreign income deduction, would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of the gross expenditure;

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(iv) in the case of the transitional year of tax—the gross deduction would not be:

(A) a deduction in respect of rental property loan interest within the meaning of Subdivision G of Division 3 of Part III of that Act; or

(B) an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

(ba) the amount (in this subsection called the ***notional deduction***) calculated in accordance with the formula:

GD − RD

where:

GD is the gross deduction; and

RD is:

(i) if there is no recipients portion in relation to the expense payment fringe benefit—nil; or

(ii) if there is a recipients portion in relation to the expense payment fringe benefit—the amount (if any) that would, or that would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable:

(A) as a once-only deduction other than a foreign income deduction; and

(B) in the case of the transitional year of tax—otherwise than as a deduction in respect of rental property loan interest within the meaning of Subdivision G of Division 3 of Part III of that Act and otherwise than as an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

to the recipient under that Act in respect of the recipients expenditure (assuming that any payment of that expenditure by the recipient had been paid by the recipient at the time when the recipients expenditure was incurred);

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exceeds nil;

(c) in the case of an expense payment fringe benefit that is not an eligible incidental travel expense payment benefit or an eligible overtime meal expense payment benefit:

(ia) where the recipients expenditure is in respect of fuel or oil for a motor vehicle owned by, or leased to, the recipient:

(A) where the fringe benefit is an eligible small expense payment fringe benefit or an undocumentable expense payment fringe benefit—substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is not the employer, that documentary evidence, or a copy, is given to the employer before the declaration date;

(B) in any case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

(C) in any case—the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure;

(i) where subparagraph (ia) does not apply and the fringe benefit is an undocumentable expense payment fringe benefit or an eligible small expense payment fringe benefit:

(A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

(B) substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is not

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the employer, that documentary evidence, or a copy, is given to the employer before the declaration date; or

(ii) in any other case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

(d) where the expense payment fringe benefit is an extended travel expense payment benefit (other than an international aircrew expense payment benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates;

(e) except where the expense payment fringe benefit is:

(i) an exclusive employee expense payment benefit;

(ii) an eligible overtime meal expense payment benefit;

(iii) an eligible incidental travel expense payment benefit;

(iv) an extended travel expense payment benefit; or

(v) a car expense payment benefit,

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure;

(ea) where:

(i) the expense payment fringe benefit is a car expense payment benefit in respect of a car held by the recipient during a period (in this section called the ***holding period***) in the year of tax; and

(ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

(iv) in a case where the substantiation rules require log books or odometer records to be maintained by or on

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behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and

(f) where paragraph (ea) does not apply and the expense payment fringe benefit is a car expense payment benefit in respect of a car held by the recipient during a period (in this subsection also called the ***holding period***) in the year of tax—the recipient gives to the employer, before the declaration date:

(i) a declaration, in a form approved by the Commissioner, that purports to set out:

(A) the holding period;

(B) the number of whole business kilometres travelled by the car during the holding period; and

(C) the number of whole kilometres travelled by the car during the holding period; or

(ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:

(A) a declaration referred to in subparagraph (i); or

(B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for this subsection and Division 14, of the expense payment fringe benefit in relation to the year of tax shall be reduced by:

(g) if neither paragraph (ea) nor paragraph (f) applies—the notional deduction;

(h) if paragraph (ea) applies—whichever of the following amounts is applicable:

(i) if it would be concluded that the amount of the providers portion would have been the same even if the

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recipients expenditure were not incurred in producing assessable income of the recipient—the car deduction percentage, ascertained under section 65G, of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;

(ii) if subparagraph (i) does not apply:

(A) in the case of an in-house expense payment fringe benefit—the car deduction percentage, ascertained under section 65G, of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or

(B) in the case of an external expense payment fringe benefit—the car deduction percentage, ascertained under section 65G, of the recipients expenditure;

(j) where:

(i) paragraph (f) applies; and

(ii) a declaration referred to in subparagraph (f)(i) has been given to the employer;

whichever of the following amounts is the least:

(iii) the notional deduction;

(iv) if it would be concluded that the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;

(v) if subparagraph (iv) does not apply:

(A) in the case of an in-house expense payment fringe benefit—33⅓% of the amount that but for this subsection and Division 14 and the recipients contribution, would be the taxable

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value of the expense payment fringe benefit in relation to the year of tax; or

(B) in the case of an external expense payment fringe benefit—33⅓% of the recipients expenditure;

(k) where:

(i) subparagraph (f)(ii) applies; and

(ii) a declaration referred to in subparagraph (f)(i) has not been given to the employer;

whichever of the following amounts is applicable:

(iii) if it would be concluded the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;

(iv) if subparagraph (iii) does not apply:

(A) in the case of an in-house expense payment fringe benefit—33⅓% of the amount that, but for this Subdivision and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or

(B) in the case of an external expense payment fringe benefit—33⅓% of the recipients expenditure.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:

(a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and

(b) does not make, as mentioned in the definition of ***travel diary*** in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition,

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the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

(3) Where the sum of:

(a) the recipients expenditure in respect of a small expense payment fringe benefit in relation to an employee in relation to an employer in relation to a year of tax; and

(b) the total of the recipients expenditure in respect of all other small expense payment fringe benefits in relation to the employer in relation to the employee in relation to the year of tax, being fringe benefits provided before the fringe benefit referred to in paragraph (a),

does not exceed $200, the fringe benefit referred to in paragraph (a) is an eligible small expense payment fringe benefit.

(3A) For the purposes of this section, where the Commissioner is satisfied, having regard to the nature of the recipients expenditure in respect of an expense payment fringe benefit, that it would be unreasonable to expect the recipient to have obtained documentary evidence of the recipients expenditure, the expense payment fringe benefit shall be deemed to be, and always to have been, an undocumentable expense payment fringe benefit.

(4) For the purposes of paragraph (1)(c), the part of a petty cash book or similar document:

(a) that contains an entry in the English language setting out the particulars that would be set out in documentary evidence of the recipients expenditure in relation to an expense payment fringe benefit (other than particulars of the date on which the documentary evidence was made out); and

(b) that is signed by or on behalf of the provider of the benefit,

shall be deemed to be substitute documentary evidence of the recipients expenditure.

(5) Where:

(a) the recipients expenditure in relation to each of 2 or more expense payment fringe benefits (whether or not in relation to the same year of tax) is the same expenditure; and

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(b) paragraph (1)(b) applies in relation to the recipients expenditure, this Act applies, and shall be deemed always to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise, and nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this subsection.

(6) For the purposes of the application of this section to an in-house expense payment fringe benefit, a reference to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under whichever of paragraphs 22A(1)(b) or (2)(b) is applicable.

(7) Where:

(a) apart from this subsection, paragraph (1)(ea) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and

(b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(h) as the amount (in this subsection called the ***reducing amount***) by which the taxable value, but for subsection (1) and Division 14, of the fringe benefit is reduced under subsection (1):

(i) in all cases—the amount that would have been ascertained under paragraph (1)(j) as the reducing amount if:

(A) paragraph (1)(f) had applied in relation to the fringe benefit; and

(B) a declaration of the kind referred to in subparagraph (1)(f)(i) had been given to the employer;

(ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would

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have been ascertained under paragraph (1)(k) as the reducing amount if:

(A) subparagraph (1)(f)(ii) had applied in relation to that fringe benefit;

(B) a declaration of the kind referred to in subparagraph (1)(f)(i) had not been given to the employer; and

(C) a declaration of the kind referred to in sub-subparagraph (1)(f)(ii)(b) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the reducing amount had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

(8) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (7).

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Division 6—Housing Fringe Benefits

Subdivision A—Housing Benefits

25 Housing benefits

The subsistence during the whole or a part of a year of tax of a housing right granted by a person (in this section referred to as the ***provider***) to another person (in this section referred to as the ***recipient***) shall be taken to constitute a benefit provided by the provider to the recipient in respect of the year of tax.

Subdivision B—Taxable Value of Housing Fringe Benefits

26 Taxable value of non-remote housing fringe benefits

(1) Subject to this Part, the taxable value of a housing fringe benefit provided in respect of the employment of an employee (not being a remote area housing fringe benefit) in relation to a year of tax is:

(a) where the recipients unit of accommodation is not located in a State or internal Territory—so much of the market value of the recipients current housing right as exceeds the recipients rent;

(b) where:

(i) paragraph (a) does not apply;

(ii) the recipients unit of accommodation is a caravan or mobile home or is in a hotel, motel, hostel or guesthouse; and

(iii) during the whole or a part of the tenancy period, the provider carried on a business consisting of or including the provision to outsiders, in respect of identical or similar caravans or mobile homes or in respect of identical or similar units of accommodation in the hotel, motel, hostel or guesthouse, of leases or licences that are identical or similar to the recipients overall housing right,

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the amount calculated in accordance with the formula **AB**, where:

A is the market value of the recipients current housing right; and

B is:

(iv) in a case where, if the fringe benefit were not a housing fringe benefit, it would be an in-house residual fringe benefit—0.75; and

(v) in any other case—1,

reduced by the recipients rent; and

(c) in any other case—the amount calculated in accordance with the formula $\frac{\mathbf{AB}}{\mathbf{C}}$, where:

A is the statutory annual value of the recipients current housing right;

B is the number of whole days in the tenancy period; and

C is:

(i) in the case of the transitional year of tax—365; and

(ii) in the case of a standard year of tax—the number of days in the year of tax,

reduced by the recipients rent.

(2) For the purposes of the application of subsection (1) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this subsection referred to as the ***current year of tax***), the statutory annual value of the recipients current housing right is:

(a) if the current year of tax is a base year of tax in relation to the recipients current housing right—the amount calculated in accordance with the formula $\frac{\mathbf{AB}}{\mathbf{C}}$, where:

A is the market value of the recipients current housing right;

B is:

(i) in a case where the current year of tax is the transitional year of tax—365; and

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(ii) in a case where the current year of tax is a standard year of tax—the number of days in the current year of tax; and

C is the number of whole days in the tenancy period; and

(b) in any other case—the amount ascertained in accordance with the formula **AB**, where:

A is:

(i) if the year of tax immediately preceding the current year of tax was a base year of tax for the purpose of calculating the taxable value of:

(A) a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or in respect of an equivalent housing right; or

(B) each of 2 or more such housing fringe benefits,

the statutory annual value for the purposes of calculating the taxable value of the fringe benefit referred to in sub-subparagraph (A) or the weighted average of the statutory annual values for the purpose of calculating the taxable values of the housing fringe benefits referred to in sub-subparagraph (B) (those statutory annual values being weighted on the basis of the lengths of the respective periods during that preceding year of tax during which the housing rights to which those housing fringe benefits relate subsisted), as the case may be; and

(ii) in any other case—the statutory annual value for the purpose of calculating the taxable values of housing fringe benefits in relation to the employer in relation to the year of tax immediately preceding the current year of tax, being housing fringe benefits in respect of the recipients overall housing right or equivalent housing rights; and

B is the indexation factor in respect of the current year of tax in respect of the State or Territory in which the recipients unit of accommodation is situated.

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(3) For the purposes of the application of subsection (2) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this subsection referred to as the ***current year of tax***), the current year of tax is a base year of tax in relation to the recipients current housing right if:

(a) the current year of tax is the transitional year of tax;

(aa) the employer elects that the current year of tax be treated as a base year of tax in relation to the recipients overall housing right or an equivalent housing right;

(b) there was no housing fringe benefit, in relation to the employer in relation to the year of tax immediately preceding the current year of tax, in respect of the recipients overall housing right or in respect of an equivalent housing right; or

(c) the following conditions are satisfied:

(i) in relation to each of the 9 years of tax immediately preceding the current year of tax there was a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or an equivalent housing right;

(ii) none of those 9 years of tax was a base year of tax for the purpose of calculating the taxable value of a housing fringe benefit to which subparagraph (i) applies.

(4) For the purposes of this section:

(a) 2 or more housing rights shall be taken to be included in the same class of housing rights if:

(i) the housing rights are in respect of the same unit of accommodation; and

(ii) the conditions (other than as to duration or consideration) of the housing rights are the same or substantially the same; and

(b) a housing right shall be taken to be equivalent to another housing right if each of those housing rights is included in the same class of housing rights.

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(5) For the purposes of this section, where a material alteration to a unit of accommodation results in an increase or decrease of not less than 10% in the market value of the right to occupy or use the unit:

(a) the unit of accommodation after the alteration shall be deemed to be a different unit of accommodation from the unit of accommodation before the alteration; and

(b) if the alteration occurs during the subsistence of a housing right granted to a person in respect of the unit of accommodation, that housing right, as it subsists after the alteration, shall be deemed to have been granted to the person in respect of the unit of accommodation as it existed after the alteration and to have been so granted in the same circumstances as the first-mentioned housing right.

(6) A reference in subsection (5) to a material alteration to a unit of accommodation is a reference to:

(a) additions or improvements made to, or other work carried out in relation to;

(b) any damage to; or

(c) the addition of facilities to, or the removal of facilities from,

the unit of accommodation or any building, place or facility associated with the occupation or use of the unit of accommodation.

(7) An election by an employer under paragraph (3)(aa) in relation to a year of tax:

(a) shall be made by notice in writing to the Commissioner; and

(b) shall be lodged with the Commissioner on or before the declaration date in relation to the year of tax.

27 Determination of market value of housing right

(1) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit, where the recipient is entitled, pursuant to the housing right, to require a second person to:

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(a) make a payment in discharge, in whole or in part, of an obligation of the recipient to pay an amount to a third person in respect of expenditure incurred by the recipient; or

(b) to reimburse the recipient, in whole or in part, in respect of an amount of expenditure incurred by the recipient,

that entitlement shall be disregarded.

(2) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit provided in respect of the employment of an employee, any onerous conditions that are attached to the housing right and that relate to his or her employment shall be disregarded.

28 Indexation factor for valuation purposes—non-remote housing

(1) For the purposes of section 26, the indexation factor in respect of a year of tax (in this subsection referred to as the ***current year of tax***) in respect of a State or Territory is the number (calculated to 3 decimal places) ascertained, as at the date on which the rent index number in respect of the State or Territory for the December quarter immediately preceding the current year of tax was first published, by dividing the sum of:

(a) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the current year of tax; and

(b) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded that quarter,

by the sum of:

(c) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the year of tax that next preceded the current year of tax; and

(d) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded the last-mentioned quarter.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has

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published or publishes a rent index number in respect of a State or Territory in respect of a quarter in substitution for a rent index number in respect of the State or Territory previously published in respect of that quarter, the publication of the later rent index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the rent sub-group of the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index numbers published in terms of the new reference base.

(4) Where the factor ascertained in accordance with subsection (1) in relation to a year of tax would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that subsection in relation to that year of tax shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

(5) For the purposes of this Subdivision:

(a) the Jervis Bay Territory shall be deemed to be part of the State of New South Wales; and

(b) the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands shall be deemed to be part of the Northern Territory.

29 Taxable value of remote area accommodation

(1) Subject to this Part, the taxable value of a remote area housing fringe benefit in relation to an employer in relation to a year of tax (in this subsection called the ***current year of tax***) is:

(a) if the employer has made an election under subsection (2) in relation to the recipients unit of accommodation in relation to the current year of tax—the amount calculated in accordance with the formula:

$$\mathbf{SA} \times \frac{\mathbf{DTP}}{\mathbf{DYT}}$$

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where:

SA is:

(i) if the recipients unit of accommodation is:

(A) eligible shared accommodation in a house, flat or home unit in relation to the year of tax;

(B) accommodation in a bunkhouse, dormitory or similar living quarters; or

(C) eligible accommodation in an employees hostel in relation to the year of tax;

the single quarters statutory amount in relation to the year of tax; or

(ii) in any other case—the standard statutory amount in relation to the year of tax;

DTP is the number of whole days in the tenancy period; and

DYT is:

(iii) in the case of the transitional year of tax—365; and

(iv) in any other case—the number of days in the current year of tax;

reduced by the recipients rent;

(b) where:

(i) paragraph (a) does not apply; and

(ii) if the housing fringe benefit were not a remote area housing fringe benefit, the taxable value of the fringe benefit would be calculated under paragraph 26(1)(b);

the amount that would be calculated under that paragraph if component B in the formula in that paragraph were 0.5; or

(c) in any other case—the amount that would be calculated under paragraph 26(1)(c) if the amount represented by component A in the formula in that paragraph were reduced by 50%.

(2) An employer may elect that paragraph (1)(a) be applied in determining the taxable values of all remote area housing fringe benefits in relation to the employer in relation to a particular unit of accommodation in relation to a year of tax.

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(3) An election by an employer under subsection (2) in relation to a year of tax:

(a) shall be made by notice in writing to the Commissioner; and

(b) shall be lodged with the Commissioner on or before the declaration date in relation to the year of tax.

(3A) For the purposes of this section:

(a) the single quarters statutory amount in relation to a year of tax (in this paragraph called the ***current year of tax***) is:

(i) in the case of the transitional year of tax—$780; or

(ii) in the case of a standard year of tax—the amount calculated:

(A) by multiplying the single quarters statutory amount in relation to the immediately preceding year of tax by the indexation factor for the current year of tax; or

(B) if the amount ascertained in accordance with sub-subparagraph (A) is not a number of whole dollars—by increasing or decreasing the amount to the nearest number of whole dollars or, if the amount is a number of whole dollars plus 50 cents, by increasing the amount by 50 cents; and

(b) the standard statutory amount in relation to a year of tax (in this paragraph called the ***current year of tax***) is:

(i) in the case of the transitional year of tax—$3,120; or

(ii) in the case of a standard year of tax—the amount calculated:

(A) by multiplying the standard statutory amount in relation to the immediately preceding year of tax by the indexation factor for the current year of tax; or

(B) if the amount ascertained in accordance with sub-subparagraph (A) is not a number of whole dollars—by increasing or decreasing the amount to the nearest number of whole dollars

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or, if the amount is a number of whole dollars plus 50 cents, by increasing the amount by 50 cents.

(4) For the purposes of this section, a housing fringe benefit in relation to an employer in relation to a year of tax in relation to a unit of accommodation shall be taken to be a remote area housing fringe benefit if:

(a) during the whole of the tenancy period, the unit of accommodation was located in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area;

(b) during the whole of the tenancy period, the recipient was a current employee of the employer and the usual place of employment of the recipient was not at a location in, or adjacent to, an eligible urban area;

(c) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees without charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned;

(d) it would be concluded that it was necessary for the employer, during the year of tax, to provide or to arrange for the provision of residential accommodation for employees of the employer by reason that:

(i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence;

(ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or

(iii) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees

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free of charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned; and

(e) the recipients overall housing right was not granted to the recipient pursuant to:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section.

(5) For the purposes of subsection (4):

(a) where a unit of accommodation is at a location in, or adjacent to, an eligible urban area and adjacent to, or in close proximity to, another unit of accommodation that is occupied or used and is not at a location in, or adjacent to, an eligible urban area, the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat the first-mentioned unit of accommodation as not being at a location in, or adjacent to, an eligible urban area; and

(b) where the usual place of employment of a person is at a location in, or adjacent to, an eligible urban area and adjacent to, or in close proximity to, another location at which persons are employed, being another location that is not in, or adjacent to, an eligible urban area, the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat that place of employment of the first-mentioned person as not being at a location in, or adjacent to, an eligible urban area.

29A Indexation factor for valuation purposes—remote area accommodation

(1) For the purposes of section 29, the indexation factor in respect of a year of tax (in this subsection called the ***current year of tax***) is the number (calculated to 3 decimal places) ascertained, as at the date

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on which the rent index number for Australia for the December quarter immediately preceding the current year of tax was first published, by dividing the sum of:

(a) the rent index number for Australia in respect of the December quarter immediately preceding the current year of tax; and

(b) the rent index number for Australia in respect of the 3 quarters that immediately preceded that quarter;

by the sum of:

(c) the rent index number for Australia in respect of the December quarter immediately preceding the year of tax that next preceded the current year of tax; and

(d) the rent index number for Australia in respect of the 3 quarters that immediatley preceded the last-mentioned quarter.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes a rent index number in respect of a quarter in substitution for a rent index number previously published by the Australian Statistician in respect of that quarter, the publication of the later rent index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the rent sub-group of the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index numbers published in terms of the new reference base.

(4) Where the factor ascertained in accordance with subsection (1) in relation to a year of tax would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that subsection in relation to that year of tax shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

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Division 7—Living-away-from-home Allowance Fringe Benefits

Subdivision A—Living-away-from-home-Allowance Benefits

30 Living-away-from-home allowance benefits

(1) Where:

(a) at a particular time, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and

(b) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for:

(i) additional expenses (not being deductible expenses) incurred by the employee during a period; or

(ii) additional expenses (not being deductible expenses) incurred by the employee, and other additional disadvantages to which the employee is subject, during a period,

by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment,

the payment of the whole, or of the part, as the case may be, of the allowance constitutes a benefit provided by the employer to the employee at that time.

(2) If:

(a) at a particular time after 10 October 1991, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and

(b) the employee's usual place of employment is on an oil rig, or other petroleum or gas installation, at sea; and

(c) the employee is provided with residential accommodation at or near that usual place of employment; and

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(d) the allowance is expressed to be paid as a living-away-from-home allowance; and

(e) no part of the allowance is covered by subsection (1); and

(f) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for disadvantages to which the employee is subject, during a period, by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;

the payment of the whole of the allowance constitutes a benefit provided by the employer to the employee at that time.

Subdivision B—Taxable Value of Living-away-from-home Allowance Fringe Benefits

31 Taxable value of living-away-from-home allowance fringe benefits

Subject to this Part, the taxable value of a living-away-from-home allowance fringe benefit in relation to a year of tax is:

(a) if the fringe benefit is covered by subsection 30(1)—the amount of the recipients allowance reduced by:

(i) any exempt accommodation component; and

(ii) any exempt food component; or

(b) if the fringe benefit is covered by subsection 30(2)—the amount of the recipients allowance.

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Division 8—Airline Transport Fringe Benefits

Subdivision A—Airline Transport Benefits

32 Airline transport benefits

Where:

(a) in respect of the employment of an employee of an employer, a person (in this section referred to as the ***provider***) provides transport, in a passenger aircraft of the provider, to another person (in this section referred to as the ***recipient***), being the employee or an associate of the employee;

(b) at or about the time when that transport commences to be provided:

(i) the provider is an airline operator; and

(ii) either of the following conditions is satisfied:

(A) the employer, or an associate of the employer, is an airline operator;

(B) the employer is a travel agent; and

(c) the transport is provided subject to the stand-by restrictions that customarily apply in relation to the provision of airline transport to employees in the airline industry,

the provision of that transport and any incidental services provided on board the aircraft shall be deemed to constitute a benefit provided by the provider to the recipient at the time when the transport commences to be provided, and not otherwise.

Subdivision B—Taxable Value of Airline Transport Fringe Benefits

33 Taxable value of airline transport fringe benefits

Subject to this Part, the taxable value of an airline transport fringe benefit in relation to a year of tax is the stand-by value of the

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recipients transport reduced by the amount of the recipients contribution.

34 Reduction of taxable value—"otherwise deductible" rule

(1) Where:

(a) the recipient of an airline transport fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) if the recipient had, at the comparison time, incurred and paid unreimbursed expenditure (in this subsection called the ***gross expenditure***), in respect of the provision of the recipients transport, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the airline transport fringe benefit in relation to the year of tax—a once-only deduction (in this subsection called the ***gross deduction***) would, or would but for section 82A, and Subdivision F of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of the gross expenditure;

(ba) the amount (in this subsection called the ***notional deduction***) calculated in accordance with the formula:

GD – RD

where:

GD is the gross deduction; and

RD is:

(i) if there is no recipients contribution in relation to the airline transport fringe benefit—nil; or

(ii) if there is a recipients contribution in relation to the airline transport fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients transport—the amount (if any) that would, or that would but for section 82A, and Subdivision F of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable as a

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once-only deduction to the recipient under that Act in respect of that consideration if that consideration had been incurred and paid by the recipient at the comparison time;

exceeds nil;

(c) except where the fringe benefit is:

(i) an exclusive employee airline transport benefit; or

(ii) an extended travel airline transport benefit,

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients transport; and

(d) where the fringe benefit is an extended travel airline transport benefit—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient in connection with the recipients transport,

the amount that, but for this subsection and Division 14, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the notional deduction.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:

(a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and

(b) does not make, as mentioned in the definition of ***travel diary*** in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

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Division 9—Board Fringe Benefits

Subdivision A—Board Benefits

35 Board benefits

Where, at a particular time, a person (in this section referred to as the ***provider***) provides a board meal to another person (in this section referred to as the ***recipient***), the provision of the meal shall be taken to constitute a benefit provided by the provider to the recipient at that time.

Subdivision B—Taxable Value of Board Fringe Benefits

36 Taxable value of board fringe benefits

Subject to this Part, the taxable value of a board fringe benefit in relation to a year of tax is:

(a) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—$2.00; or

(b) in any other case—$1.00,

reduced by the amount of the recipients contribution.

37 Reduction of taxable value—"otherwise deductible" rule

Where:

(a) the recipient of a board fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) if the recipient had, at the time when the benefit was provided, incurred and paid unreimbursed expenditure (in this section called the ***gross expenditure***), in respect of the provision of the recipients meal, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the board fringe benefit in relation to the year of tax—a deduction (in this

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section called the ***gross deduction***) would, or would but for section 82A, and Subdivision F of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under section 51 of that Act in respect of the whole or a part of the gross expenditure; and

(c) the amount (in this section called the ***notional deduction***) calculated in accordance with the formula:

GD – RD

where:

GD is the gross deduction; and

RD is:

(i) if there is no recipients contribution in relation to the board fringe benefit—nil; or

(ii) if there is a recipients contribution in relation to the board fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients meal—the amount (if any) that would, or that would but for section 82A, and Subdivision F of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under section 51 of that Act in respect of the whole or a part of that consideration if that consideration had been incurred and paid by the recipient at the time when the benefit was provided;

exceeds nil;

the amount that, but for this section and Division 14, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the notional deduction.

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Division 10—Tax-exempt Body Entertainment Fringe Benefits

Subdivision A—Tax-exempt Body Entertainment Benefits

38 Tax-exempt body entertainment benefits

Where, at a particular time, a person (in this section referred to as the ***provider***) incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision, in respect of the employment of an employee, of entertainment to a person (in this section referred to as the ***recipient***) being the employee or an associate of the employee, the incurring of the expenditure shall be taken to constitute a benefit provided by the provider to the recipient at that time in respect of that employment.

Subdivision B—Taxable Value of Tax-exempt Body Entertainment Fringe Benefits

39 Taxable value of tax-exempt body entertainment fringe benefits

Subject to this Part, the taxable value of a tax-exempt body entertainment fringe benefit in relation to an employer in relation to a year of tax is so much of the expenditure referred to in section 38 as is attributable to the provision of the entertainment referred to in that section.

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Division 10A—Car Parking Fringe Benefits

Subdivision A—Car Parking Benefits

39A Car parking benefits

If the following conditions are satisfied in relation to a daylight period, or a combination of daylight periods, on a particular day:

(a) during the period or periods, a car is parked on one or more premises of a person (the ***provider***), where:

(i) the premises, or each of the premises, on which the car is parked are business premises, or associated premises, of the provider; and

(ii) a commercial parking station is located within a 1 km radius of the premises, or each of the premises, on which the car is parked;

(b) the total duration of the period or periods exceeds 4 hours;

(c) any of the following applies:

(i) a car benefit relating to the car is provided on that day to an employee or an associate of an employee in respect of the employment of the employee;

(ii) the car is owned by, or leased to, an employee or an associate of an employee at any time during the period or periods;

(iii) the car is made available to an employee or an associate of an employee at any time during the period or periods by another person, where:

(A) the other person is neither the employer of the employee nor an associate of the employer of the employee; and

(B) the other person did not make the car available under an arrangement to which the employer of the employee, or an associate of the employer of the employee, is a party;

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(d) the provision of parking facilities for the car during the period or periods is in respect of the employment of the employee;

(e) on that day, the employee has a primary place of employment;

(f) during the period or periods, the car is parked at, or in the vicinity of, that primary place of employment;

(g) on that day, the car is used in connection with travel by the employee between:

(i) the place of residence of the employee; and

(ii) that primary place of employment;

(h) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section;

(i) the day is on or after 1 July 1993;

the provision of parking facilities for the car during the period or periods is taken to constitute a benefit provided by the provider to the employee or the associate of the employee in respect of the employment of the employee.

39B When commercial parking stations are located within a 1 km radius of business premises or associated premises

For the purposes of this Division, a commercial parking station is taken to be located within a 1 km radius of particular business premises or particular associated premises if, and only if, a car entrance to the commercial parking station is situated less than 1 km, by the shortest practicable route, from a car entrance to those premises.

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Subdivision B—Taxable Value of Car Parking Fringe Benefits

39C Taxable value of tax-exempt body entertainment fringe benefits

Subject to this Part, the taxable value, in relation to a year of tax, of a car parking fringe benefit provided on a day in the year of tax in connection with one or more premises is equal to:

(a) if, on that day, there is only one commercial parking station located within a 1 km radius of any of those premises—the lowest fee charged by the operator of the parking station in the ordinary course of business to members of the public for all-day parking on that day; or

(b) if, on that day, there are 2 or more commercial parking stations located within a 1 km radius of any of those premises—the lowest fee charged by any of the operators of those parking stations in the ordinary course of business to members of the public for all-day parking on that day;

reduced by the amount of the recipients contribution.

39D Taxable value of car parking fringe benefits—*market value* basis

Employer may choose market value basis

(1) An employer may elect that this section apply in relation to any or all of the car parking fringe benefits in relation to the employer in relation to a particular year of tax.

Market value basis of working out taxable value

(2) Subject to this Part, if an election is made under subsection (1) in relation to a car parking fringe benefit provided on a day in a year of tax, the taxable value, in relation to the year of tax, of the fringe benefit is:

(a) the amount that the recipient could reasonably be expected to have been required to pay the provider in respect of the

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provision of the benefit if it were assumed that the provider and the recipient were dealing with each other at arm's length;

reduced by:

(b) the amount of the recipients contribution.

Valuer's report must be given to employer

(3) An election purporting to be made under subsection (1) in relation to one or more car parking fringe benefits is of no effect unless:

(a) a suitably qualified valuer gives to the employer, before the declaration date, a report, in a form approved by the Commissioner, about the valuation of the fringe benefits; and

(b) the valuer is at arm's length in relation to the valuation; and

(c) the return of the employer of the year of tax, in so far as it relates to the taxable values of the fringe benefits, is based on the report.

39E Fees charged by commercial parking stations for all-day parking

Daily rate equivalent for periodic parking arrangements

(1) For the purposes of this Subdivision, if the operator of a commercial parking station provides all-day parking in the ordinary course of business to members of the public on a weekly, monthly, yearly or other periodic basis, the operator is taken to charge a fee for all-day parking on a particular day during the period equal to the amount worked out using the formula:

$$\frac{\textbf{Total fee}}{\textbf{Business days in period}}$$

where:

Total fee is the total fee charged by the operator in respect of all-day parking on days in that period;

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Anti-avoidance

(2) If either or both of the following apply:

(a) a transaction between the operator of a commercial parking station and a customer is not at arm's length;

(b) the operator of a commercial parking station sets the level of a fee for the sole or dominant purpose of enabling one or more employers to obtain reductions in the taxable values of car parking fringe benefits;

then, for the purposes of this Subdivision:

(c) if only paragraph (a) applies—it is to be assumed that the fee is the fee that would have been payable if the operator and the customer had been dealing with each other at arm's length in relation to the transaction; and

(d) if only paragraph (b) applies—it is to be assumed that the fee is the fee that would have been payable if it had been set without that purpose in mind; and

(e) if both paragraphs (a) and (b) apply—it is to be assumed that the fee is the fee that would have been payable if:

(i) the operator and the customer had been dealing with each other at arm's length in relation to the transaction; and

(ii) it had been set without that purpose in mind.

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Division 11—Property Fringe Benefits

Subdivision A—Property Benefits

40 Property benefits

Where, at a particular time, a person (in this section referred to as the ***provider***) provides property to another person (in this section referred to as the ***recipient***), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

41 Exempt property benefits

Where:

(a) a property benefit is provided to a current employee of an employer in respect of his or her employment; and

(b) the property is provided to, and consumed by, the employee on a working day and on business premises of:

(i) the employer; or

(ii) if the employer is a company, of the employer or of a company that is related to the employer,

the benefit is an exempt benefit.

Subdivision B—Taxable Value of Property Fringe Benefits

42 Taxable value of in-house property fringe benefits

(1) Subject to this Part, the taxable value of an in-house property fringe benefit in relation to an employer in relation to a year of tax is:

(a) where the recipients property was manufactured, produced, processed or treated by the provider:

(i) if identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider

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in the ordinary course of business to purchasers being manufacturers, wholesalers or retailers, an amount equal to:

(A) if any of that identical property was, at or about the provision time, sold by the provider under an arm's length transaction or arm's length transactions—the lowest price at which it was sold under such a transaction; or

(B) if sub-subparagraph (A) does not apply—the lowest price at which any of that identical property could reasonably be expected to have been sold by the provider at or about the provision time under an arm's length transaction,

increased, where sales tax was not, or would not have been, payable, by the provider in respect of the sale concerned, by the amount of any sales tax payable by the provider in respect of the provision of the recipient's property to the recipient;

(ii) where subparagraph (i) does not apply but identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider:

(A) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and

(B) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients property to the recipient,

an amount equal to 75% of the lowest price at which that property was so sold to a member of the public; or

(iii) in any other case—an amount equal to 75% of the notional value of the recipients property at the provision time;

(b) where paragraph (a) does not apply and the property was acquired by the provider—an amount equal to the lesser of:

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(i) the arm's length price in respect of the acquisition of the recipients property by the provider increased, in a case where sales tax was not payable by the person from whom the provider acquired the property in respect of the disposal of the property to the provider, by the amount of any sales tax payable in respect of the provision of the recipients property to the recipient; or

(ii) the notional value of the recipients property at the provision time; or

(c) in any other case—an amount equal to 75% of the notional value of the recipients property at the provision time, reduced by the amount of the recipients contribution.

(2) In subsection (1), ***arm's length price***, in respect of the acquisition of the recipients property by the provider, means:

(a) if the recipients property was acquired by the provider in the ordinary course of business under an arm's length transaction—the cost price of the recipients property to the provider; or

(b) in any other case—the amount that the provider could reasonably be expected to have been required to pay to acquire the recipients property under an arm's length transaction in the ordinary course of business.

43 Taxable value of external property fringe benefits

Subject to this Part, the taxable value of an external property fringe benefit in relation to an employer in relation to a year of tax is:

(a) where the provider was the employer or an associate of the employer and the recipients property was purchased by the provider under an arm's length transaction at or about the provision time—the cost price of the recipients property to the provider;

(b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an

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arm's length transaction in respect of the provision of the property—the amount of that expenditure; or

(c) in any other case—the notional value of the recipients property at the provision time,

reduced by the amount of the recipients contribution.

44 Reduction of taxable value—"otherwise deductible" rule

(1) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) if the recipient had, at the provision time, incurred and paid unreimbursed expenditure (in this subsection called the ***gross expenditure***), in respect of the purchase of the recipients property, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax—both of the following conditions would have been satisfied:

(i) a once-only deduction (in this subsection called the ***gross deduction***), not being a foreign income deduction, would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of the gross expenditure;

(ii) in the case of the transitional year of tax—the gross deduction would not be an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

(ba) the amount (in this subsection called the ***notional deduction***) calculated in accordance with the formula:

GD − RD

where:

GD is the gross deduction; and

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RD is:

(i) if there is no recipients contribution in relation to the property fringe benefit—nil; or

(ii) if there is a recipients contribution in relation to the property fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients property—the amount (if any) that would, or that would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable:

(A) as a once-only deduction other than a foreign income deduction; and

(B) in the case of the transitional year of tax—otherwise than as an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

to the recipient under that Act in respect of that consideration if that consideration had been incurred and paid by the recipient at the provision time;

exceeds nil;

(c) except where the property fringe benefit is:

(i) an exclusive employee property benefit;

(ii) an extended travel property benefit; or

(iii) a car property benefit,

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients property;

(d) where the property fringe benefit is an extended travel property benefit (other than an international aircrew property benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates;

(da) where:

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(i) the property fringe benefit is a car property benefit in respect of a car held by the recipient during a period (in this section called the ***holding period***) in the year of tax; and

(ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

(iv) in a case where the substantiation rules require log books or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and

(e) where paragraph (da) does not apply and the property fringe benefit is a car property benefit in respect of a car held by the recipient during a period (in this section also called the ***holding period***) in the year of tax—the recipient gives to the employer, before the declaration date:

(i) a declaration, in a form approved by the Commissioner, that purports to set out:

(A) the holding period;

(B) the number of whole business kilometres travelled by the car during the holding period; and

(C) the number of whole kilometres travelled by the car during the holding period; or

(ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:

(A) a declaration referred to in subparagraph (i); or

(B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the

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recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for Division 14, of the property fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

TV − ND

where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax; and

ND is:

(f) if neither paragraph (da) nor paragraph (e) applies—the notional deduction;

(g) where paragraph (da) applies—whichever of the following amounts is applicable:

(i) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient—the car deduction percentage, ascertained under section 65G, of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;

(ii) if subparagraph (i) does not apply—the car deduction percentage, ascertained under section 65G, of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax;

(h) where:

(i) paragraph (e) applies; and

(ii) a declaration referred to in subparagraph (e)(i) has been given to the employer;

whichever of the following amounts is the least:

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(iii) the notional deduction;

(iv) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;

(v) if subparagraph (iv) does not apply—33⅓% of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or

(j) where:

(i) subparagraph (e)(ii) applies; and

(ii) a declaration referred to in subparagraph (e)(i) has not been given to the employer;

whichever of the following amounts is applicable:

(iii) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;

(iv) if subparagraph (iii) does not apply—33⅓% of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:

(a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and

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(b) does not make, as mentioned in the definition of ***travel diary*** in subsection 136 (1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

(3) Where:

(a) apart from this subsection, paragraph (1)(da) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and

(b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(g) as representing the component ***ND*** in the formula in subsection (1):

(i) in all cases—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:

(A) paragraph (1)(e) had applied in relation to the fringe benefit; and

(B) a declaration of the kind referred to in subparagraph (1)(e)(i) had been given to the employer;

(ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:

(A) subparagraph (1)(e)(ii) had applied in relation to that fringe benefit;

(B) a declaration of the kind referred to in subparagraph (1)(e)(i) had not been given to the employer; and

(C) a declaration of the kind referred to in sub-subparagraph (1)(e)(ii)(B) had been given to the employer;

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this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

(4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).

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Division 12—Residual Fringe Benefits

Subdivision A—Residual Benefits

45 Residual benefits

A benefit is a residual benefit for the purposes of this Act if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive).

46 Year of tax in which residual benefits taxed

(1) Subject to this section, a residual benefit that is provided during a period shall be deemed to have been provided in respect of each year of tax during which any part of that period occurred.

(2) Where:

(a) a residual benefit (in this subsection referred to as the ***eligible benefit***), not being a residual benefit constituted by a lease or licence in respect of property, is provided on the basis that, in respect of each of a number of regular periods (in this subsection referred to as a ***billing period***) commencing on or after 1 July 1986 (whether or not there were any such periods before that date), a payment is to be made in respect of the provision of the benefit during the billing period; and

(b) identical benefits are provided to members of the public on the same basis and in the ordinary course of a business carried on by the person providing the eligible benefit,

the following provisions have effect:

(c) the provision of the eligible benefit during each billing period shall be taken to constitute a separate benefit;

(d) each such separate residual benefit shall be deemed to have been provided at the time at which the payment in respect of the billing period concerned is due and payable, and not otherwise.

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47 Exempt residual benefits

(1) Where:

(a) in respect of the employment of a current employee, the employer, or an associate of the employer, provides a residual benefit to the employee that consists of transport of the employee, otherwise than in an aircraft:

(i) between:

(A) the place of residence of the employee; and

(B) the place of employment of the employee or any other place from which or at which the employee performs duties of that employment; or

(ii) in a case where the place referred to in sub-subparagraph (i)(B) is in a metropolitan area—on a regular and scheduled service over a route wholly within that metropolitan area;

(b) where the provider is the employer—the employer carries on a business of providing transport to members of the public;

(c) where the provider is an associate of the employer—the employer and the associate each carries on a business of providing transport to members of the public;

(d) the transport referred to in paragraph (a) is provided in the same, or substantially the same, circumstances as transport provided to members of the public in the ordinary course of carrying on a business of providing transport to members of the public; and

(e) the employee is employed in the business of providing transport to members of the public,

the benefit is an exempt benefit.

(2) Where:

(a) a residual benefit provided to a current employee in respect of his or her employment consists of:

(i) the provision, or use, of a recreational facility; or

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(ii) the care of children of the employee in a child care facility; and

(b) the recreational facility or child care facility, as the case may be, is located on business premises of:

(i) the employer; or

(ii) if the employer is a company, of the employer or of a company that is related to the employer,

the benefit is an exempt benefit.

(3) Where a residual benefit provided to a current employee in respect of his or her employment consists of the use of property (other than a motor vehicle) that is ordinarily located on business premises of, and is wholly or principally used directly in connection with business operations of:

(a) the employer; or

(b) if the employer is a company—the employer or a company that is related to the employer,

the benefit is an exempt benefit.

(4) For the purposes of subsection (3), toilets, bathroom facilities, food or drink vending machines, tea or coffee making facilities, water dispensers or other amenities (not being facilities for drinking or dining) for the use of employees of an employer shall be taken to be principally used directly in connection with business operations of the employer.

(4A) For the purposes of subsection (3), a building site, construction site or any similar place where a person carries on business operations shall be taken to be business premises of the person.

(5) Where:

(a) a residual benefit consisting of the subsistence, during a year of tax, of a lease or licence in respect of a unit of accommodation is provided to an employee of an employer in respect of his or her employment;

(b) the unit of accommodation is for the accommodation of eligible family members and is provided solely by reason that the employee is required to live away from his or her usual

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place of residence in order to perform the duties of that employment;

(c) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and

(d) either of the following conditions is satisfied:

(i) subsection (7) applies in relation to the provision of transport for the employee in connection with travel in the period in the year of tax when the lease or licence subsisted, being travel between the employee's usual place of residence and the employee's usual place of employment;

(ii) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

(A) the employee's usual place of residence; and

(B) the place at which the employee actually resided while living away from his or her usual place of residence;

the benefit is an exempt benefit in relation to the year of tax.

(6) Where:

(a) a residual benefit consisting of the provision or use of a motor vehicle is provided in a year of tax in respect of the employment of a current employee;

(aa) in the case of a standard year of tax—the motor vehicle is not:

(i) a taxi let on hire to the provider; or

(ii) a car, not being:

(A) a panel van or utility truck; or

(B) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and

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(b) there was no private use of the motor vehicle during the year of tax and at a time when the benefit was provided other than:

(i) work-related travel of the employee; and

(ii) other private use of the motor vehicle by the employee or an associate of the employee, being other use that was minor, infrequent and irregular;

the benefit is an exempt benefit in relation to the year of tax.

(6A) Where:

(a) a residual benefit consisting of the provision or use of a motor vehicle is provided by a particular person (in this subsection called the ***provider***) in a year of tax in respect of the employment of a current employee of an employer,

(b) at all times during the year of tax when the motor vehicle was held by the provider, the motor vehicle was unregistered; and

(c) during the period in the year of tax when the motor vehicle was held by the provider, the motor vehicle was wholly or principally used directly in connection with business operations of:

(i) the employer; or

(ii) if the employer is a company—the employer or a company that is related to the employer,

the benefit is an exempt benefit in relation to the year of tax.

(6B) A reference in subsection (6A) to a motor vehicle held by a provider is a reference to:

(a) a motor vehicle owned by the provider;

(b) a motor vehicle leased to the provider; or

(c) a motor vehicle otherwise made available to the provider by another person.

(7) Where, during a period of employment with an employer:

(a) an employee's usual place of employment is:

(i) on an oil rig, or other installation, at sea; or

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(ii) at a location in a State or internal Territory but not in, or adjacent to, an eligible urban area;

(b) the employee is provided with residential accommodation, at or near that usual place of employment, by:

(i) the employer;

(ii) an associate of the employer; or

(iii) a person (in this subparagraph referred to as the ***arranger***) other than the employer or an associate of the employer under an arrangement between:

(A) the employer or an associate of the employer; and

(B) the arranger or another person;

(c) the employee, on a regular basis:

(i) works for a number of days and has a number of days off; and

(ii) on completion of the working days, travels from that usual place of employment to his or her usual place of residence and, on completion of the days off, returns from his or her usual place of residence to that usual place of employment; and

(d) the employee is provided with transport on a regular basis in connection with the travel referred to in subparagraph (c)(ii) and that transport is provided by:

(i) the employer;

(ii) an associate of the employer; or

(iii) a person (in this subparagraph referred to as the ***arranger***) other than the employer or an associate of the employer under an arrangement between:

(A) the employer or an associate of the employer; and

(B) the arranger or another person,

and, having regard to the location of that usual place of employment and the location of the employee's usual place of residence, it would be unreasonable to expect the employee to travel between those places on work days on a daily basis, the

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residual benefit constituted by the provision of the transport referred to in paragraph (d) is an exempt benefit.

(8) If:

(a) a residual benefit provided in respect of the employment of an employee arose out of priority of access, for a child or children of the employee, to:

(i) a place that is an eligible child care centre for the purposes of any provision of the *Child Care Act 1972*; or

(ii) family day care; or

(iii) care outside school hours; or

(iv) care in school vacations; and

(b) in order to obtain that priority of access, the employer of the employee, or an associate of the employer, made a contribution under a program administered by the Department of Health, Housing, Local Government and Community Services;

the residual benefit is an exempt benefit.

Subdivision B—Taxable Value of Residual Fringe Benefits

48 Taxable value of in-house non-period residual fringe benefits

Subject to this Part, the taxable value of an in-house non-period residual fringe benefit in relation to an employer in relation to a year of tax is:

(a) where, at or about the comparison time, identical benefits were provided by the provider:

(i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and

(ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients benefit to the recipient,

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an amount equal to 75% of the lowest price at which an identical benefit was so sold to a member of the public; or

(b) in any other case—an amount equal to 75% of the notional value of the benefit at the comparison time,

reduced by the amount of the recipients contribution.

49 Taxable value of in-house period residual fringe benefits

Subject to this Part, the taxable value of an in-house period residual fringe benefit in relation to a year of tax is:

(a) where, at or about the comparison time, identical overall benefits were provided by the provider:

(i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and

(ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients overall benefit,

an amount equal to 75% of the lowest amount paid or payable by any such member of the public in respect of the current identical benefit in relation to an identical overall benefit so provided; or

(b) in any other case—an amount equal to 75% of the notional value of the recipients current benefit, reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

50 Taxable value of external non-period residual fringe benefits

Subject to this Part, the taxable value of an external non-period residual fringe benefit in relation to an employer in relation to a year of tax is:

(a) where the provider was the employer or an associate of the employer and the benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider for the benefit;

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(b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the benefit—the amount of that expenditure; or

(c) in any other case—the notional value of the benefit at the comparison time,

reduced by the amount of the recipients contribution.

51 Taxable value of external period residual fringe benefits

Subject to this Part, the taxable value of an external period residual fringe benefit in relation to an employer in relation to a year of tax is:

(a) where the provider was the employer or an associate of the employer and the recipients overall benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider in respect of the recipients current benefit;

(b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the recipients current benefit—the amount of that expenditure; or

(c) in any other case—the notional value of the recipients current benefit,

reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

52 Reduction of taxable value—"otherwise deductible" rule

(1) Where:

(a) the recipient of a residual fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) if the recipient had, at the comparison time, incurred and paid unreimbursed expenditure (in this subsection called the ***gross***

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expenditure), in respect of the provision of the recipients benefit, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax—both of the following conditions would have been satisfied:

(i) a once-only deduction (in this subsection called the ***gross deduction***), not being a foreign income deduction, would, or would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable to the recipient under that Act in respect of the gross expenditure;

(ii) in the case of the transitional year of tax—the gross deduction would not be an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

(ba) the amount (in this subsection called the ***notional deduction***) calculated in accordance with the formula:

GD − RD

where:

GD is the gross deduction; and

RD is:

(i) if there is no recipients contribution in relation to the residual fringe benefit—nil; or

(ii) if there is a recipients contribution in relation to the residual fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients benefit—the amount (if any) that would, or that would but for section 82A, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, have been allowable:

(A) as a once-only deduction other than a foreign income deduction; and

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(B) in the case of the transitional year of tax—otherwise than as an eligible rental property deduction within the meaning of Subdivision G of Division 3 of Part III of that Act;

to the recipient under that Act in respect of so much of that consideration as was taken into account for the purposes of section 48, 49, 50 or 51 if that consideration had been incurred and paid by the recipient at the comparison time;

exceeds nil;

(c) except where the fringe benefit is:

(i) an exclusive employee residual benefit;

(ii) an extended travel residual benefit; or

(iii) a car residual benefit,

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients benefit;

(d) where the fringe benefit is an extended travel residual benefit (other than an international aircrew residual benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates;

(da) where:

(i) the fringe benefit is a car residual benefit in respect of a car held by the recipient during a period (in this section called the ***holding period***) in the year of tax; and

(ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

(iv) in a case where the substantiation rules require log books or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car

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substantiation declaration is accompanied by a copy of those documents; and

(e) where paragraph (da) does not apply and the fringe benefit is a car residual benefit in respect of a car held by the recipient during a period (in this section also called the ***holding period***) in the year of tax—the recipient gives to the employer, before the declaration date:

(i) a declaration, in a form approved by the Commissioner, that purports to set out:

(A) the holding period;

(B) the number of whole business kilometres travelled by the car during the holding period; and

(C) the number of whole kilometres travelled by the car during the holding period; or

(ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:

(A) a declaration referred to in subparagraph (i); or

(B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96,

the taxable value, but for Division 14, of the residual fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

TV − ND

where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax; and

ND is:

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(f) if neither paragraph (da) nor paragraph (e) applies—the notional deduction;

(g) where paragraph (da) applies—whichever of the following amounts is applicable:

(i) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient—the car deduction percentage, ascertained under section 65G of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;

(ii) if subparagraph (i) does not apply—the car deduction percentage, ascertained under section 65G, of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax;

(h) where:

(i) paragraph (e) applies; and

(ii) a declaration referred to in subparagraph (e)(i) has been given to the employer;

whichever of the following amounts is the least:

(iii) the notional deduction;

(iv) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;

(v) if subparagraph (iv) does not apply—33⅓% of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or

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(j) where:

(i) subparagraph (e)(ii) applies; and

(ii) a declaration referred to in subparagraph (e)(i) has not been given to the employer;

whichever of the following amounts is applicable:

(iii) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient—33⅓% of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;

(iv) if subparagraph (iii) does not apply—33⅓% of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:

(a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and

(b) does not make, as mentioned in the definition of ***travel diary*** in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition,

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

(3) Where:

(a) apart from this subsection, paragraph (1)(da) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and

(b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be

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ascertained under paragraph (1)(g) as representing the component ND in the formula in subsection (1):

(i) in all cases—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:

(A) paragraph (1)(e) had applied in relation to the fringe benefit; and

(B) a declaration of the kind referred to in subparagraph (1)(e)(i) had been given to the employer;

(ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:

(A) subparagraph (1)(e)(ii) had applied in relation to that fringe benefit;

(B) a declaration of the kind referred to in subparagraph (1)(e)(i) had not been given to the employer; and

(C) a declaration of the kind referred to in sub-subparagraph (1)(e)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

(4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).

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Division 13—Miscellaneous Exempt Benefits

53 Motor vehicle fringe benefit fuel, etc., to be exempt in certain cases

(1) For the purposes of this Act:

(a) a car expense payment benefit;

(b) a car property benefit; or

(c) a car residual benefit,

in respect of a car, being a benefit that is attributable to a period when a car fringe benefit was provided, or would but for subsection 8(2) have been provided, in relation to the car, is an exempt benefit.

(2) Where the provision or use of a motor vehicle would, but for subsection 47(6), be a residual fringe benefit in relation to a period in a year of tax, subsection (1) applies in relation to the motor vehicle as if:

(a) the motor vehicle were a car; and

(b) a car fringe benefit were provided during that period in relation to the motor vehicle.

(3) In this section:

car expense payment benefit means an expense payment benefit where the recipients expenditure is a car expense.

car property benefit means a property benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a car expense.

car residual benefit means a residual benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a car expense.

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54 Provision of food or drink to be exempt benefit in certain cases

Where:

(a) a board fringe benefit in relation to an employer is provided on a particular day;

(b) on that day, the provider of the fringe benefit also provides food or drink (not being a meal) to the recipient of the fringe benefit; and

(c) the food or drink:

(i) is provided to, and consumed by, the recipient on that day on eligible premises of the employer; and

(ii) is not provided at a party, reception or other social function, the provision of the food or drink is an exempt benefit.

55 Benefits provided by certain international organisations to be exempt

A benefit provided in respect of the employment of an employee of an employer is an exempt benefit if:

(a) the employer is an organisation that, but for subsections 66(2) and (3), would be exempt from a liability to pay tax in respect of the benefit by virtue of the operation of the *International Organizations (Privileges and Immunities) Act 1963*; or

(b) the employer is an organisation established by an agreement to which Australia is a party and which obliges Australia to grant the employer an exemption from a liability to pay tax in respect of the benefit.

56 Preservation of diplomatic and consular immunities

A benefit that, but for subsections 66(2) and (3), would be exempt from tax by virtue of the *Consular Privileges and Immunities Act 1972* or the *Diplomatic Privileges and Immunities Act 1967* is an exempt benefit.

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57 Exempt benefits—employees of religious institutions

Where:

(a) the employer of an employee is a religious institution;

(b) the employee is a religious practitioner;

(c) a benefit is provided to, or to a spouse or a child of, the employee; and

(d) the benefit is not provided principally in respect of duties of the employee other than:

(i) any pastoral duties; or

(ii) any other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs,

the benefit is an exempt benefit.

57A Exempt benefits—public benevolent institutions

(1) Where the employer of an employee is a public benevolent institution, a benefit provided in respect of the employment of the employee is an exempt benefit.

(2) Where:

(a) the employer of an employee is a government body, and

(b) the duties of the employment of the employee are exclusively performed in, or in connection with, a public hospital that is a public benevolent institution;

a benefit provided in respect of the employment of the employee is an exempt benefit.

58 Exempt benefits—live-in residential care workers

(1) Where, during a period:

(a) the employer of an employee is:

(i) a government body; or

(ii) a religious institution or a non-profit company,

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whose activities consist of, or include, caring for elderly persons or disadvantaged persons;

(b) the duties of the employment of the employee consist of, or consist principally of:

(i) caring for elderly persons and any children of those elderly persons who reside with those elderly persons; or

(ii) caring for disadvantaged persons and any children of those disadvantaged persons who reside with those disadvantaged persons;

(c) in the performance of those duties, the employee lives, together with elderly persons or disadvantaged persons, in residential premises of the employer; and

(d) the fact that the person lives in those premises is directly related to the provision, in the course of the performance of the duties of the employment of the employee, of care to the elderly persons or disadvantaged persons living in those premises, any benefit arising from the provision, during that period, of:

(e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in those premises with the employee;

(f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee; or

(g) meals provided on those premises to the employee or to a spouse or child of the employee who resides in those premises with the employee;

(h) food or drink (other than meals) for consumption during that period by the employee or by a spouse or child of the employee who resides in those premises with the employee;

is an exempt benefit.

(2) In this section:

residential premises means a house or hostel used exclusively for the provision of residential accommodation to:

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(a) elderly persons or disadvantaged persons and children of elderly persons or disadvantaged persons;
(b) persons the duties of whose employment consist of, or consist principally of, caring for persons referred to in paragraph (a); and
(c) spouses and children of persons referred to in paragraph (b).

58A Exempt benefits—employment interviews and selection tests

Where:

(a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer,
(b) the benefit is in respect of an employment interview or selection test; and
(c) in the case of an expense payment benefit:
    (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
    (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

58B Exempt benefits—removals and storage of household effects as a result of relocation

(1) Where:

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(a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee:

(i) an expense payment benefit where the recipients expenditure is in respect of the removal or storage of household effects of the employee;

(ii) a residual benefit where the recipients benefit consists of the removal or storage of household effects of the employee;

(b) the removal or storage is required solely because:

(i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;

(ii) the employee, having lived away from his or her usual place of residence in order to perform the duties of that employment, is required to return to his or her usual place of residence:

(A) in order to perform those duties; or

(B) because the employee has ceased to perform those duties; or

(iii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;

(c) the removal or storage is required to enable a family member to:

(i) if subparagraph (b)(i) applies—take up residence, or to continue to reside, at or near the place where the employee performs the duties of that employment while living away from his or her usual place of residence;

(ii) if subparagraph (b)(ii) applies—take up residence at the employee's usual place of residence; or

(iii) if subparagraph (b)(iii) applies—take up residence, or to continue to reside, at the employee's new usual place of residence;

(d) if subparagraph (b)(iii) applies:

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(i) the removal takes place, or the storage commences to be provided, within 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment; and

(ii) the benefit is not provided under a non-arm's length arrangement;

(e) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and

(f) the removal or storage was not provided in connection with travel undertaken by the employee in the course of performing the duties of that employment;

the benefit is an exempt benefit in relation to the year of tax.

(2) For the purposes of this section:

(a) a reference to the household effects of an employee is a reference to tangible property (whether or not owned by a family member) kept primarily for the personal use of family members; and

(b) without limiting the generality of an expression used in subsection (1), the recipients expenditure shall be taken to be in respect of, and the recipients benefit shall be taken to consist of, the removal or storage of household effects if the expenditure or benefit is in respect of, or consists of, the transport, packing, unpacking or insurance of the household effects in connection with the removal or storage of the household effects.

58C Exempt benefits—sale or acquisition of dwelling as a result of relocation

(1) Where:

(a) during a particular period (in this subsection called the ***former home holding period***), an employee of an employer, or an associate of an employee of an employer, holds:

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(i) a prescribed interest in land on which:

(A) there is a building constituting or containing a dwelling;

(B) the employee or associate proposes to construct, or complete the construction of, a building constituting or containing a dwelling;

(ii) a prescribed interest in a stratum unit in relation to a dwelling; or

(iii) a proprietary right in respect of a dwelling, being a flat or home unit;

(b) the employee or associate sells the interest or right solely because the employee is required to change his or her usual place of residence in order to perform the duties of his or her employment;

(c) the employer first notifies the employee at a time (in this subsection called the ***notice time***) during the former home holding period that the employee is required to perform the duties of that employment at the employee's new place of employment;

(d) at the notice time, the employee occupied, or proposed to occupy, the dwelling, or proposed to occupy the proposed dwelling, as his or her usual place of residence; and

(e) the employee or associate entered into a contract for the sale of the interest or right within 2 years after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

the following subsections have effect.

(2) Where:

(a) either of the following benefits is provided in respect of that employment of the employee in, or in respect of, a year of tax:

(i) an expense payment benefit where the recipients expenditure is incidental to the sale of that interest or right;

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(ii) a residual benefit where the recipients benefit is incidental to the sale of that interest or right;

(b) if, apart from this paragraph, this subsection would apply in relation to 2 or more dwellings or proposed dwellings in relation to the change in the employee's usual place of residence—the employer of the employee elects that this subsection apply in relation to only one of those dwellings or proposed dwellings;

(c) if paragraph (b) applies—the benefit relates to the dwelling or proposed dwelling in respect of which the election is made;

(d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and

(e) the benefit is not provided under a non-arm's length arrangement; the benefit is an exempt benefit in relation to the year of tax.

(3) Where:

(a) at a particular time, the employee or an associate of the employee acquires:

(i) a prescribed interest in land on which:

(A) there is a building constituting or containing another dwelling;

(B) the employee or associate proposes to construct, or complete the construction of, a building constituting or containing another dwelling;

(ii) a prescribed interest in a stratum unit in relation to another dwelling; or

(iii) a proprietary right in respect of another dwelling, being a flat or home unit;

(b) the employee or associate acquires the interest or right solely because the employee is required to change his or her usual place of residence in order to perform the duties of that employment at the employee's new place of employment;

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(c) the employee or associate entered into a contract for the acquisition of the interest or right within 4 years after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

(d) immediately after the completion of the acquisition, the employee occupied the other dwelling, or proposed to occupy the other proposed dwelling, as his or her usual place of residence;

(e) any of the following benefits is provided in respect of that employment of the employee in, or in respect of, a year of tax:

(i) an expense payment benefit where the recipients expenditure is incidental to the acquisition of that interest or right;

(ii) a residual benefit where the recipients benefit is incidental to the acquisition of that interest or right;

(iii) an expense payment benefit where the recipients expenditure is in respect of the act of connecting or re-connecting a telephone service to the other dwelling or proposed dwelling;

(iv) a residual benefit where the recipients benefit is constituted by the act of connecting or re-connecting a telephone service to the other dwelling or proposed dwelling;

(v) an expense payment benefit where the recipients expenditure is in respect of the act of re-connecting gas or electricity to the other dwelling or proposed dwelling;

(vi) a residual benefit where the recipients benefit is constituted by the act of re-connecting gas or electricity to the other dwelling or proposed dwelling;

(f) if subparagraph (e)(iii) or (iv) applies—immediately before the change, a telephone service was provided to the unit of accommodation that was the employee's usual place of residence before the change;

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(g) if subparagraph (e)(i), (iii) or (v) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and

(h) the benefit is not provided under a non-arm's length arrangement;

the benefit is an exempt benefit in relation to the year of tax.

(4) An election by an employer under subsection (2) in relation to a year of tax:

(a) shall be made by notice in writing to the Commissioner; and

(b) shall be lodged with the Commissioner on or before the declaration date.

58D Exempt benefits—connection or re-connection of certain utilities as a result of relocation

(1) Where:

(a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

(i) an expense payment benefit where the recipients expenditure is in respect of the act of connecting or re-connecting a telephone service to a unit of accommodation;

(ii) a residual benefit where the recipients benefit is constituted by the act of connecting or re-connecting a telephone service to a unit of accommodation;

(b) the unit of accommodation is for the accommodation of family members;

(c) the accommodation is required solely because:

(i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; or

(ii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;

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(d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and

(e) if subparagraph (c)(ii) applies:

(i) the telephone service is connected or re-connected not later than 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

(ii) immediately before the change, a telephone service was provided to the unit of accommodation that was the employee's usual place of residence before the change; and

(iii) the benefit was not provided under a non-arm's length arrangement;

the benefit is an exempt benefit in relation to the year of tax.

(2) Where:

(a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

(i) an expense payment benefit where the recipients expenditure is in respect of the act of re-connecting gas or electricity to a unit of accommodation;

(ii) a residual benefit where the recipients benefit is constituted by the act of re-connecting gas or electricity to a unit of accommodation;

(b) the unit of accommodation is for the accommodation of family members;

(c) the accommodation is required solely because:

(i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; or

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(ii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;

(d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and

(e) if subparagraph (c)(ii) applies:

(i) the gas or electricity is re-connected not later than 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment; and

(ii) the benefit was not provided under a non-arm's length arrangement;

the benefit is an exempt benefit in relation to the year of tax.

58E Exempt benefits—leasing of household goods while living away from home

Where:

(a) either of the following benefits (in this section called a ***household goods leasing benefit***) is provided in, or in respect of, a year of tax in respect of the employment of an employee:

(i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of goods;

(ii) a residual benefit where the recipients benefit consists of the subsistence of a lease or licence in respect of goods;

(b) the goods are primarily for domestic use by, and in connection with accommodation for, family members;

(c) either of the following benefits is provided in, or in respect of, the year of tax to the employee in respect of that employment:

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(i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of that accommodation;

(ii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation; and

(d) by virtue of section 21 or subsection 47(5), the benefit referred to in paragraph (c) is an exempt benefit in relation to the year of tax;

the household goods leasing benefit is an exempt benefit in relation to the year of tax.

58F Exempt benefits—relocation transport

Where:

(a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;

(b) the benefit is in respect of relocation transport; and

(c) in the case of an expense payment benefit:

(i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and

(ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

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58G Exempt benefits—motor vehicle parking

(1) Each of the following benefits is an exempt benefit:

(a) an expense payment benefit, where:

(i) the recipients expenditure is in respect of the provision of motor vehicle parking facilities; and

(ii) the benefit is not an eligible car parking expense payment benefit;

(b) a residual benefit where the recipients benefit consists of motor vehicle parking facilities.

(2) If the employer of an employee is:

(a) a scientific institution (other than an institution carried on by a company, society or association for the purposes of profit or gain to its individual shareholders or members); or

(b) a religious institution; or

(c) a charitable institution; or

(d) a public educational institution;

the following benefits provided in respect of the employment of the employee are exempt benefits:

(e) an eligible car parking expense payment benefit;

(f) a car parking benefit.

58H Exempt benefits—newspapers and periodicals used for business purposes

(1) Where:

(a) any of the following benefits is provided to an employee in respect of his or her employment:

(i) an expense payment benefit where the recipients expenditure is in respect of a newspaper or periodical;

(ii) a property benefit where the recipients property is a newspaper or periodical;

(iii) a residual benefit where the recipients benefit consists of the making available of a newspaper or periodical; and

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(b) the newspaper or periodical was for use by the employee for the purpose, or for purposes that included the purpose, of gaining or producing salary or wages of the employee in respect of that employment;

the benefit is an exempt benefit.

(2) In determining for the purposes of paragraph (1)(b) whether a newspaper or periodical was for use for the purpose of gaining or producing salary or wages, no regard shall be had to a purpose that is a merely incidental purpose.

58J Exempt benefits—compensable work-related trauma

(1) Where:

(a) a benefit is provided in respect of the employment of an employee for or in respect of compensable work-related trauma suffered by the employee; and

(b) either of the following subparagraphs applies:

(i) the benefit is provided under a workers' compensation law that applies to that employment;

(ii) the benefit is not provided under a workers' compensation law but the provision of the benefit is reasonable having regard to all relevant matters including, but without limiting the generality of the foregoing, the value of the benefit and the nature and effects of the trauma;

the benefit is an exempt benefit.

(2) Where:

(a) a residual benefit provided in, or in respect of, a year of tax in respect of the employment of an employee is constituted by the subsistence, during the year of tax, of a contingent right (whether arising under a contract of insurance or otherwise) to a benefit for or in respect of compensable work-related trauma suffered by the employee; and

(b) in the case of a contingent right arising under a contract of insurance—the contract of insurance does not provide for a

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benefit that is not for or in respect of compensable work-related trauma suffered by any employee;

the benefit is an exempt benefit in relation to the year of tax.

58K Exempt benefits—in-house health care facilities

Where:

(a) a benefit consisting of the provision of health care is provided in respect of the employment of an employee of an employer; and

(b) the health care is provided:

(i) in an in-house health care facility of the employer; or

(ii) by a member of the staff of an in-house health care facility of the employer in the performance of his or her duties as such a member;

the benefit is an exempt benefit.

58L Exempt benefits—certain travel to obtain medical treatment

(1) Where:

(a) a person (in this subsection called the ***traveller***):

(i) is provided with transport by another person; or

(ii) provides transport for himself or herself;

(b) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

(i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of the transport;

(ii) an expense payment benefit where the recipients expenditure is in respect of the provision of:

(A) the transport; or

(B) meals or accommodation for the traveller;

(iii) a property benefit where the recipients property consists of meals for the traveller;

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(iv) a residual benefit where the recipients benefit consists of the provision of:

(A) the transport; or

(B) accommodation for the traveller;

(c) the transport is required solely because a person (in this subsection called the ***patient***) requires medical treatment;

(d) the medical treatment is provided in a particular place (in this subsection called the ***treatment place***) at a time during a period when the employee is, or would but for that requirement to obtain treatment or any other temporary absence be, performing the duties of that employment in another place (in this subsection called the ***overseas employment place***), being a place in:

(i) a prescribed foreign country;

(ii) a prescribed part of a foreign country; or

(iii) a prescribed territory, dependency or colony (however described) of a foreign country;

(e) the transport is between:

(i) a place at or near the overseas employment place; and

(ii) a place at or near the treatment place;

(f) if the patient is not the employee—the patient is a family member and lives with the employee at or near the overseas employment place;

(g) if the traveller is not the patient—either of the following conditions is satisfied:

(i) the traveller accompanies the patient because:

(A) the patient has not attained the age of 18 years and requires the traveller as an escort; or

(B) the patient requires the traveller as an escort for medical reasons;

(ii) the traveller is a family member and accompanies or visits the patient where it is customary for family members to accompany or visit patients receiving medical treatment of the same nature and duration as the medical treatment required by the patient;

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(h) the meals or accommodation:

(i) are:

(A) in connection with the transport; or

(B) required solely in connection with the presence of the traveller at the treatment place for purposes related to the medical treatment of the patient; and

(ii) where sub-subparagraph (i)(B) applies and the traveller is the patient—are not provided to the patient in a hospital, clinic or similar place in connection with the medical treatment of the patient;

(j) either of the following conditions is satisfied:

(i) the treatment place was the place nearest to the overseas employment place at which medical treatment suitable for the patient could be provided;

(ii) the total cost associated with obtaining medical treatment at the treatment place was equal to, or less than, the lowest total cost associated with obtaining medical treatment at any of the places at which medical treatment suitable for the patient could have been provided; and

(k) if subparagraph (b)(ii) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

(2) A reference in this section to medical treatment is a reference to an act or thing where a payment in respect of the act or thing is a medical expense within the meaning of section 159P of the *Income Tax Assessment Act 1936*.

58LA Exempt benefits—compassionate travel

Where:

(a) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of

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an employer, being benefits in relation to the transport of a person (in this section called the ***traveller***) who is the employee or a close relative of the employee:

(i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of the transport;

(ii) an expense payment benefit where the recipients expenditure is in respect of the provision of:

(A) the transport; or

(B) meals or accommodation for the traveller in connection with the transport;

(iii) a property benefit where the recipients property consists of meals for the traveller in connection with the transport;

(iv) a residual benefit where the recipients benefit consists of the provision of:

(A) the transport; or

(B) accommodation for the traveller in connection with the transport;

(b) the sole reason that the transport is required is:

(i) if the traveller is the employee:

(A) to enable the traveller to attend the funeral of a close relative of the traveller; or

(B) to enable the traveller to visit a close relative of the traveller in connection with a serious illness of the close relative or of the traveller; or

(ii) if the traveller is a close relative of the employee:

(A) to enable the traveller to attend the funeral of the employee;

(B) to enable the traveller to visit the employee in connection with a serious illness of the employee or of the traveller;

(C) to enable the traveller to attend the funeral of another close relative of the employee; or

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(D) to enable the traveller to visit another close relative of the employee in connection with a serious illness of the other close relative or of the traveller;

(c) the travel to which the transport relates commences during a period in respect of which any of the following conditions is satisfied (or, in a case to which sub-subparagraph (b)(ii)(A) applies, would have been satisfied but for the employee's death):

(i) during that period, the employee is undertaking travel in the course of performing the duties of that employment;

(ii) in a case to which subparagraph (i) does not apply—the employee is required, during that period, to live away from his or her usual place of residence in order to perform the duties of that employment;

(iii) in a case to which neither subparagraph (i) nor (ii) applies—during that period, the usual place of residence of the employee is at, or the employee is performing duties of that employment at, a place that:

(A) is in a State or internal Territory; and

(B) is not at a location in, or adjacent to, an eligible urban area;

(d) in a case to which sub-subparagraph (b)(ii)(c) or (d) applies—the travel to which the transport relates commences during a period during which the traveller ordinarily resides with the employee; and

(e) if subparagraph (a)(ii) applies and the recipients expenditure is incurred after 25 May 1988—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

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58M Exempt benefits—work-related medical examinations, work-related medical screening, work-related preventative health care, work-related counselling, migrant language training

(1) Where any of the following benefits is provided in respect of the employment of an employee:

(a) an expense payment benefit where the recipients expenditure is in respect of:

(i) a work-related medical examination of the employee;

(ii) work-related medical screening of the employee;

(iii) work-related preventative health care of the employee;

(iv) work-related counselling of the employee or of an associate of the employee; or

(v) migrant language training of the employee or of an associate of the employee;

(b) a property benefit where the recipients property is required solely for the purposes of:

(i) a work-related medical examination of the employee;

(ii) work-related medical screening of the employee;

(iii) work-related preventative health care of the employee;

(iv) work-related counselling of the employee or of an associate of the employee; or

(v) migrant language training of the employee or of an associate of the employee;

(c) a residual benefit where the recipients benefit consists of the provision of:

(i) a work-related medical examination of the employee;

(ii) work-related medical screening of the employee;

(iii) work-related preventative health care of the employee;

(iv) work-related counselling of the employee or of an associate of the employee; or

(v) migrant language training of the employee or of an associate of the employee;

the benefit is an exempt benefit.

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(2) Where:

(a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer,

(b) the benefit is associated with:

(i) a work-related medical examination of the employee;

(ii) work-related medical screening of the employee;

(iii) work-related preventative health care of the employee;

(iv) work-related counselling of the employee or of an associate of the employee; or

(v) migrant language training of the employee or of an associate of the employee; and

(c) in the case of an expense payment benefit:

(i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and

(ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

58N Exempt benefits—emergency assistance

Where:

(a) a benefit is provided in respect of the employment of an employee of an employer;

(b) the benefit is provided solely by way of the grant of emergency assistance to the recipient; and

(c) if the benefit is:

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(i) an expense payment benefit where the recipients expenditure is wholly or partly in respect of health care;

(ii) a property benefit where the recipients property is supplied in connection with the provision of health care;

(iii) a residual benefit where the recipients benefit consists of the provision of health care; or

(iv) a loan benefit constituted by the making of a loan where the purpose of the making of the loan is wholly or partly to enable the recipient to meet expenses incurred by the recipient in respect of health care;

the health care is provided:

(v) by an employee of the employer or, if the employer is a company, of the employer or of a company that is related to the employer;

(vi) on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer; or

(vii) at or adjacent to a place where employees of the employer or, if the employer is a company, of the employer or of a company that is related to the employer perform the duties of their employment;

the benefit is an exempt benefit.

58P Exempt benefits—minor benefits

(1) Where:

(a) a benefit (in this section called a ***minor benefit***) is provided in, or in respect of, a year of tax (in this section called the ***current year of tax***) in respect of the employment of an employee of an employer;

(b) the benefit is not an airline transport benefit;

(c) in the case of an expense payment benefit, a property benefit or a residual benefit—if the minor benefit were an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, as the case may be, in relation to the employer, the expense payment fringe benefit, the property fringe

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benefit or the residual fringe benefit, as the case requires, would not be an in-house fringe benefit;

(d) in the case of a tax-exempt body entertainment benefit where the provider incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision of entertainment to the employee or an associate of the employee:

(i) the provision of entertainment to the employee or the associate of the employee, as the case may be:

(A) is incidental to the provision of entertainment to outsiders; and

(B) neither consists of, nor is provided in connection with, the provision of a meal (other than a meal consisting of light refreshments) to the employee or the associate of the employee, as the case may be; or

(ii) the entertainment is provided to the employee or the associate of the employee, as the case may be:

(A) on eligible premises of the employer; and

(B) solely as a means of recognising the special achievements of the employee in a matter relating to the employment of the employee;

(e) the notional taxable value of the minor benefit in relation to the current year of tax is small; and

(f) having regard to:

(i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:

(A) the minor benefit; or

(B) benefits provided in connection with the provision of the minor benefit;

have been or can reasonably be expected to be provided;

(ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;

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(iii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;

(iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:

(A) if the minor benefit is not a car benefit—the minor benefit; and

(B) if there are any associated benefits that are not car benefits—those associated benefits; and

(v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:

(A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and

(B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;

it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;

the minor benefit is an exempt benefit in relation to the current year of tax.

(2) For the purposes of this section, a benefit is an associated benefit in relation to a minor benefit if, and only if:

(a) any of the following subparagraphs applies:

(i) the benefit is identical or similar to the minor benefit;

(ii) the benefit is provided in connection with the provision of the minor benefit;

(iii) the benefit is identical or similar to a benefit provided in connection with the provision of the minor benefit;

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(b) the benefit and the minor benefit both relate to the same employment of a particular employee; and

(c) the benefit is not an exempt benefit by virtue of a provision of this Act other than this section.

58Q Exempt benefits—long service awards

(1) Where:

(a) a long service award benefit (in this section called the ***current long service award benefit***) is provided in, or in respect of, a year of tax in respect of the employment of an employee;

(b) the current long service award benefit is in recognition of a particular recognised long service period (in this section called the ***current recognised long service period***) of the employee;

(c) if there is no other long service award benefit provided in, or in respect of, any year of tax in respect of that employment in recognition of a different recognised long service period of the employee that is shorter than the current recognised long service period—the sum of the notional taxable values of the current long service award benefit and any other long service award benefits provided in, or in respect of, any year of tax in respect of the employment of the employee in recognition of the current recognised long service period does not exceed the amount calculated in accordance with the formula:

$$\$500 + \left(\$50 \times \left(RLS - 15\right)\right)$$

where ***RLS*** is the number of whole years in the recognised long service period of the employee that was recognised by the provision of the current long service award benefit; and

(d) if paragraph (c) does not apply—the sum of the notional taxable values of the current long service award benefit and any other long service award benefits provided in, or in respect of, any year of tax in respect of the employment of the employee in recognition of the current recognised long

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service period does not exceed the amount calculated in accordance with the formula:

$**50 × (RLS − ERLS)**

where:

RLS is the number of whole years in the recognised long service period of the employee that was recognised by the provision of the current long service award benefit; and

ERLS is the number of whole years in the longest recognised long service period of the employee that:

(i) is shorter than the current recognised long service period; and

(ii) was recognised by the provision of one or more long service award benefits in, or in respect of, any year of tax, in respect of the employment of the employee;

the current long service award benefit is an exempt benefit in relation to the year of tax.

(2) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this section.

58R Exempt benefits—safety awards

Where:

(a) one or more safety award benefits are provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and

(b) the notional taxable value of that safety award benefit, or the sum of the notional taxable values of those safety award benefits, in relation to that year of tax, does not exceed $200;

the safety award benefit, or the safety award benefits, as the case may be, are exempt benefits in relation to that year of tax.

58S Exempt benefits—trainees engaged under Australian Traineeship System

Where:

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(a) an employee is a trainee employed under a training agreement as part of the scheme known as the Australian Traineeship System;

(b) any of the following benefits is provided in, or in respect of, a year of tax in respect of that employment of the employee:

(i) an expense payment benefit where the recipients expenditure is in respect of accommodation, or food or drink, for the employee;

(ii) a housing benefit where the housing right is in respect of accommodation for the employee;

(iii) a board benefit in respect of a meal for the employee;

(iv) a property benefit where the recipients property consists of food or drink for the employee;

(v) a residual benefit where the recipients benefit consists of the subsistence of a lease or licence in respect of a unit of accommodation for the accommodation of the employee;

(c) in a case where the benefit relates to food or drink—the food or drink is not provided at a party, reception or other social function; and

(d) either of the following conditions are satisfied:

(i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;

(ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;

the benefit is an exempt benefit in relation to the year of tax.

58T Exempt benefits—live-in domestic workers employed by religious institutions or by religious practitioners

Where, during a particular period:

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(a) the employer of an employee is:
  (i) a religious institution; or
  (ii) a religious practitioner;
(b) the duties of the employment of the employee consist of, or consist principally of, rendering domestic services or personal services, or both, for:
  (i) one or more religious practitioners who reside in one or more units of accommodation located on a particular parcel of land; and
  (ii) any relatives of that religious practitioner, or of those religious practitioners, who reside in the unit of accommodation with the religious practitioner concerned;
(c) the employee resides in a unit of accommodation located on the same parcel of land; and
(d) the fact that the employee resides in the unit of accommodation is directly related to the rendering, in the course of the performance of the duties of the employment of the employee, of those domestic services or of those personal services;

any benefit arising from the provision, during that period, of:

(e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in that unit of accommodation with the employee;
(f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee;
(g) meals provided on the parcel of land to the employee or to a spouse or child of the employee who resides in that unit of accommodation with the employee; or
(h) food or drink (other than meals) for consumption, during that period, by the employee or by a spouse or child of the employee who resides in that unit of accommodation with the employee;

is an exempt benefit.

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58U Exempt benefits—live-in help for elderly and disadvantaged persons

Where, during a particular period:

(a) the employer of an employee is a natural person;

(b) the duties of the employment of the employee consist of, or consist principally of:

(i) caring for one or more elderly persons and any child or children of that elderly person, or those elderly persons, who reside with the elderly person concerned; or

(ii) caring for one or more disadvantaged persons and any child or children of that disadvantaged person, or those disadvantaged persons, who reside with the disadvantaged person concerned;

(c) in the performance of those duties, the employee resides in the same unit of accommodation as the person or persons being cared for; and

(d) the fact that the employee resides in that unit of accommodation is directly related to the provision, in the course of the performance of the duties of the employment of the employee, of care to the elderly person or elderly persons or to the disadvantaged person or disadvantaged persons;

any benefit arising from the provision, during that period, of:

(e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in that unit of accommodation with the employee;

(f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee;

(g) meals provided in that unit of accommodation to the employee or to a spouse or child of the employee who resides in that unit of accommodation with the employee; or

(h) food or drink (other than meals) for consumption, during that period, by the employee or by a spouse or child of the employee who resides in that unit of accommodation with the employee;

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is an exempt benefit.

58V Exempt benefits—food and drink for non-live-in domestic employees

Where:

(a) the employer of an employee is:

(i) a natural person; or

(ii) a religious institution;

(b) if the employer is a natural person—the duties of the employment of the employee consist of, or consist principally of, rendering domestic services for the employer or one or more relatives of the employer at a place of residence of the employer;

(c) if the employer is a religious institution—the duties of the employment of the employee consist of, or consist principally of, rendering domestic services for one or more religious practitioners or one or more relatives of religious practitioners at a place of residence of the religious practitioner concerned; and

(d) the employee is not provided with residential accommodation in respect of that employment;

any benefit arising from the provision of food or drink consumed by the employee at that place of residence at or about the time the employee was engaged in the performance of the duties of that employment is an exempt benefit.

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Division 14—Reduction of Taxable Value of Miscellaneous Fringe Benefits

59 Reduction of taxable value—remote area residential fuel

(1) Where:

(a) residential fuel is for use:

(i) in connection with the recipients unit of accommodation; and

(ii) during the subsistence of the recipients overall housing right,

in relation to a remote area housing fringe benefit in relation to an employer in relation to a year of tax; and

(b) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to the employer in relation to the year of tax or a subsequent year of tax is in respect of the supply of that residential fuel;

(ii) the recipients property in relation to a property fringe benefit in relation to the employer in relation to the year of tax is that residential fuel;

(iii) the recipients benefit in relation to a residual fringe benefit in relation to the employer in relation to the year of tax is the benefit of the consumption of that residential fuel,

the following provisions have effect:

(c) if the taxable value of the fringe benefit referred to in paragraph (a) is ascertained under paragraph 29(1)(a)—the taxable value of the fringe benefit referred to in paragraph (b) shall be taken to be nil;

(d) in any other case—the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit referred to in paragraph (b) in relation to the year of tax shall be reduced by 50%.

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(2) Where:

(a) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is in respect of the supply of residential fuel;

(ii) the recipients property in relation to a property fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is residential fuel;

(iii) the recipients benefit in relation to a residual fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is the benefit of the consumption of residential fuel;

(b) the residential fuel is for use in connection with a dwelling during a period in the year of tax or, in a case to which subparagraph (a)(i) applies, a preceding year of tax, when the recipient of the fringe benefit occupied or used the dwelling as his or her usual place of residence and was under an obligation to repay the whole or a part of a remote area housing loan connected with the dwelling; and

(c) the fringe benefit was not provided under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(3) Where:

(a) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is in respect of the supply of residential fuel;

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(ii) the recipients property in relation to a property fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is residential fuel;

(iii) the recipients benefit in relation to a residual fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is the benefit of the consumption of residential fuel;

(b) the residential fuel is for use in connection with a unit of accommodation during a period in the year of tax or, in a case to which subparagraph (a)(i) applies, in a preceding year of tax, during which:

(i) the recipient of the fringe benefit occupied or used the unit of accommodation as his or her usual place of residence; and

(ii) remote area housing rent connected with the unit of accommodation accrued; and

(c) the fringe benefit was not provided under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

60 Reduction of taxable value—remote area housing

(1) Where:

(a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) the loan is a remote area housing loan connected with a dwelling; and

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(c) the recipient occupied or used the dwelling as his or her usual place of residence during a period in the year of tax (in this section referred to as the ***occupation period***) during which the recipient was under an obligation to repay the whole or a part of the loan,

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of that amount as relates to the occupation period.

(2) Where:

(a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) the recipients expenditure is in respect of interest in respect of a remote area housing loan connected with a dwelling;

(c) the recipient occupied or used the dwelling as his or her usual place of residence during a period (in this section referred to as the ***occupation period***) during which the interest accrued; and

(d) the fringe benefit was not provided under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of that amount as relates to the occupation period.

(2A) Where:

(a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

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(b) the recipients expenditure is in respect of remote area housing rent connected with a unit of accommodation;

(c) the recipient occupied or used the unit of accommodation as his or her usual place of residence during a period (in this subsection called the ***occupation period***) during which the rent accrued; and

(d) the fringe benefit was not provided under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of the recipients expenditure as relates to the occupation period.

(3) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients property is remote area residential property,

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(4) Where:

(a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients expenditure is in respect of remote area residential property;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

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(5) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients property is a remote area residential property option fee;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(6) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and

(b) the recipients property is remote area residential property repurchase consideration;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(7) Where:

(a) subsection (6) applies to a property fringe benefit; and

(b) the amount paid by the provider of the fringe benefit by way of consideration for the purchase of the estate or interest concerned exceeds both:

(i) the market value of the estate or interest at the time of the purchase; and

(ii) the guideline price of the estate or interest at the time of the purchase;

a reference in subsection (6) to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the guideline price.

60AA Guideline price for repurchase of remote area residential property

(1) In this section:

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index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

(4) A reference in subsection 60(7) to the guideline price of an estate or interest in land is a reference to:

(a) if the factor ascertained in accordance with subsections (5) and (6) in relation to the market value of the estate or interest as at the time the estate or interest was acquired by the employee is greater than 1—the market value as at that time multiplied by that factor; or

(b) in any other case—the market value as at that time.

(5) The factor to be ascertained for the purposes of subsection (4) in relation to the market value of the estate or interest in land as at the time of the acquisition of the estate or interest by the employee is the number (calculated to 3 decimal places) ascertained by dividing the index number in respect of the quarter of the year in which the employee sold the estate or interest to the provider by the index number in respect of the quarter of the year in which the estate or interest was acquired by the employee.

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(6) Where the factor ascertained in accordance with subsection (5) would, if it were calculated to 4 decimal places, end with a number greater than 4, that factor shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

60A Reduction of taxable value—remote area holiday transport fringe benefits subject to ceiling

(1) Where one or more remote area holiday transport fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee of the employer and to a particular holiday for a particular family member, the amount (in this subsection called the ***gross taxable value***) that, but for this subsection and section 62, would be:

(a) so much of the taxable value of that fringe benefit as is attributable to transport, meals or accommodation in relation to the holiday for the family member; or

(b) so much of the sum of the taxable values of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member;

as the case requires, in relation to that year of tax, shall be reduced by:

(c) 50% of the gross taxable value; or

(d) 50% of the benchmark travel amount in relation to that fringe benefit, or in relation to those fringe benefits, in relation to the holiday for the family member;

whichever is the less.

(2) Subsection (1) does not apply in relation to a remote area holiday transport fringe benefit unless:

(a) subsection 143(3) applies to the fringe benefit; and

(b) if the fringe benefit-is an expense payment fringe benefit:

(i) in the case of an expense payment fringe benefit where:

(A) the expense payment fringe benefit is constituted by the reimbursement of the

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recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient; and

(B) the reimbursement is calculated by reference to the distance travelled by the car;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; or

(ii) in the case of an expense payment fringe benefit where subparagraph (i) does not apply:

(A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

(B) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure.

(3) Where subsection (1) applies, in relation to 2 or more years of tax, in relation to 2 or more fringe benefits relating to a particular holiday for a particular family member, subsection (1) has effect, in relation to each of those years of tax, as if the reference in paragraph (1)(d) to the benchmark travel amount in relation to that fringe benefit, or those fringe benefits, in relation to the holiday for the family member were a reference to the amount calculated in accordance with the formula:

$$\mathbf{BTA} \times \frac{\mathbf{TV}}{\mathbf{TTV}}$$

where:

BTA is the amount that, but for this subsection, would be the benchmark travel amount in relation to that fringe benefit, or in

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relation to those fringe benefits, in relation to the holiday for the family member;

TV is the amount that, but for this section and section 62, would be:

(a) so much of the taxable value, in relation to the year of tax concerned, of that fringe benefit as is attributable to transport, meals or accommodation in relation to the holiday for the family member; or

(b) so much of the sum of the taxable values, in relation to the year of tax concerned, of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member; and

TTV is the amount that, but for this section and section 62, would be so much of the sum of the taxable values, in relation to all of those years of tax, of all of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member.

(4) Where:

(a) subparagraph (2)(b)(i) applies to an expense payment fringe benefit; and

(b) the amount of the reimbursement concerned exceeds the reimbursement (in this subsection called the ***statutory reimbursement***) that would have been paid if it had been calculated on the basis of the sum of the following rates:

(i) the basic car rate;

(ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the expense payment fringe benefit is a remote area holiday transport fringe benefit—the supplementary car rate;

a reference in subsection (1) or (3) of this section to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the statutory reimbursement.

(5) Where:

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(a) a remote area holiday transport fringe benefit in relation to an employee consists of the provision of an allowance to the spouse or a child of the employee; and

(b) the whole or a part of the allowance has been expended by the recipient in obtaining the transport, meals or accommodation in respect of which the allowance was paid;

this section applies in relation to the fringe benefit as follows:

(c) the fringe benefit shall be treated as if it were an expense payment fringe benefit;

(d) the amount expended as mentioned in paragraph (b) shall be treated as if it were the recipients expenditure;

(e) so much of the allowance as does not exceed the recipients expenditure shall be treated as if it were a reimbursement of the recipients expenditure.

61 Reduction of taxable value—remote area holiday transport fringe benefits not subject to ceiling

(1A) This section does not apply in relation to a fringe benefit in respect of remote area holiday transport if subsection 143(3) applies in relation to the fringe benefit.

(1) Where:

(a) the recipients expenditure in relation to an expense payment fringe benefit in relation to a year of tax is in respect of remote area holiday transport;

(c) in a case where:

(i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient; and

(ii) the reimbursement is calculated by reference to the distance travelled by the car,

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the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; and

(d) if paragraph (c) does not apply:

(i) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

(ii) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure;

(e) where paragraph (c) does not apply—50%; and

(f) where paragraph (c) applies—50% of so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

(i) the basic car rate;

(ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the recipients expenditure is in respect of remote area holiday transport—the supplementary car rate.

(1AA) Where the recipients property in relation to a property fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

(2) Where the recipients benefit in relation to a residual fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this subsection and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by 50%.

(3) Where:

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(a) a remote area holiday transport fringe benefit in relation to an employee consists of the provision of an allowance to the spouse or a child of the employee; and

(b) the whole or a part of the allowance has been expended by the recipient in obtaining the transport, meals or accommodation in respect of which the allowance was paid;

this section applies in relation to the fringe benefit as follows:

(c) the fringe benefit shall be treated as if it were an expense payment fringe benefit;

(d) the amount expended as mentioned in paragraph (b) shall be treated as if it were the recipients expenditure;

(e) so much of the allowance as does not exceed the recipients expenditure shall be treated as if it were a reimbursement of the recipients expenditure.

61A Reduction of taxable value—overseas employment holiday transport

(1) Where one or more fringe benefits, being fringe benefits in respect of overseas employment holiday transport, in relation to an employer in relation to a year of tax relate to a particular employee of the employer, the amount (in this subsection called the ***gross taxable value***) that, but for this subsection and sections 62 and 65CAA, would be:

(a) so much of the taxable value of that fringe benefit as is attributable to transport, meals or accommodation for a particular family member; or

(b) so much of the sum of the taxable values of those fringe benefits as is attributable to transport, meals or accommodation for a particular family member;

as the case requires, in relation to that year of tax, shall be reduced by:

(c) 50% of the gross taxable value; or

(d) 50% of the benchmark travel amount in relation to that fringe benefit in relation to the family member or 50% of the greatest benchmark travel amount in relation to those fringe

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benefits in relation to the family member, as the case requires;

whichever is the less.

(2) Subsection (1) does not apply in relation to a fringe benefit in respect of overseas employment holiday transport, being an expense payment fringe benefit, unless:

(a) in the case of an expense payment fringe benefit where:

(i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient; and

(ii) the reimbursement is calculated by reference to the distance travelled by the car;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

(iii) particulars of the car; and

(iv) the number of whole kilometres travelled by the car in providing transport by virtue of which the recipients expenditure is in respect of overseas employment holiday transport; or

(b) in the case of an expense payment fringe benefit where paragraph (a) does not apply—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

(3) Where:

(a) subsection (1) applies in relation to one or more fringe benefits (in this subsection called the ***overseas holiday transport fringe benefits***) in relation to an employer in relation to a year of tax, being fringe benefits that relate to a particular employee of the employer;

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(b) one or more of the overseas holiday transport fringe benefits are home country fringe benefits in relation to a particular holiday or holidays for a particular family member;

(c) if the home country fringe benefit, or home country fringe benefits, referred to in paragraph (b) relate to only one holiday for the family member—the home country holiday amount in relation to the holiday in relation to the family member exceeds the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member; and

(d) if the home country fringe benefit, or home country fringe benefits, referred to in paragraph (b) relate to 2 or more holidays for the family member—the greatest of the home country holiday amounts in relation to the holidays in relation to the family member exceeds the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member;

the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member shall be increased by the amount of the excess referred to in whichever of paragraph (c) or (d) of this subsection is applicable.

(4) For the purposes of subsection (3), where the whole or a part (which whole or part is in this subsection called the ***attributable portion***) of the amount that, but for subsection (1) and sections 62 and 65CAA, would be the taxable value, or of the sum of the taxable values, in relation to the year of tax, of one or more home country fringe benefits in relation to a particular holiday for a particular family member is attributable to transport, meals or accommodation in relation to the holiday for the family member, the home country holiday amount, in relation to the holiday, in

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relation to the family member, is an amount equal to the attributable portion.

(5) Where:

(a) paragraph (2)(a) applies to an expense payment fringe benefit; and

(b) the amount of the reimbursement concerned exceeds the reimbursement (in this subsection called the ***statutory reimbursement***) that would have been paid if it had been calculated on the basis of the sum of the following rates:

(i) the basic car rate;

(ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the expense payment fringe benefit is in respect of overseas employment holiday transport—the supplementary car rate;

a reference in subsection (1) or (4) of this section to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the statutory reimbursement.

61B Reduction of taxable value of certain expense payment fringe benefits in respect of relocation transport

Where:

(a) an expense payment fringe benefit in respect of relocation transport is provided in a year of tax to an employee of an employer, or to an associate of the employee, in respect of the employment of the employee;

(b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and

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(c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

(i) particulars of the car; and

(ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is in respect of relocation transport;

the amount that, but for this section and section 65CAA, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

(d) the basic car rate;

(e) where 2 or more family members travelled in the car when it provided the transport by virtue of which the benefit is in respect of relocation transport—the supplementary car rate.

61C Reduction of taxable value—temporary accommodation relating to relocation

(1) Where:

(a) any of the following fringe benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

(i) an expense payment fringe benefit where the recipients expenditure is in respect of:

(A) a lease or licence in respect of a unit of accommodation occupied or used for the temporary accommodation of family members; or

(B) a lease or licence in respect of goods primarily for domestic use by family members, being domestic use in connection with a unit of accommodation occupied or used for the temporary accommodation of family members;

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(ii) a housing fringe benefit where the housing right is in respect of a unit of accommodation occupied or used for the temporary accommodation of family members;

(iii) a residual fringe benefit where the recipients benefit:

(A) is constituted by the subsistence of a lease or licence in respect of a unit of accommodation occupied or used for the temporary accommodation of family members; or

(B) is constituted by the subsistence of a lease or licence in respect of goods primarily for domestic use by family members, being domestic use in connection with a unit of accommodation occupied or used for the temporary accommodation of family members;

(b) the temporary accommodation is required solely because the employee is required to change his or her usual place of residence in order to perform the duties of that employment;

(c) if the unit of accommodation is located at or near the employee's former usual place of residence—the temporary accommodation was required because the unit of accommodation that was the employee's former usual place of residence became unavailable, or unsuitable, for residential use by family members due to removal, storage or other arrangements relating to the change in the usual place of residence of the employee;

(d) if the unit of accommodation is located at or near the employee's new place of employment—the employee, or an associate of the employee, either before, on, or as soon as reasonably practicable after, the day (in this section called the ***relocation day***) on which the employee commenced to perform the duties of that employment at the employee's new place of employment, commenced sustained reasonable efforts to acquire, or to acquire the right to occupy or use, a unit of accommodation intended by the employee or associate, as the case may be, to provide a long-term place of residence for the employee; and

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(e) the fringe benefit is not provided under a non-arm's length arrangement;

the following provisions have effect.

(2) Where:

(a) paragraph (1)(c) applies; and

(b) a percentage (in this subsection called the ***attributable percentage***) of the taxable value of the fringe benefit in relation, to the year of tax is attributable to the subsistence of the lease, licence or housing right referred to in paragraph (1)(a) during the whole or a part of the period of 21 days that ended on the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

the amount that, but for this subsection and sections 62 and 65CAA, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

(3) Where:

(a) paragraph (1)(d) applies;

(b) any of the following subparagraphs applies:

(i) the year of tax is the transitional year of tax or the first standard year of tax;

(ii) the employee, not later than 4 months after the relocation day, pursuant to a contract entered into by the employee or an associate of the employee, commences or commenced to occupy or use a unit of accommodation intended by the employee or associate, as the case may be, to provide a long-term place of residence for the employee;

(iii) the employee gives to the employer, before the declaration date, a declaration in a form approved by the Commissioner, in respect of the application of this section in relation to the employee; and

(c) a percentage (in this subsection called the ***attributable percentage***) of the taxable value of the fringe benefit in relation to the year of tax is attributable to the subsistence of

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the lease, licence or housing right referred to in paragraph(1)(a) during the whole or a part of the period commencing 7 days before the relocation day and ending on the earlier or earliest of whichever of the following days is applicable:

(i) if, during the initial accommodation search period, a contract is or was entered into by the employee or an associate of the employee for the acquisition of, or of the right to occupy or use, a unit of accommodation intended by the employee or associate to provide a long-term place of residence for the employee—the day on which the employee could reasonably be or have been expected to commence, or to have commenced, to occupy or use that unit of accommodation pursuant to that contract;

(ii) if the initial accommodation search period ends or ended before any contract of a kind referred to in subparagraph (i) of this paragraph is or was entered into by the employee or an associate—the day on which that period ends or ended;

(iii) if:

(A) the unit of accommodation that was the employee's former usual place of residence was a dwelling in which the employee, or an associate of the employee, held a relevant proprietary interest;

(B) within 6 months after the relocation day, a contract for the sale of that relevant proprietary interest is or was entered into; and

(C) the efforts referred to in paragraph (1)(d), and the efforts of that kind that continue or continued to be made during the initial accommodation search period are, or were, efforts to acquire a relevant proprietary interest in a unit of accommodation, being a dwelling;

the day occurring 12 months after the relocation day;

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(iv) except in a case where subparagraph (iii) applies—the day occurring 6 months after the relocation day;

the amount that, but for this subsection and sections 62 and 65CAA, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

(4) A reference in this section to the acquisition of a unit of accommodation includes a reference to the acquisition of a relevant proprietary interest in a unit of accommodation, being a dwelling.

(5) In this section:

initial accommodation search period, in relation to a case to which paragraph (1)(d) applies, means the period commencing on the commencement, or the first commencement, as the case requires, of the efforts referred to in that paragraph and ending when efforts of that kind first cease or ceased to be made.

relevant proprietary interest, in relation to a unit of accommodation, being a dwelling, means:

(a) in any case—a prescribed interest in land on which a building constituting, or containing, the dwelling is located;

(b) in any case—a prescribed interest in a stratum unit in relation to the dwelling; or

(c) if the dwelling is a flat or home unit—a proprietary right in respect of the dwelling.

61D Reduction of taxable value of temporary accommodation meal fringe benefits

(1) Where:

(a) either of the following fringe benefits (in this section called a ***temporary accommodation meal fringe benefit***) is provided in a year of tax to an employee of an employer, or to an associate of the employee, in respect of the employment of the employee:

(i) an expense payment fringe benefit where the recipients expenditure is in respect of a meal;

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(ii) a property fringe benefit where the recipients property is a meal; and

(b) the meal was for consumption by a family member at a time when the family member was accommodated in a hotel, motel, hostel or guest-house;

(c) any of the following fringe benefits is provided in, or in respect of, the year of tax in respect of that employment:

(i) an expense payment benefit where the recipients expenditure is in respect of that accommodation;

(ii) a housing benefit where the housing right is in respect of that accommodation;

(iii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation;

(d) both of the following conditions are satisfied:

(i) under section 61C, the taxable value of the fringe benefit referred to in paragraph (c) in relation to the year of tax is reduced by the extent to which that taxable value is attributable to the subsistence of a lease or licence, or a housing right, in respect of the accommodation during a particular period in the year of tax;

(ii) the meal was for consumption by a family member at a time during that period; and

(e) the amount that, but for this section and sections 62 and 65CAA and the recipients contribution, would be the taxable value of the temporary accommodation meal fringe benefit exceeds:

(i) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—$2.00; or

(ii) in any other case—$1.00;

the amount that, but for this section and sections 62 and 65CAA and the recipients contribution, would be the taxable value of that temporary accommodation meal fringe benefit shall be reduced by the amount of the excess referred to in paragraph (e).

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(2) For the purposes of the application of this section to an in-house property expense payment fringe benefit, a reference in this section to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under paragraph 22A(1)(b).

61E Reduction of taxable value of certain expense payment fringe benefits in respect of employment interviews or selection tests

Where:

(a) an expense payment fringe benefit in respect of an employment interview or selection test is provided in a year of tax to an employee of an employer in respect of the employment of the employee;

(b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and

(c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

(i) particulars of the car; and

(ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is in respect of an employment interview or selection test;

the amount that, but for this section and section 65CAA, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the basic car rate.

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61F Reduction of taxable value of certain expense payment fringe benefits associated with work-related medical examinations, work-related medical screenings, work-related preventative health care, work-related counselling or migrant language training

Where:

(a) an expense payment fringe benefit associated with:

(i) a work-related medical examination of an employee of an employer;

(ii) work-related medical screening of an employee of an employer;

(iii) work-related preventative health care of an employee of an employer;

(iv) work-related counselling of an employee of an employer or of an associate of an employee of an employer; or

(v) migrant language training of an employee of an employer or of an associate of an employee of an employer;

is provided in a year of tax to the employee, or to an associate of the employee, in respect of the employment of the employee;

(b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a car expense, within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*, incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and

(c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:

(i) particulars of the car; and

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(ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is associated with:

(A) a work-related medical examination of the employee;

(B) work-related medical screening of the employee;

(C) work-related preventative health care of the employee;

(D) work-related counselling of the employee or of an associate of the employee; or

(E) migrant language training of the employee or of an associate of the employee;

the amount that, but for this section and section 65CAA, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

(d) the basic car rate;

(e) where:

(i) the benefit is associated with work-related counselling of the employee or of an associate of the employee or with migrant language training of the employee or of an associate of the employee; and

(ii) 2 or more family members travelled in the car when it provided the transport by virtue of which the benefit is associated with work-related counselling of the employee or of an associate of the employee or with migrant language training of the employee or of an associate of the employee;

the supplementary car rate.

62 Reduction of aggregate taxable value of certain fringe benefits

(1) Where one or more eligible fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee

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of the employer, the taxable value of that fringe benefit, or the sum of the taxable values of those fringe benefits, as the case may be, in relation to that year shall be reduced by:

(a) in the case of the transitional year of tax:

(i) where the taxable value or the sum of the taxable values does not exceed $375—an amount equal to the taxable value or the sum of the taxable values, as the case may be; or

(ii) in any other case—$375; and

(b) in relation to a standard year of tax:

(i) where the taxable value or the sum of the taxable values does not exceed $500—an amount equal to the taxable value or the sum of the taxable values, as the case may be; or

(ii) in any other case—$500.

(2) In this section, ***eligible fringe benefit*** means:

(a) an in-house fringe benefit; or

(b) an airline transport fringe benefit.

63 Reduction of taxable value of living-away-from-home food fringe benefits

(1) Where:

(a) a living-away-from-home food fringe benefit, or 2 or more living-away-from-home food fringe benefits, in relation to an employer in relation to a year of tax relates or relate to a particular employee;

(b) the fringe benefit or fringe benefits are equivalent to the food component of a living-away-from-home allowance fringe benefit in respect of a particular period in the year of tax;

(c) that food component exceeds the sum of the statutory food amounts in respect of eligible family members in respect of that period; and

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(d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of:

(i) the employee's usual place of residence during that period; and

(ii) the place at which the employee actually resided during that period,

the following provisions apply:

(e) if there is only one living-away-from-home food fringe benefit—the amount that, but for this section and sections 62 and 65CAA and the recipients contribution, would be the taxable value of that fringe benefit, shall be reduced by the amount of the excess referred to in paragraph (c);

(f) if there are 2 or more living-away-from-home food fringe benefits—the amounts that, but for this section and sections 62 and 65CAA and the recipients contribution, would be the taxable values of those fringe benefits shall be reduced by amounts proportionate to those taxable values and equal in total to the amount of the excess referred to in paragraph (c).

(2) For the purposes of the application of this section to an in-house property expense payment fringe benefit, a reference in this section to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under paragraph 22A(1)(b).

64 Reduction of taxable value in respect of entertainment component of certain fringe benefits

(1) Where a percentage of the expenditure incurred by the provider of an expense payment fringe benefit in respect of the provision of the benefit is eligible entertainment expenditure, the amount that, but for this subsection, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage of the expenditure.

(2) For the purposes of subsection (1), where:

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(a) the expenditure incurred by the provider of an expense payment fringe benefit in respect of the provision of the benefit (in this subsection referred to as the ***providers expenditure***) is not incurred in producing assessable income; and

(b) the whole or a part (which whole or part is in this subsection referred to as the ***entertainment amount***) of the providers expenditure:

(i) would, but for this subsection, be eligible entertainment expenditure; and

(ii) is not expenditure to which section 38 applies,

so much of the providers expenditure as is equal to the entertainment amount shall be taken not to be eligible entertainment expenditure.

(3) Where a percentage of the expenditure (if any) incurred by the provider in respect of the provision of a property fringe benefit or airline transport fringe benefit in relation to a year of tax is eligible entertainment expenditure, the amount that, but for this subsection and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage of the expenditure.

(4) Where:

(a) a residual fringe benefit in relation to a year of tax is constituted by the use of depreciable property; and

(b) a percentage of that use is for the purposes of, or in connection with, the provision of entertainment,

the amount that, but for this subsection and section 62 and the recipients contribution, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage.

(5) For the purposes of subsection (4), a use of property shall not be taken to be for the purposes of, or in connection with, the provision of entertainment to the extent to which, if the provider of the fringe benefit referred to in that subsection had incurred expenditure in

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respect of leasing the property referred to in that subsection, subsection 65(1) would apply in relation to that expenditure.

(6) Where:

(a) a residual fringe benefit in relation to a year of tax is constituted by the use, during a period during the year of tax, of property (other than depreciable property) leased to the provider;

(b) the provider incurs expenditure in respect of leasing the property during that period; and

(c) a percentage of that expenditure is eligible entertainment expenditure,

the amount that, but for this subsection and section 62 and the recipients contribution, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by that percentage.

(7) Where a percentage of the total expenditure (if any) incurred by the provider in respect of the provision of a residual fringe benefit in relation to a year of tax that is not constituted by the use of property is eligible entertainment expenditure, the amount that, but for this subsection and section 62, would be the taxable value of that fringe benefit shall be reduced by that percentage of the expenditure.

(8) Where the Commissioner is satisfied that the taxable value of a fringe benefit has been reduced under Division 5, 8, 11 or 12 by reason of a particular matter or thing, the Commissioner may determine that the taxable value of the fringe benefit shall not be reduced under this section in respect of the same matter or thing.

64A Reduction of taxable value in relation to expenditure in respect of higher education contribution

Where:

(a) the provider of a fringe benefit in relation to a year of tax incurs expenditure in respect of the provision of the fringe benefit;

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(b) but for subsection 51(6) of the *Income Tax Assessment Act 1936*, a deduction would be allowable to the provider under that Act in respect of the whole or a part of that expenditure; and

(c) a deduction is not so allowable to the provider;

the amount that, but for this section and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by that expenditure or that part of that expenditure, as the case may be.

65 Reduction of taxable value in relation to expenditure on leisure facilities and travel with accompanying relatives

(1) Where:

(a) the provider of an expense payment fringe benefit, an airline transport fringe benefit, a property fringe benefit or a residual fringe benefit (other than a residual fringe benefit constituted by the use of depreciable property) in relation to a year of tax incurs expenditure in respect of the provision of the fringe benefit;

(b) but for sections 51AB and 51AG of the *Income Tax Assessment Act 1936*, a deduction would be allowable to the provider under that Act in respect of a percentage of that expenditure; and

(c) a deduction is not so allowable to the provider,

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit referred to in paragraph (a) in relation to the year of tax shall be reduced by that percentage of the expenditure.

(2) Where:

(a) a residual fringe benefit in relation to a year of tax is constituted by the use of depreciable property that is a leisure facility for the purposes of section 51AB of the *Income Tax Assessment Act 1936*;

(b) but for subsection 54(3) of that Act, a deduction would be allowable to the provider under that Act in respect of a

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percentage of the depreciation of the property during the year of tax; and

(c) a deduction is not so allowable to the provider,

the amount that, but for this subsection and section 62 and the recipients contribution, would be the taxable value of the fringe benefit in relation to the year of tax, shall be reduced by that percentage.

65A Reduction of taxable value—education of children of overseas employees

Where:

(a) any of the following fringe benefits in relation to a year of tax is provided in respect of the employment of an employee:

(i) a car fringe benefit where the application or availability of the car is in respect of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the day on which the benefit was provided;

(ii) an expense payment fringe benefit where the recipients expenditure is in respect of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the day on which the benefit was provided;

(iii) a property fringe benefit where the recipients property is required solely for the purposes of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the provision time;

(iv) a residual fringe benefit where the recipients benefit consists of, or is required solely for the purposes of, the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the comparison time;

(b) the full-time education is:

(i) at an educational institution; or

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(ii) by a tutor;

(c) the whole or any part of the full-time education is undertaken by the child when the employee is an overseas employee;

(d) either of the following conditions is satisfied:

(i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;

(ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;

(e) in the case of an expense payment fringe benefit—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer of the employee before the declaration date; and

(f) a percentage (in this section called the ***attributable percentage***) of the taxable value, in relation to the year of tax, of the fringe benefit is attributable to the full-time education of the child in the period commencing on whichever of the following days is applicable:

(i) if:

(A) the full-time education is at an educational institution;

(B) the overseas posting period is a period of not less than 28 days; and

(C) the overseas posting period commenced during an academic period of the educational institution;

the day on which that academic period commenced; or

(ii) in any other case—the day on which the overseas posting period commenced;

and ending on whichever of the following days is applicable:

(iii) if:

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(A) the full-time education is at an educational institution;

(B) the overseas posting period is a period of not less than 28 days; and

(C) the overseas posting period ended during an academic period of the educational institution;

the day on which that academic period ended;

(iv) in any other case—the day on which the overseas posting period ended;

the amount that, but for this section and sections 62 and 65CAA, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

65CAA Reduction of taxable value of fringe benefits in relation to 1991-92 year of tax—Cocos (Keeling) Islands

(1) Where:

(a) a fringe benefit (not being a car fringe benefit) in relation to an employer in relation to the year of tax commencing on 1 April 1991 relates to a particular employee; and

(b) on or after 1 July 1991, the employee derived salary or wages from Cocos (Keeling) Islands service, being salary or wages paid by the employer; and

(c) the fringe benefit was provided in respect of that Cocos (Keeling) Islands service; and

(d) except in the case of a loan fringe benefit, a housing fringe benefit or a period residual fringe benefit—the benefit was provided on or after 1 July 1991; and

(e) in the case of a loan fringe benefit, a housing fringe benefit or a period residual fringe benefit—the whole or a part (which whole or part is in this subsection called the 'reducible portion') of the taxable value of the fringe benefit is attributable to the obligation to repay the whole or any part of the loan, the subsistence of the housing right or the provision of the residual benefit, as the case may be, on or after 1 July 1991;

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the amount that, but for this subsection and sections 62, 64 and 65, would be the taxable value or, if paragraph (e) applies, the reducible portion of taxable value, of that fringe benefit in relation to the year of tax is to be reduced by 50%.

(2) Where:

(a) one or more car fringe benefits (in this subsection called the ***eligible car fringe benefits***) in relation to an employee, in relation to an employer, in relation to the year of tax commencing on 1 April 1991 relate to a particular car; and

(b) on or after 1 July 1991, the employee derived salary or wages from Cocos (Keeling) Islands service, being salary or wages paid by the employer; and

(c) the eligible car fringe benefits were provided on or after 1 July 1991 in respect of that Cocos (Keeling) Islands service;

the amount that, but for this subsection and sections 62, 64 and 65, would be the taxable value, or the sum of the taxable values, as the case requires, of the car fringe benefits in relation to the employer in relation to the year of tax that relate to the car is to be reduced by the amount calculated using the formula:

$$\textbf{Taxable value} \times \textbf{0.5}$$

where:

Taxable value means so much of the taxable value or the sum of the taxable values as is attributable to the eligible car fringe benefits.

(3) A reference in this section to Cocos (Keeling) Islands service is a reference to service as an employee where:

(a) salary or wages are payable in respect of the service; and

(b) if:

(i) section 24BB of the *Income Tax Assessment Act 1936* had not been enacted; and

(ii) section 24BA of that Act had applied in relation to the year of income in which the salary or wages were derived;

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the salary or wages would have been exempt income under section 24G of that Act.

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Division 14A—Amortisation of Taxable Value of Fringe Benefits relating to Remote Area Home Ownership Schemes

65CA Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes

(1) Where:

(a) the recipient of any of the following fringe benefits in relation to an employer in relation to a year of tax (in this section called the ***benefit year of tax***) is an employee of the employer:

(i) a property fringe benefit where the recipients property is remote area residential property;

(ii) a property fringe benefit where the recipients property is a remote area residential property option fee;

(iii) an expense payment fringe benefit where the recipients expenditure is in respect of remote area residential property;

(b) in the case of a property fringe benefit where the recipients property is remote area residential property—at or before the provision time, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;

(c) in the case of an expense payment fringe benefit—at or before the time when the employee acquired the estate or interest concerned, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned; and

(d) in all cases—the period (in this section called the ***overall amortisation period***) commencing at whichever of the following times is applicable:

(i) if subparagraph (a)(i) or (ii) applies—the provision time;

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(ii) if subparagraph (a)(iii) applies—the time when the recipients expenditure was incurred;

(which time is in this section called the ***benefit time***) and ending at the earliest of the following later times:

(iii) the time when the employee ceases or first ceases to be subject to the recognised remote area housing obligation referred to in paragraph (b) or (c) of this subsection or in paragraph 142(2A)(e), as the case requires;

(iv) the time when the employee ceases or first ceases to be employed by the employer;

(v) the time when the employee ceases or first ceases to occupy or use the dwelling concerned as his or her usual place of residence;

(vi) the time of the death of the employee;

(vii) the end of the period of 7 years after the benefit time;

commences and ends in different years of tax;

the fringe benefit is an amortised fringe benefit.

(2) The notional amortisation period in relation to the amortised fringe benefit is the period commencing at the benefit time and ending at the earlier of the following times:

(a) the end of the period specified in the contract to which the recognised remote area housing obligation concerned relates, being the period during which the employee is to be subject to that obligation;

(b) the end of the period of 7 years after the benefit time.

(3) If the overall amortisation period has not come to an end before the end of a particular year of tax (in this subsection called the ***current year of tax***), the amortised amount, in relation to the current year of tax, of the amortised fringe benefit is the amount calculated in accordance with the formula:

$$\textbf{Taxable value} \times \frac{\textbf{Current amortisation period}}{\textbf{Notional amortisation period}}$$

where:

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Taxable value is the taxable value, in relation to the benefit year of tax, of the fringe benefit.

Current amortisation period is the whole number of months (or part months) in the current year of tax that are included in the notional amortisation period.

Notional amortisation period is the whole number of months (or part months) that are included in the notional amortisation period.

(4) If the overall amortisation period comes to an end during a particular year of tax (in this subsection called the ***current year of tax***), the amortised amount, in relation to the current year of tax, of the amortised fringe benefit is the amount calculated in accordance with the formula:

Taxable value − Previously amortised amounts

where:

Taxable value is the taxable value, in relation to the benefit year of tax, of the fringe benefit.

Previously amortised amounts is the sum of the amortised amounts, in relation to each year of tax preceding the current year of tax, of the fringe benefit.

(5) Where the recipients expenditure in relation to an expense payment fringe benefit was incurred before 1 July 1986, paragraph (1)(d) applies in relation to the fringe benefit as if the recipients expenditure had been incurred on 1 July 1986.

(6) Where the following paragraphs apply in relation to a fringe benefit in relation to an employer in relation to a year of tax:

(a) the fringe benefit would have been an amortised fringe benefit if the reference in subsection 142(2D) to 5 years were a reference to 7 years;

(b) the benefit time occurred before 31 August 1988;

the employer is eligible for extended amortisation treatment.

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(7) Where:

(a) an employer is eligible for extended amortisation treatment; and

(b) a fringe benefit in relation to the employer in relation to a year of tax would have been an amortised fringe benefit if the reference in subsection 142(2D) to a contractual obligation were a reference to a contractual obligation entered into before the end of the period of 6 months after the commencement of this subsection;

the following provisions have effect:

(c) a reference in subsection (3) or (4) of this section to the overall amortisation period in relation to the fringe benefit is to be read as a reference to the period that would have been the overall amortisation period in relation to the fringe benefit if the reference in subparagraph (1)(d)(vii) of this section to 7 years were a reference to 15 years;

(d) for the purpose of determining the notional amortisation period in relation to the fringe benefit, the reference in paragraph (2)(b) of this section to 7 years is to be read as a reference to 15 years.

65CB Amendment of assessments

Nothing in section 74 prevents the amendment at any time of an assessment for the purposes of giving effect to this Division.

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Division 14B—Reducible Fringe Benefits relating to Remote Area Home Repurchase Schemes

65CC Reducible fringe benefits relating to remote area home repurchase schemes

(1) Where:

(a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;

(b) the recipients property is remote area residential property repurchase consideration;

(c) the taxable value of the fringe benefit in relation to the year of tax is nil; and

(d) the market value of the estate or interest purchased by the provider of the fringe benefit exceeds the amount paid by the provider by way of consideration for the purchase of the estate or interest;

the fringe benefit is a reducible fringe benefit.

(2) The reduction amount, in relation to the year of tax, of the reducible fringe benefit is 50% of the amount of the excess referred to in paragraph (1)(d).

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Division 15—Car Substantiation Rules for Otherwise Deductible Provisions

65D Car substantiation rules

The object of this Division is to set out the substantiation rules that apply for the purposes of sections 19, 24, 44 and 52 in relation to cars held by recipients of fringe benefits.

65E No compliance with substantiation rules in log book year of tax unless log book records and odometer records are maintained

Where a car is held by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to an employer during a period (in this section called the ***holding period***) in a year of tax that is a log book year of tax of the recipient in relation to the car, the substantiation rules shall be taken to have been complied with in relation to the car in relation to the holding period if, and only if:

(a) if either of the following subparagraphs applies:

(i) the recipient commenced to hold the car during the last 12 weeks of the year of tax;

(ii) the Commissioner is satisfied, having regard to the recipient's circumstances, that it would be unreasonable to expect log books and odometer records in relation to the car to have been maintained by or on behalf of the recipient for an applicable log book period in relation to the car;

the employer, in the employer's car records for the year of tax, specifies a percentage as the nominated business percentage applicable to the car in relation to the recipient for the year of tax; or

(b) in any other case—both of the following conditions are satisfied:

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(i) log book records and odometer records are maintained by or on behalf of the recipient for the applicable log book period in relation to the car;

(ii) the employer, in the employer's car records for the year of tax, specifies a percentage as the nominated business percentage applicable to the car in relation to the recipient for the holding period, not being a percentage that exceeds the business percentage established during the applicable log book period.

65F No compliance with substantiation rules in non-log book year of tax unless log book records kept in previous log book year of tax

Where a car is held by the recipient of a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit during a period (in this section called the ***holding period***) in a year of tax that is not a log book year of tax of the recipient in relation to the car, the substantiation rules shall be taken to be complied with in relation to the car if, and only if:

(a) odometer records are maintained by or on behalf of the recipient in relation to the car for the holding period; and

(b) the employer, in the employer's car records for the year of tax, specifies whichever of the following percentages is applicable:

(i) the percentage that was:

(A) the nominated business percentage applicable to the car in relation to the recipient for the period that was the holding period in the year of tax that was the last log book year of tax of the recipient in relation to the car; and

(B) specified in the employer's car records for that last log book year of tax;

(ii) if the percentage referred to in subparagraph (i) would otherwise be applicable but the employer is of the opinion that that percentage calculated in accordance with the formula:

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N – U

where:

N is the percentage referred to in subparagraph (i); and

U is the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the recipient for the holding period;

is a percentage that:

(A) if the car is a low business kilometre car of the recipient in relation to the year of tax—exceeds nil; or

(B) in any other case—exceeds 10%;

a percentage as the nominated business percentage applicable to the car in relation to the recipient for the holding period.

65G Car deduction percentage

Where a car is held by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to an employer during a period (in this section called the ***holding period***) in a year of tax, the car deduction percentage in relation to the car in relation to the recipient for the year of tax is:

(a) if the percentage calculated in accordance with the formula:

N – U

where:

N is the percentage applicable to the car specified in the employer's car records for the year of tax as mentioned in section 65E or 65F; and

U is the percentage (in this paragraph called the ***reasonable percentage***) that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the recipient for the holding period;

is a percentage that:

(i) if either of the following sub-subparagraphs applies:

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(A) the year of tax is a log book year of tax of the recipient in relation to the car;

(B) the year of tax is not a log book year of tax of the recipient in relation to the car and the car is a low business kilometre car of the recipient in relation to the year of tax;

exceeds nil; or

(ii) in any other case—exceeds 10%;

the reasonable percentage; or

(b) in any other case—the percentage applicable to the car specified in the employer's car records for the year of tax as mentioned in section 65E or 65F.

65H Nominated business percentage to be reduced if it exceeds business percentage established during applicable log book period or if it is unreasonable

(1) For the purposes of this Act, where:

(a) an employer, in the employer's car records for a year of tax, specifies, or purports to specify, a percentage (in this subsection called the ***excessive percentage***) of the kind mentioned in subparagraph 65E(b)(ii) in respect of a car held by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to the employer during a period (in this subsection called the ***holding period***) in the year of tax; and

(b) the excessive percentage exceeds the percentage (in this subsection called the ***reduced percentage***) that is the lesser of the following percentages:

(i) the business percentage applicable to the car that was established during the applicable log book period referred to in subparagraph 65E(b)(ii);

(ii) the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the recipient for the holding period;

the following provisions have effect:

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(c) the employer shall be treated as if he or she had, in the car records, specified, in respect of the car, the reduced percentage instead of the excessive percentage;

(d) if the employer, in the employer's car records for a subsequent year of tax, specifies, or purports to specify, in respect of the car, the excessive percentage in accordance with the condition set out in subparagraph 65F(b)(i)—the employer shall be treated as if he or she had, in the car records for that subsequent year of tax, specified, in respect of the car, the reduced percentage instead of the excessive percentage.

(2) For the purposes of this Act, where:

(a) subparagraph 65F(b)(ii) applies in relation to a car held by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to an employer during a period (in this subsection called the ***holding period***) in a year of tax; and

(b) the employer fails to specify in the employer's car records for the year of tax a percentage as the nominated business percentage applicable to the car in relation to the recipient for the holding period;

the employer shall be treated as if he or she had, in the car records, specified, in respect of the car, as that nominated business percentage, the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the recipient for the holding period.

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Part IV—Liability to tax

66 Liability to pay tax

(1) Subject to this Act, tax imposed in respect of the fringe benefits taxable amount of an employer of a year of tax is payable by the employer.

(2) A law, or a provision of a law, passed before the commencement of this Act that purports to exempt a person from liability to pay fringe benefits tax or to pay taxes that include that tax does not exempt that person from liability to pay that tax.

(3) A law, or a provision of a law, passed after the commencement of this Act that purports to exempt a person from liability to pay taxes under the laws of the Commonwealth or to pay certain taxes under those laws that include fringe benefits tax, other than a law or a provision that expressly exempts a person from liability to pay that tax, shall not be construed as exempting the person from liability to pay that tax.

67 Arrangements to avoid or reduce fringe benefits tax

(1) Where:

(a) an employer (in this subsection referred to as the ***eligible employer***) has obtained or, but for this section, would obtain, a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is or was provided to a person, being an arrangement that was entered into, or commenced to be carried out, on or after 19 September 1985; and

(b) it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part of the arrangement did so for the sole or dominant purpose of enabling the eligible employer to obtain a tax benefit in connection with the arrangement or of enabling the eligible

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employer and another employer or other employers each to obtain a tax benefit in connection with the arrangement (whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the eligible employer or is the other employer or one of the other employers),

the Commissioner:

(c) may determine that the fringe benefits taxable amount (if any) of the eligible employer of the year of tax be increased by the amount of the tax benefit; and

(d) may determine that appropriate adjustments (if any) be made to the fringe benefits taxable amount of the eligible employer in respect of another year of tax or of another employer in respect of any year of tax,

and any such determination has effect accordingly.

(2) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person is a reference to an amount not being included in the fringe benefits taxable amount of the employer of the year of tax in respect of that benefit where the amount would have been included, or could reasonably be expected to have been included, in that fringe benefits taxable amount if the arrangement had not been entered into or carried out.

(3) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person does not include a reference to an amount not being included in the fringe benefits taxable amount of the employer of the year of tax in respect of that benefit, being an amount that would have been included, or could reasonably be expected to have been included, in that fringe benefits taxable amount if the arrangement had not been entered into or carried out, where the non-inclusion of the amount in that fringe benefits taxable amount is attributable to the payment or provision by a person of consideration in respect of the provision of the benefit.

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(4) Where, at any time, an employer considers that the Commissioner ought to make a determination under paragraph (1)(d) in relation to the employer in relation to a year of tax, the employer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that paragraph.

(5) The Commissioner shall consider the request and serve on the employer a written notice of the Commissioner's decision on the request.

(6) If the employer is dissatisfied with the Commissioner's decision on the request, the employer may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*

(8) Nothing in section 74 prevents the amendment of an assessment at any time before the end of 6 years after the original assessment date if the amendment is for the purposes of giving effect to subsection (1) of this section as it applies by virtue of paragraph (1)(c).

(9) Nothing in section 74 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to subsection (1) of this section as it applies by virtue of paragraph (1)(d).

(10) In this section, a reference to an employer, in relation to an arrangement, includes a reference to a person who would be, or might reasonably be expected to be, an employer but for the arrangement.

(11) A reference in this section to the carrying out of an arrangement by a person shall be read as including a reference to the carrying out of an arrangement by a person together with another person or other persons.

(12) Nothing in the provisions of this Act other than this section or in the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* shall be taken to limit the operation of this section.

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Part V—Returns and assessments

Division 1—Returns

68 Annual returns

Where there is a fringe benefits taxable amount of an employer of a year of tax, the employer shall, unless the employer has furnished a return or returns under section 69 in relation to the fringe benefits taxable amount of the year of tax, furnish to the Commissioner a return not later than 28 days after the end of the year or such later date as the Commissioner allows.

69 Further returns

Where the Commissioner, by notice in writing served on a person, requires the person, whether an employer or not, to furnish to the Commissioner a return in relation to a year of tax, the person shall furnish the return in the manner and within the time specified in the notice, whether or not the person has furnished, or is or was required to furnish, a return under section 68 or this section in respect of that year of tax.

70 Requirements for returns

A return under section 68 or 69 shall:

(a) be in the form provided or authorised by the Commissioner for the purposes of that section;

(b) be furnished in accordance with the regulations;

(c) be signed by or on behalf of the person furnishing the return;

(d) specify:

(i) the fringe benefits taxable amount of the employer of the year of tax concerned; and

(ii) the amount of tax payable on that amount; and

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(e) contain such other information as is required for the due completion of the form of return.

71 Certificate of sources of information

(1) A person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return under this Act shall sign a certificate in the prescribed form to be endorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.

Penalty: $1,000.

(2) The agent's certificate shall, for the purposes of this Act, be deemed to be duly signed, in the case of a partnership, or a company, that is registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*, if, and only if, it is signed in the name of the partnership or company, as the case requires, by a person who is registered as a nominee of that partnership or company for the purposes of that Part, and that person's name is also appended.

(2A) The agent's certificate shall, for the purposes of this Act, be deemed to be duly signed, in the case of a natural person who is registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*, if, and only if:

(a) it is signed by the natural person; or

(b) it is signed in the name of the natural person by another person who is registered as a nominee of the natural person for the purposes of that Part, and that other person's name is also appended.

(3) An employer who does not furnish with his or her return an agent's certificate shall furnish information to the Commissioner in the prescribed form, endorsed on or annexed to the return, setting out such particulars as to the sources available for the compilation of the return as are prescribed.

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Division 2—Assessments

72 First return deemed to be an assessment

Where:

(a) at a particular time, a return under this Act in relation to an employer in relation to a year of tax is furnished; and

(b) before that time, no return has been furnished, and no assessment has been made, in relation to the employer in relation to the year of tax,

the following provisions have effect:

(c) the Commissioner shall be deemed at that time to have made an assessment (in this section referred to as the ***deemed assessment***) of:

(i) the fringe benefits taxable amount (including a nil amount) of the employer of the year of tax; and

(ii) the amount (including a nil amount) of tax payable on that fringe benefits taxable amount,

being those respective amounts as specified in the return referred to in paragraph (a);

(d) the return referred to in paragraph (a) shall be deemed to be a notice of the deemed assessment and to be under the hand of the Commissioner;

(e) the notice referred to in paragraph (d) shall be deemed to have been served at that time on the person liable to pay the tax.

73 Default assessments

Where:

(a) an employer has not furnished a return in respect of a year of tax; and

(b) the Commissioner is of the opinion that the employer is liable to pay tax in respect of that year,

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the Commissioner may, whether during that year or after the end of that year, make an assessment of:

(c) the fringe benefits taxable amount of the employer of the year of tax; and

(d) the amount of tax payable on that fringe benefits taxable amount.

74 Amendment of assessments

(1) The Commissioner may, at any time within a period of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(2) Subject to this section, the Commissioner may, after the end of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(3) Where:

(a) an employer does not make a full and true disclosure of all the material facts necessary for an assessment of the tax payable by the employer;

(b) the Commissioner makes an assessment; and

(c) there is an avoidance of tax,

the Commissioner may:

(d) where the Commissioner is of the opinion that the avoidance of tax is due to fraud or evasion—at any time; and

(e) in any other case—within 6 years after the original assessment date in relation to the assessment,

amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(4) No amendment effecting a reduction in the liability of an employer under an assessment shall be made after the end of 3 years after the original assessment date.

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(5) Where an assessment has been amended under this section in any particular, the Commissioner may, within 3 years after the date on which the amended assessment is made, make, in or in respect of that particular, such further amendment of the assessment as, in the Commissioner's opinion, is necessary to effect such reduction in the liability of the employer liable to pay tax under the assessment as is just.

(6) Where an employer:

(a) applies, within 3 years after the original assessment date in relation to an assessment, for an amendment of an assessment; and

(b) supplies to the Commissioner within that period all information needed by the Commissioner for the purposes of determining the application made by the employer,

the Commissioner may amend the assessment, notwithstanding that that period has expired.

(7) Nothing in this section prevents the amendment of an assessment:

(a) in order to give effect to a decision on a review or appeal; or

(b) by way of reduction in any particular pursuant to an objection made under this Act or pending an appeal or review.

(8) The Commissioner may, at any time, amend an assessment of additional tax under Part VIII.

74A Effect of public ruling

(1) Expressions used in this section have the same meanings as in Part IVAAA of the *Taxation Administration Act 1953*.

(2) Subject to section 74C, if:

(a) there is a public ruling on the way in which a fringe benefits tax law applies to a person in relation to an arrangement (***ruled way***); and

(b) that law applies to that person in relation to that arrangement in a different way; and

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(c) the amount of fringe benefits tax under an assessment in relation to that person would (apart from this section and section 74C) exceed what it would have been if that law applied in the ruled way;

the assessment and amount of fringe benefits tax must be what they would be if that law applied in the ruled way.

74B Effect of private ruling

(1) Expressions used in this section have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*.

(2) Subject to sections 74C, 74D and 74E, if:

(a) there is a private ruling on the way in which a fringe benefits tax law applies to a person in respect of a year of tax in relation to an arrangement (***ruled way***); and

(b) that law applies to that person in respect of that year in relation to that arrangement in a different way; and

(c) the amount of fringe benefits tax under an assessment in relation to that person would (apart from this section and section 74C) exceed what it would have been if that law applied in the ruled way;

the assessment and amount of fringe benefits tax must be what they would be if that law applied in the ruled way.

74C Assessment where conflicting rulings

(1) In this section:

ruling means:

(a) a public ruling; or

(b) a private ruling.

(2) Expressions used in this section have the same meanings as in section 74A or 74B.

(3) If:

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(a) there are rulings of different ways in which the same fringe benefits tax law applies to the same person in relation to the same arrangement; and

(b) apart from this section, because of there being those different ways, there are conflicting requirements under section 74A or 74B, or both, of what the assessment and amount of fringe benefits tax in relation to that person are to be;

the assessment and amount of fringe benefits tax must be what they would be if that law so applied in whichever of those ways would result in the lowest amount of fringe benefits tax.

74D Final Tribunal decision about private ruling conclusive

(1) In this section:

arrangement, ***fringe benefits tax law*** and ***private ruling*** have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*;

objection decision and ***taxation objection*** have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

(2) If:

(a) on the review of an objection decision about a taxation objection against a private ruling, the Tribunal decides that a fringe benefits tax law would apply to a person in a particular way in respect of a year of tax in relation to an arrangement; and

(b) that decision becomes final;

then, for the purposes of this Act, that law applies to that person in that way in respect of that year in relation to that arrangement.

(3) Subsection (2) applies in spite of any order or decision of a court, or any other decision of the Tribunal, about any application of that law.

(4) For the purposes of subsection (2), if there is no appeal against the Tribunal's decision when the period for lodging an appeal ends, the decision becomes final at the end of the period.

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74E Final court order about private ruling conclusive

(1) In this section:

arrangement, ***fringe benefits tax law*** and ***private ruling*** have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*;

objection decision and ***taxation objection*** have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

(2) If:

(a) on an appeal against:

(i) an objection decision about a taxation objection against a private ruling; or

(ii) a decision of the Tribunal on the review of such an objection decision;

a court orders that a fringe benefits tax law would apply to a person in a particular way in respect of a year of tax in relation to an arrangement; and

(b) that order becomes final;

then, for the purposes of this Act, that law applies to that person in that way in respect of that year in relation to that arrangement.

(3) Subsection (2) applies despite any other order or decision of a court about any application of that law.

(4) For the purposes of subsection (2):

(a) if the order is made by the Federal Court constituted by a single judge and there is no appeal against the order when the period for lodging an appeal ends—the order becomes final at the end of the period; and

(b) if the order is made by the Full Court of the Federal Court and there is no application for special leave to appeal to the High Court against the order when the period of 30 days after the order is made ends—the order becomes final at the end of the period.

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74F Final court order about Commissioner discretion

(1) Expressions used in this section have the same meanings as in section 74E.

(2) For the purposes of this section, the Commissioner exercises a discretion if the Commissioner acts as described in section 14ZAD of the *Taxation Administration Act 1953*.

(3) If:

(a) a private ruling rules that a discretion of the Commissioner under the fringe benefits tax law would be exercised in a particular way; and

(b) on an appeal against:

(i) an objection decision about a taxation objection against that ruling; or

(ii) a decision of the Tribunal on the review of such an objection decision;

a court orders that it would be in accordance with law for the Commissioner to exercise that discretion in that way in relation to the law, person, year and arrangement that the ruling is about (***rule matters***); and

(c) that order becomes final;

then, for the purposes of this Act, if the Commissioner exercises that discretion in that way in relation to the rule matters, the discretion is exercised lawfully.

(4) For the purposes of subsection (3), an order becomes final if it would become final for the purposes of section 74E.

(5) Subsection (3) applies despite any other order or decision of a court about the exercise of a discretion.

75 Refund of amounts overpaid

(1) Where, by reason of an amendment of an assessment, a person's liability to tax is reduced:

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(a) the amount by which the tax is so reduced shall be taken, for the purposes of section 93, never to have been payable; and

(b) the Commissioner shall:

(i) refund the amount of any tax overpaid; or

(ii) apply the amount of any tax overpaid against any liability of the person to the Commonwealth and refund any part of the amount that is not so applied.

(2) In subsection (1), unless the contrary intention appears, ***tax*** includes additional tax under section 93 or Part VIII.

76 Amended assessment to be an assessment

Except as otherwise provided, an amended assessment is an assessment for all the purposes of this Act.

77 Notice of assessment

As soon as practicable after an assessment is made, the Commissioner shall serve notice of the assessment in writing on the person liable to pay the tax.

78 Validity of assessment

The validity of any assessment is not affected by reason that any provision of this Act has not been complied with.

78A Objections

An employer who is dissatisfied with an assessment may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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Part VII—Collection and recovery of tax

Division 1—General

90 When tax payable

(1) Subject to this Part, tax assessed in respect of a year of tax becomes due and payable, or shall be deemed to have become due and payable, as the case requires, on the twenty-eighth day after the end of the year of tax.

(2) Subject to this Part, additional tax under Part VIII is due and payable on the date specified in the notice of assessment of the additional tax as the date on which the additional tax is due and payable.

91 Taxpayer leaving Australia

(1) Where the Commissioner has reason to believe that a person liable to pay tax may leave Australia before the date on which the tax would, but for this section, be due and payable, the tax is due and payable on such date as the Commissioner notifies to that person.

(2) In subsection (1), ***tax*** includes additional tax under Part VIII.

92 Extension of time and payment by instalments

(1) The Commissioner may, in such circumstances as the Commissioner thinks fit, extend the time for payment of an amount of tax for such period or periods as the Commissioner determines, and, where the Commissioner does so, the tax shall be due and payable accordingly.

(2) The Commissioner may, in such circumstances as the Commissioner thinks fit, permit the payment of an amount of tax to be made by instalments in such amounts and at such times as the Commissioner determines, and, subject to subsection (3), each

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instalment is due and payable at the time so determined in relation to that instalment.

(3) If the Commissioner permits the payment of an amount of tax to be made by instalments and an instalment of an amount of tax is not paid on or before the time for the due payment of the instalment, the whole of the amount outstanding becomes due and payable at that time.

(4) In this section, ***tax*** includes additional tax under Part VIII.

93 Penalty for unpaid tax

(1) Subject to this section, if any tax remains unpaid after the time when it became due and payable, or would, but for section 92, have become due and payable, additional tax is due and payable by way of penalty by the person liable to pay the tax at the rate of 16% per annum on the amount unpaid, computed from that time or, where, under section 92, the Commissioner has granted an extension of time for payment of the tax or has permitted payment of the tax to be made by instalments, from such date as the Commissioner determines, not being a date before the date on which the tax was originally due and payable.

(2) Where:

(a) the Commissioner amends an assessment (in this subsection referred to as the ***former assessment***) in relation to an employer in relation to a year of tax;

(b) the tax payable under the amended assessment exceeds the tax payable under the former assessment; and

(c) the whole or a part (which whole or part is in this subsection referred to as the ***non-penalised amount***) of the excess referred to in paragraph (b) relates to a matter in respect of which the employer is not liable (otherwise than by reason of the operation of subsection 8ZE(1) of the *Taxation Administration Act 1953* or subsection 117(3) of this Act) to pay additional tax under Part VIII (other than section 114) of this Act,

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the additional tax under subsection (1), insofar as it:

(d) would relate to so much of the unpaid amount referred to in subsection (1) as is attributable to the non-penalised amount; and

(e) would be calculated in respect of the period:

(i) commencing on:

(A) the day on which tax would, but for section 92, have become due and payable by the employer in respect of the year of tax; or

(B) the original assessment date, whichever is the later; and

(ii) ending on the thirtieth day after the day on which the amended assessment was made;

shall be calculated as if the reference in subsection (1) to 16% per annum were a reference to such rate of interest as is, or such rates of interest as are, applicable under regulations made for the purposes of paragraph 10(1)(b) of the *Taxation (Interest on Overpayments) Act 1983*.

(3) Until regulations are made for the purposes of paragraph 10(1)(b) of the *Taxation (Interest on Overpayments) Act 1983*, the rate of interest applicable for the purposes of subsection (2) is 14.026% per annum.

(4) Where additional tax is due and payable by a person under this section in relation to an amount of tax and:

(a) the Commissioner is satisfied that:

(i) the circumstances that contributed to the delay in payment of the tax were not due to, or caused directly or indirectly by, an act or omission of the person; and

(ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances;

(b) the Commissioner is satisfied that:

(i) the circumstances that contributed to the delay in payment of the tax were due to, or caused directly or indirectly by, an act or omission of the person;

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(ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and

(iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or part of the additional tax; or

(c) the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax or part of the additional tax,

the Commissioner may remit the additional tax or part of the additional tax.

(5) Where judgment is given by, or entered in, a court for payment of:

(a) an amount of tax; or

(b) an amount that includes an amount of tax, then:

(c) the tax shall not be taken, for the purposes of subsection (1), to have ceased to be due and payable by reason only of the giving or entering of the judgment; and

(d) if the judgment debt carries interest, the additional tax that would, but for this paragraph, be payable under this section in relation to the tax shall, by force of this paragraph, be reduced by:

(i) in a case to which paragraph (a) applies—the amount of the interest; or

(ii) in a case to which paragraph (b) applies—an amount that bears the same proportion to the amount of the interest as the amount of the tax bears to the amount of the judgment debt.

(6) In this section, unless the contrary intention appears, ***tax*** includes additional tax under Part VIII.

94 Recovery of tax

(1) Tax when it becomes due and payable:

(a) is a debt due to the Commonwealth and payable to the Commissioner in the manner and at the place prescribed; and

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(b) may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.

(2) In subsection (1), ***tax*** includes additional tax under section 93 or Part VIII.

95 Substituted service

(1) Where:

(a) a document is required to be served on a person for the purposes of proceedings against the person for recovery of tax; and

(b) the Commissioner is satisfied, after reasonable enquiry, that the person:

(i) is absent from Australia and has no attorney or agent in Australia on whom service of process can be effected; or

(ii) cannot be found,

service of the document on the person may be effected, without leave of the court, by posting the document or a sealed copy of it in a letter addressed to the person at his or her last known place of business or residence in Australia.

(2) In subsection (1), ***tax*** includes additional tax under section 93 or Part VIII.

96 Liquidators, etc.

(1) Where a person (in this section referred to as the ***asset holder***):

(a) becomes, on a particular date, a liquidator of a company, being a company that is an employer;

(b) is a receiver, or a receiver and manager, for debenture holders of a company, being a company that is an employer, and, on a particular date, takes possession of assets of the company; or

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(c) is agent for a non-resident principal, being a principal who is an employer, and, on a particular date, is instructed by the principal to wind up the whole or part of a business of the principal,

the asset holder shall, within 14 days of that date, give notice in writing of the fact to the Commissioner, and the succeeding provisions of this section apply.

(2) The Commissioner shall, as soon as practicable, notify the asset holder of the amount that, in the opinion of the Commissioner, is sufficient to provide for any amount of tax that is or may become payable by the company or principal, as the case may be.

(3) Subject to subsection (5), if the asset holder is a person of the kind referred to in paragraph(1)(a) or (b), the asset holder:

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company until the asset holder has been notified by the Commissioner under subsection (2);

(b) shall set aside, out of the assets available for payment of ordinary debts of the company, assets to the value of an amount that bears to the value of the assets available for payment of ordinary debts of the company the same proportion as the amount notified by the Commissioner under subsection (2) bears to the sum of:

(i) the amount notified by the Commissioner under subsection (2);

(ii) any amount of prescribed tax that the Commissioner is required to notify to the asset holder under an Act other than this Act and has so notified; and

(iii) the aggregate of the ordinary debts of the company (excluding any debt in respect of tax or prescribed tax); and

(c) is, to the extent of the value of the assets that the asset holder is so required to set aside, liable as trustee to pay the tax.

(4) If the asset holder is a person of the kind referred to in paragraph (1)(c), the asset holder:

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(a) shall not, without the leave of the Commissioner, part with any of the assets of the principal until the asset holder has been notified by the Commissioner under subsection (2);

(b) shall set aside, out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are less than that value; and

(c) is, to the extent of the value of the assets that the asset holder is so required to set aside, liable as trustee to pay the tax.

(5) Nothing in paragraph (3)(a) prevents the asset holder parting with assets of the company for the purpose of paying debts of the company that are not ordinary debts of the company.

(6) For the purposes of subsections (3) and (5), a debt of a company is an ordinary debt if:

(a) the debt is an unsecured debt; and

(b) the debt is not required, under a law of the Commonwealth or of a State or Territory, to be paid in priority to some or all of the other debts of the company.

(7) In subsection (3), ***prescribed tax*** means any amount that the Commissioner is required to notify under a section of another Act that corresponds to this section.

(8) If the asset holder refuses or fails to comply with any provision of this section or refuses or fails as trustee duly to pay the tax for which the asset holder is liable under subsection (3) or (4), the asset holder:

(a) is, to the extent of the value of the assets that the asset holder is required under subsection (3) or (4) to set aside, personally liable to pay the tax; and

(b) is guilty of an offence punishable on conviction by a fine not exceeding $1,000.

(9) Nothing in this section shall be taken to limit an obligation or liability of the asset holder arising otherwise than under this section.

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(10) Where 2 or more persons:

(a) are liquidators of a particular company of a kind referred to in paragraph (1)(a);

(b) are receivers, or receivers and managers, for debenture holders of a particular company of a kind referred to in paragraph (1)(b) and take possession of assets of the company; or

(c) are agents for a particular non-resident principal of a kind referred to in paragraph (1)(c) and are instructed by the principal to wind up the whole or a part of a business of the principal,

then:

(d) a reference in this section to the asset holder is a reference to both or all of those persons; and

(e) the obligations and liabilities attaching to the asset holder under this section attach to both or all of those persons jointly.

(11) In this section, unless the contrary intention appears, ***tax*** includes additional tax under section 93 or Part VIII.

97 Recovery of tax from trustee of deceased employer

(1) The succeeding provisions of this section apply where, at the time of an employer's death:

(a) the employer has not paid the whole of the tax payable in respect of fringe benefits provided to, or to associates of, employees of the employer up to the time of the death of the employer; or

(b) additional tax under Part VIII to which the employer is liable has not been assessed or paid.

(2) The Commissioner has the same powers and remedies for the assessment and recovery of tax from a trustee of the estate of the employer as the Commissioner would have had against the employer if the employer were still living.

(3) The trustee shall:

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(a) furnish such returns and such information as the employer was, or would but for the employer's death have been, liable to furnish; and

(b) furnish such further returns and information as the Commissioner requires.

(4) Where the trustee is unable or refuses or fails to furnish a return in respect of a year of tax, the Commissioner may make an assessment of:

(a) the fringe benefits taxable amount of the employer of that year; and

(b) the amount of tax payable on that fringe benefits taxable amount.

(5) The trustee is subject to additional tax under section 93 or Part VIII to the same extent as the employer would be if the employer were still living.

(6) The amount of any tax payable by the trustee is a charge on all of the employer's estate in the trustee's hands in priority to any other encumbrance other than a charge in respect of a debt payable to the Commissioner.

(7) In this section, unless the contrary intention appears, ***tax*** includes additional tax under section 93 or Part VIII.

98 Where no administration of deceased employer's estate

(1) Where a grant has not been made of probate of the will, or of letters of administration of the estate, of a deceased employer within 6 months after the employer's death, the succeeding provisions of this section apply.

(2) The Commissioner may make an assessment of:

(a) the fringe benefits taxable amount or amounts in respect of which tax was payable by the deceased employer; and

(b) the amount of tax payable on that amount or those amounts,

and, in a case where the deceased employer resided in a State or Territory immediately before the employer's death, shall cause

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notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory in which the deceased employer resided immediately before the employer's death.

(3) A person who claims an interest in the estate of the deceased employer and who is dissatisfied with the assessment may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953.*

(4) Subject to any amendment, the assessment is conclusive evidence of the liability of the deceased employer.

(5) The Commissioner may give an order in writing, in the prescribed form, authorising a member or special member of the Australian Federal Police or a member of the police force of a State or Territory, or any other person specified in the order, to levy the amount of tax assessed, with costs, by distress and sale of any property of the deceased employer.

(6) A person authorised under such an order has power to levy, in the prescribed manner, the amount specified in the order.

(7) In spite of subsections (4), (5) and (6), if probate of the will, or letters of administration of the estate, of the deceased employer is or are granted to a person, and the person is dissatisfied with the assessment, the person may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(8) Part IVC of the *Taxation Administration Act 1953* applies in relation to an objection under subsection (3) or (7) as if the person were the deceased employer.

99 Commissioner may collect tax from person owing money to person liable to tax

(1) The Commissioner may, by notice in writing, require a person (in this section referred to as the ***debtor***):

(a) by whom money is due or accruing, or may become due, to an employer;

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(b) who holds, or may subsequently hold, money for or on account of an employer, or for or on account of another person for payment to an employer; or

(c) who has, or may subsequently have, authority from another person to pay money to an employer,

to pay to the Commissioner, at or before a time (in this section referred to as the ***payment time***) specified in the notice (not being a time before the notice is served on the debtor, or before the money becomes due or is held, or the debtor so has authority, as the case may be) an amount (in this section referred to as the ***garnisheed amount***) equal to:

(d) the whole of the money, or so much of it as is sufficient to pay the amount due by the employer in respect of tax; or

(e) such amount as is specified in the notice out of each payment that the debtor becomes liable to make to the employer, or, not being liable to make, makes to the employer, until the amount of tax is paid.

(2) The Commissioner may, by further notice in writing, revoke or vary a notice under subsection (1).

(3) The Commissioner shall cause a notice under subsection (1) or (2) to be served on the debtor and a copy of the notice to be served on the employer.

(4) A person who refuses or fails to comply with a notice under this section is guilty of an offence.

Penalty: $1,000.

(5) Where a person (in this subsection referred to as the ***convicted person***) is convicted of an offence against subsection (4) in relation to the refusal or failure of the convicted person or another person to comply with a notice under this section, the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding the amount or the aggregate of the amounts, as the case requires, that the convicted person or the other person, as the case may be,

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refused or failed to pay to the Commissioner in accordance with the notice.

(6) A person making a payment pursuant to this section shall be deemed to be acting with the authority of the employer and of all other persons concerned and is, by force of this subsection, indemnified in respect of the payment.

(7) If any payment in respect of the amount due by the employer is made before payment is made by a person under a notice given pursuant to this section, the Commissioner shall forthwith give notice to that person in accordance with subsection (2).

(8) The garnisheed amount is, from the payment time, a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.

(9) Where:

(a) money has been paid by a person to a building society in respect of the issue of withdrawable shares in the capital of the society; and

(b) the money has not been repaid,

the money shall, for the purposes of this section, be taken:

(c) in a case where the money is repayable on demand—to be due by the building society to the person; or

(d) in any other case—to be money that may become due by the building society to the person.

(10) Where, but for this subsection, money is not due, or repayable on demand, to a person unless a condition is fulfilled, the money shall be taken, for the purposes of this section, to be due, or repayable on demand, as the case may be, to the person notwithstanding that the condition has not been fulfilled.

(11) A notice to be served under this section on the Commonwealth or on a State or Territory may be served on a person employed by the Commonwealth or by that State or Territory, as the case may be, being a person who, by or under a law of the Commonwealth or of that State or Territory, is charged with a duty of disbursing public

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money, and a notice so served shall be deemed, for the purposes of this section, to have been served on the Commonwealth or that State or Territory, as the case may be.

(12) In this section:

building society means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory.

tax includes:

(a) additional tax under section 93 or Part VIII;

(b) an amount that a person is liable to pay to the Commissioner under Division 2;

(c) a judgment debt or costs in respect of:

(i) tax;

(ii) additional tax under section 93 or Part VIII; or

(iii) an amount that a person is liable to pay to the Commissioner under Division 2;

(d) any fine or costs imposed by a court in respect of an offence against this Act; and

(e) any amount ordered by a court, upon the conviction of a person for an offence against this Act, to be paid by the person to the Commissioner.

100 Person in receipt or control of money of non-resident

(1) A person who has authority to receive, control or dispose of money belonging to a non-resident who is liable to an amount of tax shall, when required by the Commissioner by notice in writing served on the person, pay the amount of tax and, by force of this section, is, when so required:

(a) authorised and required to retain from time to time any money that comes to the person on behalf of the non-resident or so much of it as is sufficient to pay the amount of tax payable by the non-resident;

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(b) made personally liable for the amount of tax after it becomes payable to the extent of any amount so retained, or which should have been so retained, under paragraph (a); and

(c) indemnified for all payments that the person makes pursuant to this section.

(2) For the purposes of subsection (1), a person who is liable to pay money to a non-resident shall be deemed to be a person who has the control of money belonging to the non-resident, and all money due by the person to the non-resident shall be deemed to be money that comes to the person on behalf of the non-resident.

(3) Where the Commonwealth, a State or Territory, or an authority of the Commonwealth, a State or Territory has the receipt, control or disposal of money belonging to a non-resident, this section (other than paragraph (1)(b)) applies to and in relation to the Commonwealth, the State or the Territory, or the authority of the Commonwealth, of the State or of the Territory, as the case may be, in the same manner as it applies to and in relation to any other person.

(4) In this section, ***tax*** includes additional tax under section 93 or Part VIII.

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Division 2—Collection by Instalments

Subdivision A—General

101 Interpretation

(1) In sections 92, 93, 94, 95, 100, 129, 130 and 131, but not in any other section of this Act, ***tax*** includes an instalment of tax payable under this Division.

(2) In sections 94, 95, 100, 129, 130 and 131, but not in any other section of this Act, ***tax*** includes additional tax payable under subsection 112(4).

(3) The ascertainment of the notional tax amount, or the amount of any instalment of tax, in accordance with this Division shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(4) All amounts of instalments of tax shall be calculated to the nearest dollar.

102 Liability to pay instalments of tax

For the purpose of securing generally the more expeditious collection of tax, an employer is liable to pay in accordance with this Division:

(a) 2 instalments of tax in respect of the transitional year of tax; and

(b) 3 instalments of tax in respect of each standard year of tax.

103 When instalment of tax payable

Subject to this Division:

(a) the 2 instalments of tax payable in respect of the transitional year of tax are due and payable respectively on 28 October 1986 and 28 January 1987; and

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(b) the 3 instalments of tax payable in respect of a standard year of tax are due and payable respectively on 28 July, 28 October and 28 January in the year of tax concerned.

104 Application of payments of instalments of tax

(1) Where:

(a) an employer has paid an amount in respect of an instalment of tax in respect of a year of tax; and

(b) an assessment has been made of the amount of tax payable by the employer in respect of that year of tax,

the Commissioner shall credit the amount so paid in payment successively of:

(c) any tax payable by the employer in respect of that year of tax whether or not that tax is due for payment; and

(d) any other liability of the employer to the Commonwealth,

and shall refund to the employer so much of the amount as is not so credited.

(2) For the purposes of subsection (1), where:

(a) an employer has paid an amount (in this subsection called the ***instalment amount***) in respect of an instalment of tax in respect of the transitional year of tax; and

(b) the whole or a part of the instalment amount is refunded to the employer otherwise than under this Act;

the amount refunded shall be deemed never to have been paid by. the employer.

105 Unpaid instalments

(1) If, on the date on which tax becomes or became due and payable by an employer in respect of a year of tax, the whole or a part of an amount payable as an instalment of tax in respect of that year of tax has not or had not been paid and there is or was no other instalment in respect of that year of tax the whole or a part of which has not or had not been paid:

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(a) where no part of the tax in respect of that year of tax has or had been paid—so much (if any) of the amount unpaid in respect of that instalment as exceeds the amount of that tax ceases or shall be deemed to have ceased, on that date, to be payable;

(b) where part only of the tax in respect of that year of tax has or had been paid—so much (if any) of the amount unpaid in respect of that instalment as exceeds the amount of that tax that has not or had not been paid ceases or shall be deemed to have ceased, on that date, to be payable; or

(c) where the whole of the tax in respect of that year of tax has or had been paid—the amount unpaid in respect of that instalment ceases or shall be deemed to have ceased, on that date, to be payable.

(2) If, on the date on which tax becomes or became due and payable by an employer in respect of a year of tax, there are 2 or more instalments of tax in respect of that year of tax the whole or a part of each of which has not or had not been paid:

(a) where no part of the tax in respect of that year of tax has or had been paid or part only of that tax has or had been paid—the Commissioner may determine that the whole or any part of all or any of the amounts unpaid in respect of those instalments shall cease or shall be deemed to have ceased, on that date, to be payable; or

(b) where the whole of the tax in respect of that year of tax has or had been paid—each of the amounts unpaid in respect of those instalments ceases or shall be deemed to have ceased, on that date, to be payable.

(3) In making a determination for the purposes of subsection (2), the Commissioner shall have regard to:

(a) the extent (if any) to which the sum of the amounts unpaid in respect of the instalments of tax referred to in that subsection exceeds or exceeded the amount of the tax referred to in that subsection that has not or had not been paid; and

(b) any other relevant matters.

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(4) Where, by reason of the making of a determination by the Commissioner under subsection (2), the amount payable by an employer as an instalment has been reduced or an instalment is not payable, the Commissioner shall cause to be served on the employer a notice in writing specifying the reduced amount as the amount that is or was payable as the instalment or stating that the instalment is or was not payable, as the case may be.

Subdivision B—Transitional Year of Tax

106 Notional tax amount

(1) Subject to this section, the notional tax amount of an employer in respect of a quarter in the transitional year of tax is an amount equal to the tax that would be assessed in respect of the transitional year of tax if:

(a) except for the purpose of calculating, for the purposes of Division 2 of Part III, the amount of depreciation or interest that is deemed to have been incurred in respect of a car or for the purposes of the application of the car substantiation rules, the quarter (in this subsection referred to as the ***notional year of tax***) were the transitional year of tax;

(aa) for the purposes of the application of the car substantiation rules:

(i) the first quarter (in this subsection also called the ***notional year of tax***) were the transitional year of tax;

(ii) the second quarter (in this subsection also called the ***notional year of tax***) were the first standard year of tax and the rate of tax were the same as the rate for the transitional year of tax;

(iii) low business kilometre cars were treated as cars other than low business kilometre cars;

(v) section 162H applied in relation to the second notional year of tax as if the second notional year of tax had commenced at the commencement of the first notional year of tax;

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(vi) sections 10B and 65F applied in relation to the second notional year of tax as if paragraph 10B(a) or 65F(a), as the case requires, were omitted;

(vii) a reference to the declaration date, in relation to the employer, were a reference to the twenty-eighth day after the date of commencement of this paragraph, or such later date as the Commissioner allows;

(b) the amount of the depreciation or interest that is deemed, for the purposes of Division 2 of Part III, to have been incurred by the provider of a car fringe benefit in respect of a car in respect of the notional year of tax were calculated in accordance with the formula $\mathbf{A - B}$, where:

A is the amount of the depreciation or interest that would be deemed to have been incurred by the provider in respect of the car in respect of the transitional year of tax if the person who owned the car at the end of the notional year of tax were to continue to own the car during the period (if any) after the end of the notional year of tax and before the end of the transitional year of tax; and

B is so much of the amount represented by component A as is not attributable to the notional year of tax;

(c) except for the purposes of the car substantiation rules, a reference in the definition of ***declaration date*** in subsection 136(1) to the date of lodgment of the return of the fringe benefits taxable amount of the employer of a year of tax were a reference to the date of lodgment of the information furnished by the employer under section 108 relating to the basis of the calculation of the instalment of tax relating to the notional year of tax;

(d) sub-subparagraphs 9(2)(a)(i)(A) and (ii)(A) applied as if "the commencement of the year of tax" were omitted and "1 July 1986" were substituted;

(e) a number referred to in subparagraph 9(2)(c)(i) were divided by 3;

(ea) if a benefit (in this paragraph called the ***second notional year benefit***) was provided in, or in respect of, the second notional

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year of tax and a declaration relating to the second notional year benefit was not given under whichever of the following provision or provisions is applicable:

(i) paragraph 19(1)(c);
(ii) paragraph 19(1)(ca);
(iii) paragraph 19(1)(d);
(iv) paragraph 21(1)(d);
(v) paragraph 24(1)(e);
(vi) paragraph 24(1)(ea);
(vii) paragraph 24(1)(f);
(viii) paragraph 34(1)(c);
(ix) paragraph 44(1)(c);
(x) paragraph 44(1)(da);
(xi) paragraph 44(1)(e);
(xii) paragraph 47(5)(d);
(xiii) paragraph 52(1)(c);
(xiv) paragraph 52(1)(da);
(xv) paragraph 52(1)(e);
(xvi) paragraph 63(1)(d);
(xvii) the definition of ***exempt accommodation component*** in subsection 136(1);
(xviii) the definition of ***exempt food component*** in subsection 136(1);

before the declaration date for the second notional year of tax, the provision concerned applies in relation to the second notional year benefit as if a declaration:

(xix) given under the provision concerned before the declaration date for the first notional year of tax; and
(xx) that related to a benefit that was:
(A) provided in, or in respect of, the first notional year of tax; and
(B) the same, or substantially the same, as the second notional year benefit;

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had also been given in accordance with the provision concerned in relation to the second notional year benefit;

(f) a reference to 365 in section 26 or 29 were a reference to the number of days in the notional year of tax;

(g) component ***SA*** in the formula in paragraph 29(1)(a) were divided by 4;

(ga) section 58R applied in relation to the second notional year of tax as if:

(i) paragraph 58R(b) were omitted and the following paragraph were substituted:

‘(b) the sum of:

(i) the notional taxable value of that safety award benefit, or the sum of the notional taxable values of those safety award benefits, as the case may be, in relation to the year of tax; and

(ii) if one or more safety award benefits in relation to the employer in relation to the immediately preceding year of tax relate to the employee—the notional taxable value of that safety award benefit, or the sum of the notional taxable values of those safety award benefits, as the case may be, in relation to the preceding year of tax;

does not exceed $200;’; and

(ii) ***first-mentioned*** were inserted before ***safety award benefit*** (last occurring) and before ***safety award benefits*** (last occurring); and

(h) an amount referred to in paragraph 62(1)(a) were divided by 3.

(3) Where:

(a) an employer has not furnished information under section 108 in relation to an instalment of tax in respect of the transitional year of tax; or

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(b) the Commissioner is not satisfied with information furnished by an employer under section 108 in relation to an instalment of tax,

the Commissioner may determine that the notional tax amount of the employer in respect of the quarter to which that instalment of tax relates is such amount that, in the opinion of the Commissioner, might reasonably be expected to be the notional tax amount, ascertained in accordance with subsection (1), of the employer in respect of the quarter.

(4) As soon as practicable after a determination is made under subsection (3) in relation to an employer, the Commissioner shall cause notice of the determination to be served on the employer.

(5) In this section:

car substantiation rules means the following provisions:

(a) sections 10, 10A, 10B and 10C;
(b) paragraphs 19(1)(ca) and (f);
(c) paragraphs 24(1)(ea) and (h);
(d) paragraphs 44(1)(da) and (g);
(e) paragraphs 52(1)(da) and (g);
(f) Division 15 of Part III;
(g) any of the following provisions, to the extent to which the provision is relevant for the purposes of a provision referred to in paragraph (a) to (f) (inclusive) of this definition:
  (i) subsection 136(1);
  (ii) sections 162C to 162M (inclusive).

107 Amount of instalment of tax

The amount payable by an employer as an instalment of tax in respect of the transitional year of tax is:

(a) in the case of the first instalment—the notional tax amount of the employer in respect of the quarter commencing on 1 July 1986; and

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(b) in the case of the second instalment—the notional tax amount of the employer in respect of the quarter commencing on 1 October 1986.

108 Instalment statement

Where an employer is liable to pay an instalment of tax in respect of the transitional year of tax, the employer shall, not later than the date on which the instalment is due and payable or such later date as the Commissioner allows, furnish to the Commissioner, in accordance with a form approved by the Commissioner, such information relating to the basis of calculation of that instalment as is required by the form.

Subdivision C—Standard Years of Tax

109 Interpretation

In this Subdivision:

employer's estimate, in relation to an employer, in relation to an instalment of tax in relation to a standard year of tax, means the amount shown in a statement by the employer under subsection 112(1) in relation to the instalment as the employer's estimate of the tax that will be payable by the employer in respect of the year of tax.

estimated tax, in relation to an employer in relation to a standard year of tax, means the amount determined, or last determined, as the case requires, under subsection 112(2) or (3) as the estimated tax of the employer in respect of the year of tax.

penalty period, in relation to an instalment in relation to a standard year of tax, means:

(a) in the case of a first instalment—the period commencing on 29 July in the year of tax and ending on 28 October in the year of tax;

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(b) in the case of a second instalment—the period commencing on 29 October in the year of tax and ending on 28 January in the year of tax; or

(c) in the case of a third instalment—the period commencing on 29 January in the year of tax and ending on 28 April in the next succeeding year of tax.

relevant fraction, in relation to an instalment, means:

(a) in the case of a first instalment—0.25;

(b) in the case of a second instalment—0.50; or

(c) in the case of a third instalment—0.75;

110 Notional tax amount

(1) Subject to this section, the notional tax amount of an employer in respect of a standard year of tax is:

(a) in the case of the year of tax commencing on 1 April 1987—the amount ascertained by multiplying by 1.42 the tax that was assessed in respect of the employer in respect of the immediately preceding year of tax; and

(b) in the case of a subsequent year of tax—the amount of the tax that was assessed in respect of the employer in respect of the immediately preceding year of tax.

(2) Subject to the following provisions of this section, where:

(a) the rate of tax declared by the Parliament for a standard year of tax is different from the rate declared for the immediately preceding year of tax; and

(b) provision is made by the regulations for varying the notional tax amount of employers in respect of the year of tax,

then, on and after such date as is prescribed, the notional tax amount of the employer in respect of that year of tax is the amount ascertained in accordance with subsection (1) as varied in accordance with the provision so made by the regulations.

(3) Where the Commissioner has reason to believe that the tax assessed in respect of an employer in respect of the year of tax will be greater than the tax (if any) that was assessed in respect of the

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immediately preceding year of tax, the Commissioner may determine that the notional tax amount of the employer in respect of the year of tax is such amount as the Commissioner estimates will be the tax payable by the employer in respect of the year of tax.

(4) Where the Commissioner makes a determination under subsection (3):

(a) the Commissioner shall cause a notice in writing to be served on the employer specifying:

(i) the notional tax amount determined by the Commissioner; and

(ii) the date on which the determination takes effect, being a date not less than 30 days after the date of service of the notice; and

(b) subject to subsection (5), the notional tax amount of the employer in respect of the year of tax is, on and after the date specified in the notice, the amount determined by the Commissioner.

(5) Where, in relation to an instalment of tax in respect of a standard year of tax, being an instalment that becomes due and payable on the twenty-eighth day after the end of a quarter, an employer has estimated pursuant to subsection 112(1) the amount of tax that will be payable in respect of that year of tax and has furnished to the Commissioner a statement in accordance with that subsection, then, on and after the last day of the quarter and until such time as there is a further application of this subsection in relation to a subsequent instalment of tax payable by the employer, the notional tax amount of the employer in respect of the year of tax is, or shall be deemed to have been, as the case requires, an amount equal to the estimated tax.

111 Amount of instalment of tax

(1) Subject to subsection (2), the amount payable by an employer as an instalment of tax (in this subsection referred to as the ***current instalment***) in respect of a standard year of tax, being an instalment

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that becomes due and payable on the twenty-eighth day after the end of a quarter, is the amount ascertained in accordance with the formula $\frac{AB - C}{}$, where:

A is the amount that, on the last day of the quarter, is the notional tax amount of the employer in respect of the year of tax;

B is the relevant fraction; and

C is the amount, or the sum of the amounts, of any instalments of tax in respect of that year of tax that have become due and payable before the date on which the current instalment is due and payable.

(2) An instalment of tax in respect of a standard year of tax is not payable if:

(a) the instalment is calculated by reference to a notional tax amount ascertained under subsection 110(1) or (2); and

(b) the notional tax amount by reference to which the instalment was calculated is less than:

(i) if a determination of an amount is in force under subsection (3) in respect of the year of tax—that amount; or

(ii) in any other case—$1,000.

(3) The Commissioner may, by notice in writing in the *Gazette*, determine an amount other than $1,000 as the amount applicable for the purposes of subsection (2) in respect of a year or years of tax specified in the determination.

112 Estimated tax

(1) An employer may, not later than the date on which an instalment of tax in respect of a standard year of tax is due and payable or within such further period as the Commissioner allows:

(a) make an estimate of the amount of the tax (if any) that will be payable by the employer in respect of that year of tax; and

(b) furnish to the Commissioner a statement in writing showing:

(i) the amount so estimated; and

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(ii) the basis on which the estimate has been made,

unless the employer has previously furnished a statement under this subsection in relation to the instalment of tax.

(2) Where an employer furnishes to the Commissioner, in relation to an instalment of tax, a statement under subsection (1), the estimated tax is, subject to subsection (3), an amount equal to the employer's estimate.

(3) Where, having regard to information in returns furnished by the employer and any other information in the Commissioner's possession, the Commissioner has reason to believe that the amount of tax that will be payable by the employer in respect of the year of tax is greater than the employer's estimate:

(a) the Commissioner may estimate the amount that, in the Commissioner's opinion, should have been the amount estimated by the employer pursuant to subsection (1) in respect of that year of tax; and

(b) the estimated tax is:

(i) an amount equal to the amount of tax so estimated by the Commissioner; or

(ii) the amount that would be the notional tax amount of the employer in respect of the year of tax if the employer had not furnished a statement under subsection (1),

whichever is the less.

(4) Where:

(a) an amount payable by an employer as an instalment of tax (in this subsection referred to as the ***insufficient instalment***) in respect of a year of tax was calculated by reference to the employer's estimate;

(b) the notional tax amount is less than 90% of the amount of tax assessed to the employer in respect of the year of tax; and

(c) the tax referred to in paragraph (b) has become due and payable,

additional tax, by way of penalty, in respect of the penalty period, is due and payable by the employer to the Commissioner at the rate

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of 16% per annum on the amount by which the insufficient instalment is less than the amount ascertained in accordance with the formula $\mathbf{AB - C}$, where:

A is:

(d) the amount that, but for subsection 110(5), would have been the notional tax amount; or

(e) the amount of tax referred to in paragraph (b), whichever is the less;

B is the relevant fraction; and

C is the amount, or the sum of the amounts, of any instalments of tax in respect of that year of tax that became due and payable before the date on which the insufficient instalment became due and payable.

(5) Where:

(a) but for the operation of subsection 110(5), an employer would have been liable to pay an instalment of tax in respect of a year of tax; and

(b) the employer's estimate in relation to the year of tax is nil,

subsection (4) applies in relation to the instalment as if a nil amount were payable as that instalment of tax.

(6) Where the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to do so, the Commissioner may remit the whole or any part of the additional tax payable by the employer under subsection (4).

(7) In determining for the purposes of this section whether an amount of tax has become due and payable by an employer and, if an amount of tax has become due and payable by an employer, the day on which that amount became due and payable, the operation of section 92 shall be disregarded.

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113 Notice of alteration of amount of instalment

Where, by reason of the operation of subsection 112(3), the amount payable by an employer as an instalment of tax is greater than the instalment that would have been payable if it had been ascertained by reference to the employer's estimate, the Commissioner shall cause to be served on the employer a notice in writing specifying:

(a) the amount of the increase in the instalment of tax, became payable by reason of subsection 112(3); and

(b) a date as the due date for payment of that amount, being a date not less than 14 days after the date of service of the notice,

and the amount of the increase in the instalment of tax so specified is, notwithstanding section 103, due and payable on the date so specified.

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Part VIII—Penalty tax

114 Penalty for failure to furnish return

(1) Where an employer other than a government body refuses or fails to furnish, when and as required under or pursuant to this Act to do so, a return, or any information, relating to a year of tax, being a return relevant to or information relevant to ascertaining the employer's liability under this Act, the employer is liable to pay, by way of penalty, additional tax equal to double the amount of tax payable by the employer in respect of the year of tax.

(2) Where, but for this subsection, an amount of additional tax, being an amount less than $20, is payable by an employer under this section in respect of an act or omission, then, by force of this subsection, the amount of additional tax shall be taken to be $20.

115 Penalty for false or misleading statements

(1) Where:

(a) an employer other than a government body:

(i) makes a statement to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, that is false or misleading in a material particular; or

(ii) omits from a statement made to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, any matter or thing without which the statement is misleading in a material particular; and

(b) the tax properly payable by the employer exceeds the tax that would have been payable by the employer if it were assessed on the basis that the statement were not false or misleading, as the case may be,

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the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the excess.

(2) Where, but for this subsection, an amount of additional tax, being an amount less than $20, is payable by an employer under this section in respect of an act or omission, then, by force of this subsection, the amount of the additional tax shall be taken to be $20.

(3) A reference in subsection (1) to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes a statement:

(a) made in an application, certificate, notification, declaration, objection, return or other document made, given or furnished, under or pursuant to this Act;

(b) made in answer to a question asked of a person under or pursuant to this Act;

(c) made in any information furnished, or purporting to be furnished, under or pursuant to this Act; or

(d) made in a document furnished to a taxation officer otherwise than under or pursuant to this Act,

but does not include a statement made in a document produced pursuant to paragraph 128(1)(c).

(4) A reference in subsection (1) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of this Act is a reference to such a statement made orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes such a statement:

(a) made in an application, certificate, declaration, notification or other document made, given or furnished to the person;

(b) made in answer to a question asked by the person; or

(c) made in any information furnished to the person.

(5) In this section:

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data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

taxation officer means a person exercising powers, or performing functions under, pursuant to or in relation to this Act.

115A Penalty tax for over-estimating business percentage applicable to car

(1) Where:

(a) an employer, in the employer's car records for a year of tax, specifies, or purports to specify, (otherwise than by virtue of section 10C) a percentage (in this subsection called the ***excessive percentage***) of the kind mentioned in section 10A or 10B in respect of a car held, during a period (in this subsection called the ***holding period***) in the year of tax, by the provider of a car fringe benefit in relation to the employer in respect of the car;

(b) the excessive percentage exceeds the percentage (in this subsection called the ***reduced percentage***) that is the lesser of the following percentages:

(i) if the excessive percentage is a percentage of the kind mentioned in subparagraph 10A(b)(ii)—the business percentage applicable to the car that was established during the applicable log book period referred to that subparagraph;

(ii) in all cases—the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the provider for the holding period;

(c) the percentage calculated in accordance with the formula:

$$EP - RP$$

where:

EP is the excessive percentage; and

RP is the reduced percentage;

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is a percentage that:

(i) if either of the following sub-subparagraphs applies:

(A) the year of tax is a log book year of tax of the employer in relation to the car;

(B) the year of tax is not a log book year of tax of the employer in relation to the car and the car is a low business kilometre car of the provider in relation to the year of tax;

exceeds nil; or

(ii) in any other case—exceeds 10%; and

(d) the tax properly payable by the employer exceeds the tax that would have been payable by the employer if the percentage represented by component ***BP*** in the formula in subsection 10(2) were equal to the excessive percentage;

the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the excess referred to in paragraph (d).

(2) Where:

(a) an employer, in the employer's car records for a year of tax, specifies, or purports to specify (otherwise than by virtue of section 65H), a percentage (in this subsection called the ***excessive percentage***) of the kind mentioned in section 65E or 65F in respect of a car held during a period (in this subsection called the ***holding period***) in the year of tax by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to the employer;

(b) the excessive percentage exceeds the percentage (in this subsection called the ***reduced percentage***) that is the lesser of the following percentages:

(i) if the excessive percentage is a percentage of the kind mentioned in subparagraph 65E(b)(ii)—the business percentage applicable to the car that was established during the applicable log book period referred to in that subparagraph;

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(ii) in all cases—the percentage that represents a reasonable estimate of the underlying business percentage applicable to the car in relation to the recipient for the holding period;

(c) the percentage calculated in accordance with the formula:

$$EP - RP$$

where:

EP is the excessive percentage; and

RP is the reduced percentage;

is a percentage that:

(i) if either of the following sub-subparagraphs applies:

(A) the year of tax is a log book year of tax of the recipient in relation to the car;

(B) the year of tax is not a log book year of tax of the recipient in relation to the car and the car is a low business kilometre car of the recipient in relation to the year of tax;

exceeds nil; or

(ii) in any other case—exceeds 10%; and

(d) the tax properly payable by the employer exceeds the tax that would have been payable by the employer if the car deduction percentage ascertained under section 65G in relation to the car in relation to the recipient for the year of tax were equal to the excessive percentage;

the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the excess referred to in paragraph (d).

116 Penalty tax where arrangement to avoid tax

Where:

(a) for the purpose of making an assessment or arising out of the consideration of an objection, the Commissioner has calculated the tax that is assessable to an employer in respect of a year of tax;

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(b) in calculating the tax assessable to the employer, a determination or determinations made by the Commissioner under subsection 67(1) was or were taken into account; and

(c) either of the following subparagraphs applies:

(i) no tax would have been assessable to the employer in respect of the year of tax if no determination had been made under subsection 67(1) in relation to the employer in relation to the year of tax;

(ii) the amount of tax (in this section referred to as the ***amount of claimed tax***) that would, but for this section, have been assessable to the employer in respect of the year of tax if no determination had been made under subsection 67(1) in relation to the employer in respect of the year of tax is less than the amount of tax referred to in paragraph (a),

the employer is liable to pay, by way of penalty, additional tax equal to:

(d) in a case to which subparagraph (c)(i) applies—double the amount of the tax referred to in paragraph (a); or

(e) in a case to which subparagraph (c)(ii) applies—double the amount by which the amount of tax referred to in paragraph (a) exceeds the amount of claimed tax.

117 Assessment of additional tax

(1) The Commissioner shall make an assessment of the additional tax payable by an employer under a provision of this Part and shall, as soon as practicable after the assessment is made, cause notice in writing of the assessment to be served on the employer.

(2) Nothing in this Act shall be taken to preclude notice of an assessment made in respect of an employer under subsection (1) from being incorporated in notice of any other assessment made in respect of the employer under this Act.

(3) The Commissioner may, in the Commissioner's discretion, remit the whole or any part of the additional tax payable by an employer under a provision of this Part, but, for the purposes of the application of subsection 33(1) of the *Acts Interpretation Act 1901*

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to the power of remission conferred by this subsection, nothing in this Act shall be taken to preclude the exercise of the power at a time before an assessment is made under subsection (1) of the additional tax.

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Part IX—Tax agents

118 Interpretation

In this Part, ***registered tax agent*** means a person or partnership who or which is registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*.

119 Unregistered tax agents not to charge fees

(1) A person shall not demand or receive any fee for or in relation to the preparation of any fringe benefits tax return or objection, or for or in relation to the transaction of any business on behalf of an employer in fringe benefits tax matters, unless the person is a registered tax agent.

Penalty: $2,000.

(2) Subsection (1) does not apply to a solicitor or counsel acting in the course of his or her profession in the preparation of any objection or in any litigation or proceedings before a board, a court or the Tribunal, or so acting in an advisory capacity either in connection with the preparation of any fringe benefits tax return or objection or with any fringe benefits tax matter.

(3) A person is not entitled to sue for, recover or set-off any amount which the person is prohibited by this section from demanding.

120 Negligence of registered tax agents

(1) If, through the negligence of a registered tax agent, an employer becomes liable to pay a fine or other penalty or any additional tax, the registered tax agent is liable to pay to the employer the amount of that fine, penalty or additional tax, and that amount may be sued for and recovered by the employer as a debt in any court of competent jurisdiction.

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(2) Nothing in this section shall exonerate the employer from his or her liability.

121 Preparation of returns etc. on behalf of registered tax agents

(1) A registered tax agent shall not allow any person, not being his or her employee, a registered tax agent or, in the case of a partnership which is registered as a tax agent, a member of that partnership:

(a) to prepare on the registered tax agent's behalf, either directly or indirectly, a fringe benefits tax return or objection; or

(b) to conduct on the registered tax agent's behalf, either directly or indirectly, any business relating to any fringe benefits tax return or objection or fringe benefits tax matter.

Penalty: $1,000.

(2) A partnership or company that is registered as a tax agent shall not allow any person to do anything specified in paragraph (1)(a) or (b) except under the supervision and control of a person who is a registered nominee of the partnership or company for the purposes of Part VIIA of the *Income Tax Assessment Act 1936*.

Penalty: $1,000.

(2A) A natural person who is registered as a tax agent shall not allow any person to do anything specified in paragraph (1)(a) or (b) except under the supervision and control of:

(a) the tax agent; or

(b) a person who is a registered nominee of the tax agent for the purposes of Part VIIA of the *Income Tax Assessment Act 1936*.

Penalty: $1,000.

(3) Nothing in this section shall be construed as prohibiting the employment by a registered tax agent of a solicitor or counsel to act in the course of his or her profession in the preparation of any objection or in any litigation or proceedings before a board, a court or the Tribunal, or in an advisory capacity either in connection with

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the preparation of any fringe benefits tax return or the conduct of any such business as is referred to in paragraph (1)(b).

122 Advertising etc. by persons other than registered tax agents

(1) Subject to this section, a person, not being a registered tax agent, shall not, directly or indirectly, advertise in any manner that fringe benefits tax returns will be prepared by the person or that any other matter in connection with fringe benefits tax will be attended to by the person.

Penalty: $1,000.

(2) Subsection (1) does not apply in relation to advertising that relates to acts or things done or to be done by a solicitor or counsel acting in the course of his or her profession:

(a) in the preparation of an objection;

(b) in litigation or proceedings before a board, the Tribunal or a court; or

(c) in an advisory capacity in connection with the preparation of a fringe benefits tax return or objection or with any fringe benefits tax matter.

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Part X—Statutory evidentiary documents

123 Retention of statutory evidentiary documents

(1) For the purposes of Part III, where an employer fails to retain, for the retention period, a statutory evidentiary document given to the employer, the statutory evidentiary document shall be deemed never to have been given to the employer.

(2) For the purposes of sections 10A and 10B, where an employer fails to retain, for the retention period, statutory evidentiary documents, being log book records or odometer records maintained by or on behalf of the employer, those documents shall be deemed never to have been maintained.

(3) For the purposes of subparagraph 24(1)(c)(ia) or (i), where an employer fails to retain, for the retention period, statutory evidentiary documents, being substitute documentary evidence maintained by or on behalf of the employer, those documents shall be deemed never to have been maintained.

(4) Where:

(a) a statutory evidentiary document (in this subsection referred to as the ***original document***) in relation to an employer is lost or destroyed; and

(b) the Commissioner is satisfied that:

(i) the employer took all reasonable precautions to prevent loss or destruction of the original document;

(ii) the original document was lost or destroyed because of circumstances beyond the control of the employer; and

(iii) the employer has a document (in this subsection referred to as the ***substitute document***) that:

(A) is a copy of the original document; or

(B) properly records all of the matters set out in the original document and was in existence when the original document was lost or destroyed,

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the substitute document shall be deemed, for the purposes of this section, to be, and to have been at all times after the original document was lost or destroyed, the original document.

(5) Where:

(a) a statutory evidentiary document in relation to an employer is lost or destroyed; and

(b) the Commissioner is satisfied that:

(i) the employer took all reasonable precautions to prevent loss or destruction of the document;

(ii) the document was lost or destroyed because of circumstances beyond the control of the employer;

(iii) subsection (4) does not apply in relation to the document; and

(iv) it is not reasonably practicable for the employer to obtain a substitute document,

subsection (1), (2) or (3), as the case requires, does not apply, and shall be deemed not to have applied, at any time after the document was lost or destroyed.

(6) Where:

(a) a provision of this Act makes provision for a person to give a statutory evidentiary document (in this subsection referred to as the ***original document***) to an employer;

(b) the original document is lost or destroyed before it is given to the employer; and

(c) the Commissioner is satisfied that:

(i) the person took all reasonable precautions to prevent loss or destruction of the document;

(ii) the document was lost or destroyed because of circumstances beyond the control of the person;

(iii) the person does not have a document that:

(A) is a copy of the original document; or

(B) properly records all of the matters set out in the original document and was in existence when

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the original document was lost or destroyed; and

(iv) it is not reasonably practicable for the employer to obtain a substitute document,

that provision of this Act has effect as if the original document had been given by the person to the employer and had been retained by the employer for the retention period.

(7) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this section.

123A Car records to be completed before declaration date

(1) For the purposes of this Act (other than section 115A), a matter shall not be taken to have been specified or nominated in car records of an employer for a year of tax unless the matter was included in those records before the declaration date.

(2) Subsection (1) is subject to any other provision of this Act that requires a particular matter to be treated as if it had been specified or nominated in car records of an employer.

123B Substantiation requirements not to apply in special circumstances

(1) If the Commissioner is satisfied that:

(a) a benefit has been provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and

(b) it would be unreasonable for the substantiation requirements under this Act in relation to the benefit to apply;

the substantiation requirements do not so apply.

(2) In making a decision under subsection (1), the Commissioner is to have regard to:

(a) the nature and quality of evidence that the employer makes available to substantiate:

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(i) if the benefit provided is a fringe benefit—the taxable value of the fringe benefit; or

(ii) whether the benefit provided is an exempt benefit; and

(b) special circumstances affecting the employer, including, but not limited to, the following:

(i) the extent to which the substantiation requirements were complied with;

(ii) whether the failure to comply with the substantiation requirements was inadvertent or deliberate.

(3) The Commissioner may only make a decision under subsection (1):

(a) in the course of reviewing on the Commissioner's own motion the affairs of the employer; or

(b) in considering an objection against the assessment of the employer of the year of tax; or

(c) in considering whether to make an amendment of the assessment of the employer of the year of tax in response to a request made by the employer before the commencement of this section.

(4) This section does not apply to a declaration made for the purposes of this Act.

(5) If:

(a) an employer makes an application under subsection 82(1) or (2), as in force immediately before the commencement of section 113 of the *Taxation Laws Amendment Act (No. 3) 1991*; and

(b) the period mentioned in the subsection concerned ended before the commencement of this section;

the following provisions have effect:

(c) the Commissioner, the Tribunal or the Federal Court of Australia, as the case requires, when making a decision on the application, must disregard subsection (1) of this section;

(d) if the Commissioner, the Tribunal or the Federal Court of Australia, as the case requires, grants the application:

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(i) the employer's objection has no effect to the extent that it relates to grounds based on subsection (1) of this section; and

(ii) the Tribunal or the Federal Court of Australia, when making a decision under:

(A) paragraph 86A(a) of this Act, as in force immediately before the commencement of section 113 of the *Taxation Laws Amendment Act (No. 3) 1991*; or

(B) paragraph 14ZZK(a) or 14ZZO(a) of the *Taxation Administration Act 1953*, as the case requires;

must disregard subsection (1) of this section.

(6) This section applies to a benefit provided before, at or after the commencement of this section.

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Part XI—Miscellaneous

124 Assessments

(1) Where the Commissioner does not have sufficient information to make an assessment of the fringe benefits taxable amount of an employer of a year of tax, that fringe benefits taxable amount shall be deemed, for the purposes of making an assessment under this Act, to be such amount as, in the opinion of the Commissioner, might reasonably be expected to be that fringe benefits taxable amount.

(2) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment shall be deemed to have been made, held or formed when the assessment was made.

124A Assessment on assumption

(1) Subject to subsection (4), where:

(a) an employee of an employer has derived eligible foreign remuneration or foreign earnings during a year of tax; and

(b) at the time of making an assessment of the fringe benefits taxable amount of the employer of the year of tax, it is reasonable to assume that, at a later time, circumstances will exist because of which that eligible foreign remuneration or foreign earnings, as the case may be, will be exempt income by virtue of section 23AF or 23AG of the *Income Tax Assessment Act 1936*;

this Act applies as if those circumstances existed at the time of making that assessment.

(2) Subject to subsection (4), where, at the time of making an assessment of the fringe benefits taxable amount of an employer of a year of tax, it is reasonable to assume that, at a later time,

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circumstances will exist because of which a benefit provided in respect of the employment of an employee of the employer in, or in respect of, the year of tax will be an exempt benefit by virtue of section 58B, 58C or 58D, this Act applies as if those circumstances existed at the time of making that assessment.

(3) Subject to subsection (4), where:

(a) a fringe benefit (in this subsection called the ***temporary accommodation fringe benefit***) of a kind referred to in paragraph 61C(1)(a) is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and

(b) at the time of making an assessment of the fringe benefits taxable amount of the employer of the year of tax, it is reasonable to assume that, at a later time, circumstances will exist because of which section 61C will apply to reduce the taxable value of the temporary accommodation fringe benefit in relation to the year of tax by a particular amount;

this Act applies as if those circumstances existed at the time of making that assessment.

(4) Where this Act has, by virtue of subsection (1), (2) or (3), applied on the basis that a circumstance that did not exist at the time of making an assessment would exist at a later time and the Commissioner, after making the assessment, becomes satisfied that that circumstance will not exist, then, notwithstanding section 74, the Commissioner may amend the assessment at any time for the purposes of ensuring that this Act shall be taken always to have applied on the basis that that circumstance did not exist.

125 Judicial notice of signature

All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, shall take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner of Taxation or Deputy Commissioner attached or appended to any official document in connection with this Act.

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126 Evidence

(1) The mere production of:

(a) a notice of assessment; or

(b) a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment,

is conclusive evidence of the due making of the assessment and, except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment are correct.

(2) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is *prima facie* evidence that the second-mentioned document was so issued or given.

(3) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, a return or a notice of assessment is evidence of the matter set out in the document to the same extent as the original return or notice, as the case may be, would be if it were produced.

(4) The mere production of a certificate in writing signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due and payable by a person in respect of an amount of tax or an amount payable by way of an instalment of tax under Division 2 of Part VII or by way of penalty under section 93 or 112 or Part VIII, is *prima facie* evidence of the matters stated in the certificate.

(5) The mere production of a *Gazette* containing a notice purporting to be issued by the Commissioner is *prima facie* evidence that the notice was so issued.

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(6) A return under this Act purporting to be made or signed by or on behalf of a person is *prima facie* evidence that the return was made by the person or with the authority of the person.

127 Access to premises, etc.

(1) For the purposes of this Act, an officer authorised in writing by the Commissioner to exercise powers under this section:

(a) may, at all reasonable times, enter and remain on any land or premises;

(b) is entitled to full and free access at all reasonable times to all documents; and

(c) may inspect, examine, make copies of, or take extracts from, any documents.

(2) An officer is not entitled to enter or remain on any land or premises under this section if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce an authority in writing signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

(3) The occupier of land or premises entered or proposed to be entered by an officer under subsection (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: $1,000.

128 Commissioner to obtain information and evidence

(1) The Commissioner may, for the purposes of this Act, by notice in writing, require a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any public authority, and whether or not the person is liable to pay an amount of tax):

(a) to furnish the Commissioner with such information as the Commissioner requires;

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(b) to attend before the Commissioner, or before an officer authorised by the Commissioner for the purpose, at a time and place specified in the notice, and then and there answer questions; and

(c) to produce to the Commissioner any documents in the custody or under the control of the person.

(2) The Commissioner may require the information or answers to questions to be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner, or an officer authorised by the Commissioner in writing for the purpose, may administer an oath or affirmation.

(3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.

(4) The regulations may prescribe scales of expenses to be allowed to persons required to attend under this section.

129 Agents and trustees

(1) The following provisions of this section apply in relation to a person (in this section referred to as the ***representative***) being:

(a) a person who, as agent for an employer, provides or arranges for the provision of benefits that are fringe benefits in relation to the employer;

(b) an employer in the capacity of a trustee, being an employer in relation to whom fringe benefits are provided; or

(c) a trustee in respect of the affairs of an employer where the trustee, as trustee, provides or arranges for the provision of benefits that are fringe benefits in relation to the employer.

(2) The representative:

(a) shall furnish returns in relation to the fringe benefits; and

(b) is liable to any tax payable in respect of the provision of the fringe benefits,

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but only in the capacity of agent or trustee, as the case requires, and each such return shall be separate and distinct from any other return furnished or lodged by the representative.

(3) The representative is, by force of this section:

(a) authorised and required to retain from time to time any money that comes to the representative in the capacity as agent for the other person or trustee of the trust estate, or so much of it as is sufficient to pay the amount of tax;

(b) made personally liable for the amount of tax after it becomes payable to the extent of any amount that the representative is required to retain under paragraph (a); and

(c) indemnified for all payments that the representative makes pursuant to this section.

(4) For the purposes of ensuring payment of the amount of tax, the Commissioner has the same remedies against attachable property of any kind vested in, under the control or management of, or in the possession of, the representative as the Commissioner would have against the property of any other person in respect of an amount of tax payable by the other person.

(5) In this section, unless the contrary intention appears, ***tax*** includes additional tax under section 93 or Part VIII.

130 Recovery of tax paid on behalf of another person

(1) A person who pays an amount of tax for or on behalf of another person may recover the amount from the other person as a debt, together with the cost of recovery, or retain or deduct the amount out of money in his or her hands belonging or payable to the other person.

(2) In subsection (1), ***tax*** includes additional tax under section 93 or Part VIII.

131 Right of contribution

(1) Where:

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(a) 2 or more persons are jointly liable or jointly and severally liable to pay tax; and

(b) one of those persons has paid any of the tax,

the person referred to in paragraph (b) may, in a court of competent jurisdiction, recover by way of contribution and as a debt from any of the other persons referred to in paragraph (a) such part of the amount paid as the court considers just and equitable.

(2) In subsection (1), ***tax*** includes additional tax under section 93 or Part VIII.

132 Records to be kept and preserved

(1) An employer shall:

(a) keep records that record and explain all transactions and other acts engaged in by the employer or any other person that are relevant for the purpose of ascertaining the employer's liability under this Act; and

(b) retain those records, and any records given to the employer under paragraph (2)(b), for a period of 7 years after the completion of the transactions or acts to which they relate.

(2) Where an associate of an employer provides, or arranges for the provision of, fringe benefits to, or to associates of, employees of the employer, the associate shall:

(a) keep records that record and explain all transactions and other acts engaged in by the associate or any other person in respect of the provision of those fringe benefits, being transactions or acts that are relevant for the purpose of ascertaining the employer's liability under this Act;

(b) give to the employer a copy of the records, so far as they relate to a year of tax, not later than 21 days after the end of that year of tax; and

(c) retain those records for a period of 7 years after the completion of the transactions or acts to which they relate.

(3) A person who is required by this section to keep records shall keep the records:

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(a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and

(b) so as to enable the employer's liability under this Act to be readily ascertained.

(4) Nothing in this section shall be taken to require a person (in this subsection referred to as the ***record keeper***) to keep a record of information relating to a transaction or act engaged in by another person if:

(a) where the transaction or act was entered into or done under an arrangement to which the record keeper was a party:

(i) the record keeper made all reasonable efforts:

(A) to ascertain whether the transaction had been entered into or the act had been done; and

(B) to obtain the information; and

(ii) did not know, and could not reasonably be expected to have known, the information; or

(b) in any other case—the record keeper did not know, and could not reasonably be expected to have known, the information.

(5) Nothing in this section shall be taken to require a person to retain records where:

(a) the Commissioner has notified the person that retention of the records is not required; or

(b) the person is a company that has gone into liquidation and been finally dissolved.

Penalty: $2,000.

133 Release of employers in cases of hardship

(1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Department of Finance and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that:

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(a) an employer has suffered such a loss or is in such circumstances; or

(b) owing to the death of a person who, if he or she had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the Board may release the employer or the trustee of the estate of the deceased person, as the case may be, wholly or in part from his or her liability, and the Commissioner may make such entries as are necessary for that purpose.

(2) The Commissioner or his or her substitute shall be the Principal Member of, and shall preside at meetings of, the Board, and the decision of the majority shall prevail.

(3) Where an application is made for release in respect of an amount of tax, if that amount is not less than $10,000 the Board shall, and if that amount is less than $10,000 the Board may, refer the application to the Tribunal and shall notify the applicant in writing of its having done so.

(4) The President of the Tribunal shall designate the Registrar or a Deputy Registrar of the Tribunal to be a designated person:

(a) for the purposes of dealing with the application; or

(b) for the purposes of dealing with applications under this section included in a specified class of application.

(6) The applicant may appear before the designated person or the designated person may require the applicant to appear before him or her, either in person or by a representative, and the designated person may examine the applicant or his or her representative upon oath or affirmation concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.

(7) The designated person shall be assisted in his or her examination of the applicant by an officer employed in the Australian Taxation Office who is a qualified accountant.

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(8) The designated person may permit the applicant to be assisted at the examination by such persons as the designated person considers the circumstances justify.

(9) A record shall be made of the information elicited by the designated person during his or her examination.

(10) The designated person shall:

(a) submit a report to the Board constituted under this section upon the facts disclosed by his or her examination, together with the record referred to in subsection (9); and

(b) draw the attention of that Board to facts that, in his or her opinion, have particular bearing upon the application.

(11) In any case where the amount of the liability does not exceed $500, the powers conferred by subsection (1) on the Board specified in that subsection may be exercised by the Commissioner.

(12) In this section, ***tax*** includes additional tax under section 93 or Part VIII.

134 Service on partnerships and associations

Service, whether by post or otherwise, of a notice or document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons shall be deemed, for the purposes of this Act, to constitute service of the notice or other document on each member of the partnership or each member of the association or other body of persons, as the case may be.

135 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

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and, in particular, may make regulations prescribing penalties not exceeding a fine of $500 for offences against the regulations.

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Part XII—Interpretation

136 Interpretation

(1) In this Act, unless the contrary intention appears:

academic period, in relation to an educational institution, means:

(a) if the academic years of the educational institution are divided into terms but not semesters—a term of the academic year;

(b) if the academic years of the educational institution are divided into semesters (whether or not they are also divided into terms)—a semester of the academic year; or

(c) if the academic years of the educational institution are not divided into terms or semesters—an academic year of the institution.

agent includes:

(a) a person who, for and on behalf of a person out of Australia, has the management or control in Australia of the whole or a part of a business of the second-mentioned person; and

(b) a person declared by the Commissioner, by notice in writing served on the person, to be an agent or the sole agent of a person for the purposes of this Act.

agent's certificate means a certificate under subsection 71(1).

airline operator, in relation to transport in a passenger aircraft provided in respect of the employment of an employee, means a person who, at or about the time when that transport commenced to be provided, carried on a business of providing transport on passenger aircraft principally to outsiders.

airline transport benefit means a benefit referred to in section 32.

airline transport fringe benefit means a fringe benefit that is an airline transport benefit.

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all-day parking means parking of a single car for a continuous period of 6 hours or more;

amortised fringe benefit has the meaning given by section 65CA.

arm's length loan means a loan where the parties to the loan are dealing with each other at arm's length in relation to the loan.

arm's length transaction means a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

arrangement 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; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

assessable income means assessable income for the purposes of the *Income Tax Assessment Act 1936*.

assessment means:

(a) the ascertainment of the fringe benefits taxable amount of an employer of a year of tax and of the tax payable on that amount; or

(b) the ascertainment of the additional tax payable under a provision of Part VIII.

associate has the same meaning in relation to a person as that expression has in relation to a person in section 26AAB of the *Income Tax Assessment Act 1936*.

associated premises, in relation to a person, means premises, or a part of premises:

(a) owned by the person; or

(b) leased by the person; or

(c) otherwise under the control of the person;

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but does not include:

(d) business premises of the person; or

(e) premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person;

Australia, when used in a geographical sense, includes the external Territories.

Australian Airlines means:

(a) a body corporate that is a group company for the purposes of the *Australian Airlines (Conversion to Public Company) Act 1988*; or

(b) any body, whether incorporated or not, in which such a body corporate has a controlling interest and that owns or operates aircraft.

Australian workers' compensation law means a workers' compensation law that is a law of the Commonwealth or of a State or Territory.

basic car rate, in relation to a year of tax ending on 31 March in a year, means the rate prescribed for the purposes of paragraph 82KX(1)(a) of the *Income Tax Assessment Act 1936* in relation to the year of income ending on 30 June in that year;

benchmark interest rate:

(a) in relation to a year of tax, means a rate of interest offered anywhere in Australia, immediately before the commencement of the year of tax, in respect of a Commonwealth Bank housing loan; and

(b) in relation to a time after 2 April 1986 and before 1 July 1986, means a rate of interest offered anywhere in Australia at that time in respect of a Commonwealth Bank housing loan.

benefit includes any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a

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right, benefit, privilege, service or facility that is, or is to be, provided under:

(a) an arrangement for or in relation to:

(i) the performance of work (including work of a professional nature), whether with or without the provision of property;

(ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or

(iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

(b) a contract of insurance; or

(c) an arrangement for or in relation to the lending of money.

board benefit means a benefit referred to in section 35.

board fringe benefit means a fringe benefit that is a board benefit.

board meal means a meal provided, in respect of the employment of an employee of an employer, to a person (in this definition referred to as the ***recipient***), being the employee or an associate of the employee, where:

(a) the meal is provided on a meal entitlement day;

(b) the meal is provided by the employer or, if the employer is a company, by the employer or by a company that is related to the employer;

(c) either of the following subparagraphs applies:

(i) the meal is cooked or otherwise prepared on eligible premises of the employer and is provided to the recipient on eligible premises of the employer (not being a dining facility that, at any time, is open to the public);

(ii) the following conditions are satisfied:

(A) the duties of employment of the employee consist principally of duties to be performed in, or in connection with, an eligible dining facility of the employer or a facility for the provision of

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accommodation, recreation or travel of which the eligible dining facility forms part;

(B) the meal is cooked or otherwise prepared in the cooking facility of the eligible dining facility;

(C) the meal is provided to the recipient in the eligible dining facility;

(D) the facility in which the meal is cooked or otherwise prepared is not for use wholly or principally for the cooking or other preparation of meals solely for the employee or associates of the employee or for the employee and associates of the employee; and

(E) the meal is not provided at a party, reception or other social function.

business day means a day other than a Saturday, a Sunday or a public holiday in the place concerned;

business journey means:

(a) for the purposes of the application of Division 2 of Part III in relation to a car fringe benefit in relation to an employer in relation to a car—a journey undertaken in a car otherwise than in the application of the car to a private use, being an application that results in the provision of a fringe benefit in relation to the employer; or

(b) for the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, as the case requires, in relation to an employee in relation to a car—a journey undertaken in the car in the course of producing assessable income of the employee.

business kilometre, in relation to a car, means a kilometre travelled by the car in the course of a business journey.

business operations, in relation to a government body or a non-profit company, includes any operations or activities carried out by that body or company.

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business premises, in relation to a person, means premises, or a part of premises, of the person used, in whole or in part, for the purposes of business operations of the person, but does not include premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person.

car means a motor vehicle (including a vehicle known as a four wheel drive vehicle), being:

(a) a motor car, station wagon, panel van, utility truck or similar vehicle; or

(b) any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers,

but does not include a motor cycle or similar vehicle.

car benefit means a benefit referred to in subsection 7(1).

car expense, in relation to a car, means an expense incurred in respect of:

(a) the registration of, or insurance in respect of, the car;

(b) repairs to or maintenance of the car; or

(c) fuel for the car.

car expense payment benefit means an expense payment fringe benefit where the recipients expenditure is a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*.

car fringe benefit means a fringe benefit that is a car benefit.

car loan benefit means a loan fringe benefit where the loan was used by the recipient to:

(a) purchase a car; or

(b) pay a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936.*

car parking benefit means a benefit referred to in section 39A;

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car parking fringe benefit means a fringe benefit that is a car parking benefit;

car property benefit means a property fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*.

car records, in relation to an employer in relation to a year of tax, means records that are maintained by the employer in relation to the year of tax for the purposes of the provisions of this Act that refer to car records and that:

(a) in the case of the year of tax commencing on 1 April 1988 or an earlier year of tax—are in writing in the English language or are in a form that enables them to be readily accessible and convertible into writing in the English language; or

(b) in the case of a later year of tax—are maintained in a form approved by the Commissioner;

car residual benefit means a residual fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a car expense within the meaning of Subdivision F of Division 3 of Part III of the *Income Tax Assessment Act 1936*.

car substantiation declaration, in relation to a car held by a person during a period (in this definition called the ***holding period***) in a year of tax, means a declaration, in a form approved by the Commissioner, for the purposes of paragraphs 19(1)(ca), 24(1)(ea), 44(1)(da) and 52(1)(da), in relation to the car in relation to the holding period.

child, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of the person.

child care facility means a facility at which a person receives, or is ready to receive, 2 or more children under the age of 6, not being associates of the person, for the purpose of minding, caring for or

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educating them for a day or part of a day without provision for residential care but does not include a facility at the place of residence of any of those children.

close relative, in relation to a person, means:

(a) the spouse of the person;

(b) a child or parent of the person; or

(c) a parent of the person's spouse;

commercial parking station, means a permanent commercial car parking facility where any or all of the car parking spaces are available in the ordinary course of business to members of the public for all-day parking on payment of a fee;

Commissioner means the Commissioner of Taxation.

Commonwealth Bank housing loan means an arm's length loan by the Commonwealth Bank of Australia made in the ordinary course of business to a member of the public, being a loan:

(a) for housing purposes; and

(b) the terms of which provide for:

(i) interest to be calculated on the daily balance of the loan; and

(ii) that interest to be added to the balance of the loan at monthly intervals.

company includes any body or association, corporate or unincorporate, but does not include a partnership.

comparison time means:

(a) in relation to a residual fringe benefit:

(i) where the fringe benefit is constituted by a benefit to which subsection 46(2) applies—the commencement of the billing period referred to in that subsection in relation to the benefit; or

(ii) in any other case:

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(A) where the fringe benefit is a period residual fringe benefit—the time when the recipients overall benefit commenced to be provided; or

(B) in any other case—the time when the benefit is provided; and

(b) in relation to an air transport fringe benefit—the time when the benefit is provided.

compensable work-related trauma means work-related trauma suffered by an employee where:

(a) if there is no Australian workers' compensation law that applies to the employment of the employee—if any Australian workers' compensation law had applied to the employment of the employee, that law would have provided for compensation or other benefits for or in respect of the trauma; or

(b) in all cases—there is a workers' compensation law that:

(i) applies to the employment of the employee; and

(ii) provides for compensation or other benefits for or in respect of the trauma.

contract of investment insurance means a contract of life assurance insuring payment of money in the event that the life insured is alive on a specified date, whether or not the contract also insures the payment of money in any other event.

cost price:

(a) in relation to a car owned by a person, means:

(i) where the car was manufactured by the person, the sum of:

(A) the amount for which the car could reasonably have been expected to have been sold by the person by wholesale under an arm's length transaction at or about the time when the car was applied to the person's own use; and

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(B) where a liability to sales tax arises by virtue of the car being applied to the person's own use—the amount of that liability;

(ii) where neither subparagraph (i) nor (iii) applies, an amount equal to the sum of:

(A) the expenditure incurred by the person (other than expenditure in respect of registration or in respect of a tax on, or on a transfer of, registration) that is directly attributable to the acquisition or delivery of the car or, if subsection 7(6) applies in relation to the car, the leased car value of the car when the person first took the car on hire; and

(B) the amount of any additional expenditure incurred by the person for or in relation to the fitting of non-business accessories to the car at or about the time when the car was acquired by the person, reduced by the amount of any reimbursement of the whole or a part of that expenditure paid, at or about the time when the expenditure was incurred, by a recipient of a car benefit in relation to the car; or

(iii) where subparagraph (i) does not apply and the person was entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the person acquired the car or by which the person arranged for the fitting of non-business accessories to the car at or about the time when the car was acquired by the person, the amount that could reasonably have been expected to have been applicable under subparagraph (ii) if the person had not been entitled to those privileges to exemptions;

(b) in relation to a non-business accessory fitted to a car, means:

(i) where the accessory was manufactured by the person (in this paragraph referred to as the ***provider***) who held the car at the time of the fitting, the sum of:

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(A) the amount for which the accessory could reasonably have been expected to have been sold under an arm's length transaction by the person by wholesale at or about the time when the accessory was applied to the provider's own use; and

(B) where a liability to sales tax arises by virtue of the accessory being applied to the provider's own use—the amount of that liability;

(ii) where neither subparagraph (i) nor (iii) applies—the expenditure incurred, by a person other than a recipient of a car benefit in relation to the car, for or in relation to the fitting of the accessory, reduced by the amount of any reimbursement of the whole or a part of that expenditure paid at or about that time by a recipient of a car benefit in relation to the car; and

(iii) where subparagraph (i) does not apply and a person was entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the person acquired the accessory—the amount that could reasonably have been expected to have been applicable under subparagraph (ii) if the person had not been entitled to those privileges or exemptions; and

(c) in relation to the recipients property in relation to a property fringe benefit—means the expenditure incurred by the provider that is directly attributable to purchasing or obtaining delivery of the property.

counselling includes the giving of advice or information in a seminar.

current employee means an employee within the meaning of Division 2 of Part VI of the *Income Tax Assessment Act 1936*.

current employer means an employer within the meaning of Division 2 of Part VI of the *Income Tax Assessment Act 1936*.

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current identical benefit, in relation to an identical overall benefit in relation to a year of tax, means that identical overall benefit insofar as it was provided during the year of tax;

customs duty means customs duty imposed under a law of the Commonwealth or of a Territory.

daily balance, in relation to a loan, means the balance of the loan at the end of a day.

daylight period, in relation to a day, means so much of a period on that day as occurs:

(a) after 7 a.m. on that day; and

(b) before 7 p.m. on that day;

debt waiver benefit means a benefit referred to in section 14.

debt waiver fringe benefit means a fringe benefit that is a debt waiver benefit.

December quarter means a quarter ending on 31 December.

declaration date, in relation to an employer in relation to a year of tax, means the date of lodgment of the return of the fringe benefits taxable amount of the employer of the year of tax, or such later date as the Commissioner allows.

deductible entertainment expenditure means a loss or outgoing to the extent to which:

(a) subsection 51AE(5) of the *Income Tax Assessment Act 1936* applies to the loss or outgoing, or would apply if it were incurred in producing assessable income;

(b) subsection 51AE(5A) of that Act does not apply to the loss or outgoing, or would not apply if it were incurred in producing assessable income; and

(c) the loss or outgoing is deductible under section 51 of that Act or would be so deductible if it had been incurred in producing assessable income.

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deductible expenses, in relation to an allowance paid to an employee, means expenses incurred by the employee in respect of which a deduction is or, but for section 51AE, and Subdivisions F and G of Division 3 of Part III, of the *Income Tax Assessment Act 1936*, would be, allowable to the employee under section 51 of that Act.

depreciable property means plant or articles within the meaning of section 54 of the *Income Tax Assessment Act 1936*.

Deputy Commissioner means a Deputy Commissioner of Taxation.

disadvantaged person means:

(a) a person who is intellectually, psychiatrically or physically handicapped; or

(b) a person who is in necessitous circumstances.

disease includes any physical or mental ailment, disorder, defect or morbid condition whether of sudden onset or gradual development and whether of genetic or other origin.

documentary evidence, in relation to an expense incurred by a person, means a document that would constitute documentary evidence of the expense within the meaning of subsection 82KU(1) of the *Income Tax Assessment Act 1936* (including that subsection as applied, by subsections 82KU(3) and (4) of that Act) or subsection 82KU(5) of that Act if the person were a taxpayer within the meaning of that Act.

domestic route means a route where the port of embarkation and the port of disembarkation are both within Australia.

domestic services includes:

(a) child care;

(b) gardening;

(c) home renovations, repairs or maintenance;

(d) house cleaning;

(e) nursing care; and

(f) preparation of meals.

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dwelling means a unit of accommodation constituted by, or contained in a building, being a unit that consists, in whole or in substantial part, of residential accommodation.

economy air fare, in relation to a person being carried on a scheduled passenger air service operated by a carrier over a route, means:

(a) in a case where paragraph (b) does not apply—the standard air fare (other than a preferential air fare) charged by the carrier in respect of the scheduled air service; or

(b) in a case where the carrier charges children, students or blind persons a concessional air fare in respect of the air fare to which paragraph (a) applies and the person is eligible for such a concessional air fare—the concessional air fare concerned,

being, in either case, an air fare in relation to which no special booking conditions are attached.

educational institution means a school, college or university.

elderly person means a person who has attained the age of 60 years.

eligible car parking expense payment benefit means an expense payment benefit where:

(a) the recipient is an employee or an associate of an employee; and

(b) the recipients expenditure is in respect of the provision of car parking facilities for a car on one or more days; and

(c) the following conditions are satisfied in relation to any of those days:

(i) on that day, the employee has a primary place of employment;

(ii) on that day, the car was parked for one or more daylight periods exceeding 4 hours in total at, or in the vicinity of, that primary place of employment;

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(iii) the whole or a part of the recipients expenditure is in respect of the provision of the parking facilities to which that parking relates;

(iv) on that day, the car was used in connection with travel by the employee between the place of residence of the employee and that primary place of employment;

(v) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this definition;

(vi) the day is on or after 1 July 1993;

eligible dining facility, in relation to an employer, means:

(a) a canteen, dining room or similar facility; or

(b) a cafe, restaurant or similar facility,

that is located on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer.

eligible entertainment expenditure means deductible entertainment expenditure or non-deductible entertainment expenditure.

eligible family member means:

(a) in relation to an employee who is required to live away from his or her usual place of residence during a period in order to perform the duties of his or her employment:

(i) the employee; or

(ii) the spouse of the employee, or a child of the employee, being a spouse or child, as the case may be:

(A) who lived with the employee during that period; and

(B) whose usual place of residence during that period was the same as the usual place of residence of the employee; and

(b) in relation to a living-away-from-home allowance fringe benefit in relation to an employee, means:

(i) the employee; or

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(ii) the spouse of the employee, or a child of the employee, being a spouse or child, as the case may be:

(A) in respect of whom the recipients allowance is paid;

(B) who lived with the employee during the recipients allowance period; and

(C) whose usual place of residence during that period was the same as the usual place of residence of the employee.

eligible foreign remuneration has the same meaning as in section 23AF of the *Income Tax Assessment Act 1936*.

eligible incidental travel expense payment benefit means an expense payment fringe benefit where:

(a) either:

(i) the recipients expenditure:

(A) is in respect of travel by the recipient away from the recipient's usual place of residence undertaken in the course of performing the duties of his or her employment, being expenditure in respect of accommodation, the purchase of food or drink or otherwise incidental to the travel; and

(B) relates solely to travel by the recipient in Australia; or

(ii) the recipients expenditure:

(A) is in respect of travel by the recipient away from the recipient's usual place of residence undertaken in the course of performing the duties of his or her employment, being expenditure in respect of the purchase of food or drink or otherwise incidental to the travel (except in respect of accommodation); and

(B) relates solely or principally to travel by the recipient outside Australia; and

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(b) the payment or reimbursement, as the case may be, that constitutes the fringe benefit is in the nature of compensation to the recipient for the expenses that the recipient might reasonably be expected to have incurred in respect of the matters specified in sub-subparagraph (a)(i)(A) or (a)(ii)(A), as the case requires;

eligible overtime meal expense payment benefit means an expense payment fringe benefit where:

(a) the recipients expenditure is incurred in respect of the purchase of food or drink in connection with overtime worked by the recipient; and

(b) the payment or reimbursement, as the case may be, that constitutes the fringe benefit is in the nature of compensation to the recipient for the expenses that the recipient might reasonably be expected to have incurred in respect of the purchase of food or drink in connection with that overtime.

eligible pre-commencement loan means a loan made before 1 July 1986 at a rate of interest that:

(a) is specified in a document in existence at the time when the loan was made; and

(b) cannot be varied.

eligible premises, in relation to entertainment, a meal, or food or drink, provided in respect of the employment of an employee of an employer, means:

(a) if the employer is a company—premises of the employer or of a company that is related to the employer; or

(b) in any other case—premises of the employer,

and includes, in either case, a location at or adjacent to a site at which the employee performs duties of that employment.

emergency means an emergency involving any of the following matters:

(a) a natural disaster;

(b) a conflict involving an armed force;

(c) a civil disturbance;

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(d) an accident;
(e) a serious illness;
(f) any similar matter.

emergency assistance, in relation to a person, means assistance granted to the person where:

(a) the person is, or is at immediate risk of becoming, the victim of an emergency;
(b) the assistance is granted to the person solely in order to provide immediate relief;
(c) the assistance is in respect of all or any of the following matters:
(i) first aid or other emergency health care;
(ii) emergency meals or food supplies;
(iii) emergency clothing;
(iv) emergency transport;
(v) emergency accommodation;
(vi) emergency use of household goods;
(vii) temporary repairs;
(viii) any similar matter.

employee means:

(a) a current employee;
(b) a future employee; or
(c) a former employee.

employee credit loan benefit, in relation to a year of tax, means a loan fringe benefit in relation to an employee in relation to the year of tax where:

(a) the loan consists of the provision of credit to the employee in respect of:
(i) property sold; or
(ii) other benefits provided;
to the employee by the provider of the fringe benefit; and
(b) if the employee had, on the last day of the period during the year of tax when the employee was under an obligation to

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repay the whole or any part of the loan, incurred interest in respect of the loan in respect of that period, that interest would have been exclusively incurred in gaining or producing salary or wages of the employee in respect of the employment to which the fringe benefit relates.

employee share loan benefit, in relation to a year of tax, means a loan fringe benefit in relation to an employee in relation to an employer in relation to the year of tax where:

(a) the sole purpose of the making of the loan is to enable the employee to acquire shares, or rights to acquire shares, in a company, being:
  (i) the employer; or
  (ii) an associate of the employer; and

(b) the shares or rights were beneficially owned by the employee at all times during the period during the year of tax when the employee was under an obligation to repay the whole or any part of the loan.

employer means:

(a) a current employer;

(b) a future employer; or

(c) a former employer,

but does not include:

(d) the Commonwealth; or

(e) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

employment, in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee.

exclusive employee airline transport benefit means an airline transport fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients transport,

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that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

exclusive employee expense payment benefit means an expense payment fringe benefit where the recipients expenditure is exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates and is not expenditure in respect of interest.

exclusive employee property benefit means a property fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

exclusive employee residual benefit means a residual fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

exempt accommodation component, in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, in relation to a year of tax, means:

(a) where the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of:

(i) the employee's usual place of residence during the recipients allowance period; and

(ii) the place at which the employee actually resided during the recipients allowance period,

so much (if any) of the recipients allowance as it would be concluded is in the nature of compensation to the employee for additional expenses that might reasonably be expected to be incurred by the employee in respect of the subsistence during the recipients allowance period of a lease or licence in

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respect of a unit of accommodation for the accommodation of eligible family members; or

(b) in any other case—nil.

exempt food component, in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, in relation to a year of tax, means:

(a) where the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of:

(i) the employee's usual place of residence during the recipients allowance period; and

(ii) the place at which the employee actually resided during the recipients allowance period,

whichever of the following is applicable:

(iii) where the food component of the recipients allowance has been determined by allowing for the whole or a part of the amount (which whole or part is in this definition referred to as the ***deducted home consumption expenditure***) of the expenditure that might reasonably be expected to have been incurred by the employee, in respect of the recipients allowance period, in respect of food or drink for eligible family members if the eligible family members had resided at their usual place of residence during the recipients allowance period:

(A) if the deducted home consumption expenditure is not less than the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period—the food component of the recipients allowance; or

(B) in any other case—the amount ascertained in accordance with the formula $\mathbf{A - (B - C)}$, where:

A is the food component of the recipients allowance;

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B is the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period; and

C is the deducted home consumption expenditure.

(iv) where subparagraph (iii) does not apply—the food component of the recipients allowance reduced by the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period; or

(b) in any other case—nil;

expense payment benefit means a benefit referred to in section 20.

expense payment fringe benefit means a fringe benefit that is an expense payment benefit.

extended travel airline transport benefit means an airline transport fringe benefit where:

(a) the recipients transport is over an international route; or

(b) the following conditions are satisfied:

(i) the recipients transport is in respect of travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;

(ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

extended travel expense payment benefit means an expense payment fringe benefit where:

(a) the recipient's expenditure is in respect of travel outside Australia; or

(b) the following conditions are satisfied:

(i) the recipients expenditure is in respect of travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;

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(ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates,

but does not include a car expense payment benefit.

extended travel property benefit means a property fringe benefit where:

(a) the recipients property is in respect of travel outside Australia; or

(b) the following conditions are satisfied:

(i) the recipients property is provided in respect of travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;

(ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates,

but does not include a car property benefit.

extended travel residual benefit means a residual fringe benefit where:

(a) the recipients benefit is in respect of travel outside Australia; or

(b) the following conditions are satisfied:

(i) the recipients benefit consists of, or is in respect of, travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;

(ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates,

but does not include a car residual benefit.

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external expense payment fringe benefit means an expense payment fringe benefit other than an in-house expense payment fringe benefit.

external non-period residual fringe benefit means a non-period residual fringe benefit other than an in-house residual fringe benefit.

external period residual fringe benefit means a period residual fringe benefit other than an in-house residual fringe benefit.

external property fringe benefit, in relation to an employer, means a property fringe benefit in relation to the employer other than an in-house property fringe benefit.

family member, in relation to a benefit provided to an employee, or to an associate of an employee, in respect of the employment of the employee, means:

(a) the employee;

(b) the spouse of the employee; or

(c) a child of the employee.

fitting, in relation to a non-business accessory, includes the acquisition of the accessory.

food component, in relation to the recipients allowance in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, means so much (if any) of the recipients allowance as it would be concluded is in the nature of compensation for expenses that the employee might reasonably be expected to incur, in respect of the recipients allowance period, in respect of food or drink for eligible family members.

foreign earnings has the same meaning as in section 23AG of the *Income Tax Assessment Act 1936*.

foreign income deduction has the same meaning as in section 160AFD of the *Income Tax Assessment Act 1936*.

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former employee means a person who has been a current employee.

former employer means a person who has been a current employer.

fringe benefit, in relation to an employee, in relation to the employer of the employee, in relation to a year of tax, means a benefit:

(a) provided at any time during the year of tax; or

(b) provided in respect of the year of tax,

being a benefit provided to the employee or to an associate of the employee by:

(c) the employer;

(d) an associate of the employer; or

(e) a person (in this paragraph referred to as the ***arranger***) other than the employer or an associate of the employer under an arrangement between:

(i) the employer or an associate of the employer; and

(ii) the arranger or another person,

in respect of the employment of the employee, but does not include:

(f) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*;

(g) a benefit that is an exempt benefit in relation to the year of tax;

(h) a benefit constituted by the acquisition by the employee, or by a relative of the employee, of a share in a company, or of a right to acquire a share in a company, under a scheme for the acquisition of shares by employees, where section 26AAC of the *Income Tax Assessment Act 1936* applies in relation to the acquisition;

(j) a benefit constituted by:

(i) the making of a payment of money to; or

(ii) the setting apart of money as,

a superannuation fund;

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(k) a payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* that would be an eligible termination payment within the meaning of that Subdivision if:

(i) subparagraphs (a)(ii), (iii), (iiia) and (iv) of the definition of ***eligible termination payment*** in subsection 27A(1) of that Act were omitted;

(ii) a reference in paragraph (b) of that definition to a superannuation fund included a reference to a fund of the kind referred to in subparagraph (a)(iii) or (iiia) of that definition;

(iii) subparagraphs (b)(i), (ii) and (iii) of that definition were omitted; and

(iv) paragraph (k) of that definition were omitted;

(m) consideration of a capital nature for, or in respect of:

(i) a legally enforceable contract in restraint of trade by a person; or

(ii) personal injury to a person;

(n) a payment of an amount that, under any provision of the *Income Tax Assessment Act 1936*, is deemed to be a dividend paid to the recipient; or

(p) a payment made, or liability incurred, to a person to the extent that the payment or liability is, by virtue of subsection 65(1A) of the *Income Tax Assessment Act 1936*, deemed not be income of the person for the purposes of that Act.

fringe benefits tax or ***tax*** means tax imposed by the *Fringe Benefits Tax Act 1986*.

fringe benefits taxable amount, in relation to an employer in relation to a year of tax (in this definition called the ***current year of tax***), means the sum of the following amounts:

(a) the sum of the taxable values, in relation to the current year of tax, of all the fringe benefits (other than amortised fringe benefits) in relation to the employer in relation to the current year of tax;

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(b) the sum of the amortised amounts, in relation to the current year of tax, of all the amortised fringe benefits in relation to the employer in relation to the current year of tax and any other year of tax;

reduced by the sum of the reduction amounts, in relation to the current year of tax, of all the reducible fringe benefits in relation to the employer in relation to the current year of tax.

future employee means a person who will become a current employee.

future employer means a person who will become a current employer.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory.

health care means any examination, test or form of care (whether therapeutic, preventative or rehabilitative) that is related to the physiological or psychological health of a person and, without limiting the generality of the foregoing, includes:

(a) the supply, maintenance or repair of:
  (i) an artificial limb or other artificial substitute; or
  (ii) a medical, surgical or similar aid or appliance used by a person; and
(b) the supply of drugs or other property in connection with such an examination, test or form of care.

housing benefit means a benefit referred to in section 25.

housing fringe benefit means a fringe benefit that is a housing benefit.

housing right, in relation to a person, means a lease or licence granted to the person to occupy or use a unit of accommodation, insofar as that lease or licence subsists at a time when the unit of accommodation is the person's usual place of residence.

identical benefit, in relation to the recipients benefit in relation to a residual fringe benefit, means another benefit that is the same in all

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respects, except for differences (if any) that are minimal or insignificant and do not affect the value of the other benefit.

identical overall benefit, in relation to the recipients overall benefit in relation to a period residual fringe benefit, means a benefit that is the same in all respects as the recipients overall benefit (except for any differences that are minimal or insignificant and do not affect the value of the benefit).

identical property, in relation to the recipients property in relation to a property fringe benefit, means other property that is the same in all respects, including physical characteristics, quality and reputation, except for differences (if any) that are minimal or insignificant and do not affect the value of the property.

incorporated company means a company being a body corporate.

in-house expense payment fringe benefit' means:

(a) an in-house property expense payment fringe benefit; or

(b) an in-house residual expense payment fringe benefit.

in-house fringe benefit means:

(a) an in-house expense payment fringe benefit;

(b) an in-house property fringe benefit; or

(c) an in-house residual fringe benefit.

in-house health care facility, in relation to an employer, means a clinic, surgery, first-aid station or similar facility that is:

(a) operated wholly or principally for providing health care in respect of compensable work-related trauma suffered:

(i) in any case—by employees of the employer; or

(ii) if the employer is a company—by employees of the employer or by employees of a company that is related to the employer; and

(b) located:

(i) on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer; or

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(ii) at or adjacent to a place where employees of the employer or, if the employer is a company, of the employer or of a company that is related to the employer (other than members of the staff of the facility) perform the duties of their employment.

in-house non-period residual fringe benefit means an in-house residual fringe benefit that is not provided during a period.

in-house period residual fringe benefit means an in-house residual fringe benefit that is provided during a period.

in-house property expense payment fringe benefit, in relation to an employer, means an expense payment fringe benefit in relation to the employer where:

(a) the recipients expenditure was incurred in respect of the provision of tangible property by a person (in this definition called the ***property provider***);

(b) the provision of the property is a property benefit;

(c) if the property provider is the employer or an associate of the employer—at or about the provision time, the property provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders;

(d) if the property provider is not the employer or an associate of the employer:

(i) the property was acquired by the property provider from the employer or an associate of the employer (which employer or associate is in this definition called the ***seller***); and

(ii) at or about the provision time, both the property provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders; and

(e) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

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in-house property fringe benefit, in relation to an employer, means a property fringe benefit in relation to the employer in respect of tangible property:

(a) where both of the following conditions are satisfied:
  (i) the provider is the employer or an associate of the employer; and
  (ii) at or about the provision time, the provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders; or

(b) where all of the following conditions are satisfied:
  (i) the provider is not the employer or an associate of the employer;
  (ii) the property was acquired by the provider from the employer or an associate of the employer (which employer or associate is in this definition called the ***seller***); and
  (iii) at or about the provision time, both the provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders.

in-house residual expense payment fringe benefit, in relation to an employer, means an expense payment fringe benefit in relation to the employer where:

(a) the recipients expenditure was incurred in respect of the provision of a residual benefit (other than a benefit provided under a contract of investment insurance) by a person (in this definition called the ***residual benefit provider***);

(b) if the residual benefit provider is the employer or an associate of the employer—at or about the time that, if the residual benefit had been a residual fringe benefit, would have been the comparison time, the residual benefit provider carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders;

(c) if the residual benefit provider is not the employer or an associate of the employer:

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(i) the residual benefit provider purchased the benefit from the employer or an associate of the employer (which employer or associate is in this definition called the ***seller***); and

(ii) at or about the time that, if the residual benefit had been a residual fringe benefit, would have been the comparison time, both the residual benefit provider and the seller carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders; and

(d) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

in-house residual fringe benefit, in relation to an employer, means a residual fringe benefit in relation to the employer:

(a) where both of the following conditions are satisfied:

(i) the provider is the employer or an associate of the employer;

(ii) at or about the comparison time, the provider carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders; or

(b) where all of the following conditions are satisfied:

(i) the provider is not the employer or an associate of the employer;

(ii) the provider purchased the benefit from the employer or an associate of the employer (which employer or associate is in this definition called the ***seller***);

(iii) at or about the comparison time, both the provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders;

but does not include a benefit provided under a contract of investment insurance.

injury means any physical or mental injury.

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in respect of, in relation to the employment an of employee, includes by reason of, by virtue of, or for or in relation directly or indirectly to, that employment.

industrial instrument means a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law.

intangible property means:

(a) real property;

(b) a chose in action; and

(c) any other kind of property other than tangible property, but does not include:

(d) a right arising under a contract of insurance; or

(e) a lease or licence in respect of real property or tangible property.

interest, in relation to a loan, includes a payment in the nature of interest.

international aircrew expense payment benefit means an expense payment fringe benefit where the recipients expenditure:

(a) is in respect of travel by the recipient in the course of performing the duties of the recipient's employment as the pilot, flight engineer, flight attendant, or other member of the crew, of an aircraft, being expenditure in respect of accommodation, the purchase of food or drink or otherwise incidental to the travel; and

(b) relates to travel by the recipient outside Australia.

international aircrew property benefit means a property fringe benefit where the recipients property:

(a) is in respect of travel by the recipient in the course of performing the duties of the recipient's employment as the pilot, flight engineer, flight attendant or other member of the crew, of an aircraft, being property that is:

(i) food or drink;

(ii) in respect of accommodation; or

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(iii) otherwise incidental to the travel; and

(b) relates to travel by the recipient outside Australia.

international aircrew residual benefit means a residual fringe benefit where the recipients benefit:

(a) is in respect of travel by the recipient in the course of performing the duties of the recipient's employment as the pilot, flight engineer, flight attendant or other member of the crew of an aircraft, being a benefit that is in respect of accommodation or a benefit that is otherwise incidental to the travel; and

(b) relates to travel by the recipient outside Australia.

international route means a route that is not a domestic route.

law, in relation to a foreign country, means a law of that country, or of any part of, or place in, that country.

lease includes sub-lease.

leased means let on hire (including a letting on hire that is described in the relevant agreement as a lease) under an agreement other than a hire-purchase agreement.

leased car value, in relation to a car held but not owned by a person at a particular time, means:

(a) in a case to which paragraph (b) does not apply—the amount that the person could reasonably be expected to have been required to pay to purchase the car from the owner at that time under an arm's length transaction; or

(b) if the person commenced to lease the car at that time from a lessor who purchased the car at or about that time—the cost price of the car to the lessor.

liability to the Commonwealth means a liability to the Commonwealth arising under, or by virtue of, an Act of which the Commissioner has the general administration.

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liquidator, in relation to a company, means a person who, whether or not appointed as liquidator, is required by law to carry out the winding up of the company.

living-away-from-home allowance benefit means a benefit referred to in section 30.

living-away-from-home allowance fringe benefit means a fringe benefit that is living-away-from-home allowance benefit.

living-away-from-home food fringe benefit means:

(a) an expense payment fringe benefit provided in respect of the employment of an employee where:
  (i) the recipients expenditure was incurred in respect of food or drink;
  (ii) the food or drink was not for consumption while the employee was undertaking travel in the course of performing the duties of that employment; and
  (iii) the food or drink was for consumption by eligible family members at a time when the employee was required to live away from his or her usual place of residence in order to perform the duties of that employment; or

(b) a property fringe benefit provided in respect of the employment of an employee where:
  (i) the recipients property is food or drink;
  (ii) the food or drink was not for consumption while the employee was undertaking travel in the course of performing the duties of that employment; and
  (iii) the food or drink was for consumption by eligible family members at a time when the employee was required to live away from his or her usual place of residence in order to perform the duties of that employment.

loan includes:

(a) an advance of money;

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(b) the provision of credit or any other form of financial accommodation;
(c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and
(d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit means a benefit referred to in subsection 16(1).

loan fringe benefit means a fringe benefit that is a loan benefit.

log book records, in relation to a car held by a person (in this definition called the ***holder***), in relation to a period, means a daily log book or similar document in which, in respect of each business journey:

(a) that is undertaken in the car during the period; and
(b) that the holder, or a person acting on behalf of the holder, chooses to record in the document for the purpose of demonstrating the pattern of use of the car during the period;

an entry setting out particulars of:

(c) the date on which the journey began and the date on which it ended;
(d) the respective odometer readings of the car at the beginning and end of the journey;
(e) the number of kilometres travelled by the car in the course of the journey;
(f) the purpose or purposes of the journey;
(g) the name of the person, or the names of the persons, driving the car on that journey;
(h) the date on which the entry is made; and
(j) the name of the person by whom the entry is made;

is made in the English language at, or as soon as reasonably practicable after, the end of the journey, and that, in relation to each such entry so made, is signed, at the time when the entry is made, by the person who made the entry.

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long service award benefit, in relation to an employee of an employer, means a benefit provided to the employee, in respect of the employment of the employee, in, or in respect of, a year of tax solely by way of an award in recognition of the existence of a recognised long service period in relation to the employee that is not less than 15 years, but does not include:

(a) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*;

(b) a benefit provided under a non-arm's length arrangement; or

(c) a benefit provided under an arrangement where, having regard to:

(i) the form and substance of the arrangement;

(ii) the matters taken into account in determining the period of recognised long service leave recognised by the award; and

(iii) the eligibility of other employees of the employer to be awarded benefits in recognition of the existence of recognised long service periods;

it would be concluded that the arrangement, or any part of the arrangement, was entered into by any of the parties to the arrangement for the sole or dominant purpose of enabling the employer to obtain the benefit of the application of section 58Q.

long service leave means:

(a) long service leave;

(b) long leave;

(c) furlough;

(d) extended leave; or

(e) leave of a similar kind (however described).

low business kilometre car, in relation to a person, in relation to a year of tax, means a car held by the person during a particular period (in this definition called the ***holding period***) in the year of tax where the number calculated in accordance with the formula:

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$$\mathbf{BK} \times \frac{\mathbf{DY}}{\mathbf{DHP}}$$

where:

DHP is the number of days in the holding period;

DY is the number of days in the year of tax; and

BK is the number of whole kilometres travelled by the car during the holding period in respect of business journeys undertaken in the car.

does not exceed:

(a) in the case of the transitional year of tax—3,750; or

(b) in the case of a standard year of tax—5,000.

meal entitlement day, in relation to a meal provided in a year of tax, in respect of the employment of an employee, to a person (in this definition referred to as the ***recipient***) being the employee or an associate of the employee, means a day in respect of which:

(a) in respect of the employment of the employee, the recipient was entitled to be provided (whether without charge or otherwise) with residential accommodation; and

(b) either of the following subparagraphs applies:

(i) the recipient was entitled, pursuant to the provisions of an industrial instrument in respect of the employment of the employee, to be provided (whether without charge or otherwise) with not fewer than 2 meals on that day;

(ii) the following conditions are satisfied:

(A) under an arrangement that was in force during the whole or a part of the year of tax (which whole or part is in this subparagraph referred to as the ***arrangement period***) in respect of the employment of the employee, the recipient was entitled to be provided (whether without charge or otherwise) with not fewer than 2 meals on that day;

(B) during the arrangement period, the recipient was also entitled under the arrangement to be provided (whether without charge or otherwise)

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with not fewer than 2 meals on each day during the arrangement period that was a working day in relation to the employee;

(C) pursuant to the arrangement, the recipient was ordinarily provided (whether without charge or otherwise) with not fewer than 2 meals on the days referred to in sub-subparagraph (b).

migrant language training, in relation to a person, means a course attended by the person where:

(a) at the time of attending the course, the person is, or intends to become, an immigrant to Australia; and

(b) the course is designed to:

(i) teach the English language; or

(ii) impart an understanding of the rights and duties of an Australian citizen and of the way of living of the Australian people;

to persons whose first language is not English.

motor vehicle means a motor vehicle (including a vehicle known as a four wheel drive vehicle), being:

(a) a motor car, station wagon, panel van, utility truck or similar vehicle;

(b) a motor cycle or similar vehicle; or

(c) any other road vehicle.

natural person does not include a natural person in the capacity of trustee.

nominated business percentage means:

(a) for the purposes of the application of section 10 in relation to a car fringe benefit in relation to an employer in relation to a car while it was held by a person (in this paragraph called the ***provider***) during a particular period (in this paragraph called the ***holding period***) in a year of tax—a percentage that represents an estimate made by the employer of the underlying business percentage applicable to the car in relation to the provider for the holding period, having regard

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to all relevant matters including, but without limiting the generality of the foregoing:

(i) any log book records, odometer records or other records maintained by or on behalf of the provider; and

(ii) any variations in the pattern of use of the car during the holding period; and

(b) for the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, in relation to an employer in relation to a car held by the recipient during a particular period (in this paragraph called the ***holding period***) in a year of tax—a percentage that represents an estimate made by the employer of the underlying business percentage applicable to the car in relation to the holding period, having regard to all relevant matters including, but without limiting the generality of the foregoing:

(i) any log book records, odometer records or other records maintained by or on behalf of the recipient; and

(ii) any variations in the pattern of use of the car during the holding period.

non-arm's length arrangement means an arrangement other than an arm's length arrangement.

non-business accessory, in relation to a car, means an accessory fitted to the car, whether at the factory where the car was assembled or at some other place, other than an accessory required to meet the special needs of any business operations in relation to which the car is used.

non-deductible entertainment expenditure means a loss or outgoing to the extent to which:

(a) subsection 51AE(4) of the *Income Tax Assessment Act 1936* applies to the loss or outgoing, or would apply if it were incurred in producing assessable income; and

(b) but for that subsection, the loss or outgoing would be deductible under section 51 of that Act, or would be so

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deductible if it were incurred in producing assessable income.

non-deductible exempt entertainment expenditure means non-deductible entertainment expenditure to the extent to which it is not incurred in producing assessable income.

non-profit company means a company that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the company's constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members.

notional amount of interest, in relation to a loan in relation to a year of tax, means the amount of interest that would have accrued on the loan in respect of the year of tax if the interest were calculated on the daily balance of the loan at:

(a) where the loan is an eligible pre-commencement loan:
  (i) the statutory interest rate in relation to the time when the loan was made; or
  (ii) the statutory interest rate in relation to the year of tax;
  whichever is the less;
(b) where the loan is not an eligible pre-commencement loan, was made before 3 April 1986 and is a housing loan relating to a dwelling:
  (i) the statutory interest rate in relation to the year of tax; or
  (ii) 13.5% per annum;
  whichever is the less; or
(c) in any other case—the statutory interest rate in relation to the year of tax.

notional taxable value, in relation to a benefit provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer, means the amount that, if it were assumed that:

(a) in the case of a car benefit—the car benefit was a residual benefit; and

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(b) in all cases—the benefit was a fringe benefit in relation to the employer in relation to the year of tax;

would be the taxable value of the fringe benefit in relation to the year of tax.

notional value, in relation to the provision of property or another benefit to a person, means the amount that the person could reasonably be expected to have been required to pay to obtain the property or other benefit from the provider under an arm's length transaction.

obligation, in relation to the payment or repayment of an amount, includes an obligation that is not enforceable by legal proceedings.

odometer records, in relation to a car, in relation to a period, means a document in which particulars of:

(a) the odometer reading of the car at the commencement of the period or, if the first business journey undertaken in the car occurred during the period, at the commencement of that business journey;

(b) the odometer reading of the car at the end of the period or, if the last business journey undertaken in the car occurred during the period, at the end of that business journey;

(c) if paragraph 162K(2)(b) or 162L(2)(b) applies with effect from a particular date—the odometer readings of both the replacement car and of the original car referred to in that paragraph, as at that date;

(d) the respective dates on which the entries are made; and

(e) the name of the person, or the names of the persons, by whom the entries are made;

are entered in the English language, and that is signed by the person or persons referred to in paragraph (e), at, or as soon as reasonably practicable after, the respective times to which those odometer readings relate.

offence against this Act includes an offence against:

(a) the *Crimes Act 1914*; or

(b) the *Taxation Administration Act 1953*,

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relating to this Act.

officer means an officer or employee of the Australian Public Service.

once-only deduction, in relation to expenditure, means a deduction in a year of income in respect of a percentage of the expenditure where no deduction is allowable in respect of a percentage of the expenditure in any other year of income.

original assessment date means:

(a) in relation to an assessment other than an amended assessment—the day on which the assessment was made; and

(b) in relation to an assessment being the first or a subsequent amendment of an assessment to which paragraph (a) applies—the day on which the original assessment was made.

outsider, in relation to the employment of an employee of an employer, means a person not being:

(a) an employee of the employer;

(b) an employee of an associate of the employer;

(c) an employee of a person (in this definition referred to as the ***provider***) other than the employer or an associate of the employer who provides benefits to, or to associates of, employees of the employer or an associate of the employer under an arrangement between:

(i) the employer or an associate of the employer; and

(ii) the provider or another person; or

(d) an associate of an employee to whom any of the preceding paragraphs apply.

period residual fringe benefit means a residual fringe benefit that is provided during a period.

person includes:

(a) a body politic;

(b) a body corporate;

(c) a partnership;

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(d) any other unincorporated association or body of persons; and
(e) a person in the capacity of trustee.

personal services includes services as a personal secretary or chauffeur.

place of residence, in relation to a person, means:
(a) a place at which the person resides; or
(b) a place at which the person has sleeping accommodation,
whether on a permanent or temporary basis and whether or not on a shared basis.

preferential air fare means an air fare charged by a person in respect of travel over a route, being an air fare the payment of which entitles the person travelling to benefits to which some of the other passengers on the same flight are not entitled.

primary place of employment, in relation to an employee in relation to a day, means business premises, or associated premises, of the employer of the employee, or of an associate of the employer, where:
(a) if the employee performed duties of his or her employment on that day—on that day; or
(b) in any other case—on the most recent day before that day on which the employee performed duties of his or her employment;
those premises are or were:
(c) the sole or primary place of employment of the employee; or
(d) otherwise the sole or primary place from which or at which the employee performs duties of his or her employment;

private use, in relation to a motor vehicle, in relation to an employee or an associate of an employee, means any use of the motor vehicle by the employee or associate, as the case may be, that is not exclusively in the course of producing assessable income of the employee.

producing assessable income includes:

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(a) gaining assessable income; or
(b) carrying on a business for the purpose of gaining or producing assessable income.

property means:
(a) intangible property; and
(b) tangible property.

property benefit means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III.

property fringe benefit means a fringe benefit that is a property benefit.

provide:
(a) in relation to a benefit—includes allow, confer, give, grant or perform; and
(b) in relation to property—means dispose of (whether by sale, gift, declaration of trust or otherwise):
(i) if the property is a beneficial interest in property but does not include legal ownership—the beneficial interest; or
(ii) in any other case—the legal ownership of the property.

provider, in relation to a benefit, means the person who provides the benefit.

providers portion, in relation to an expense payment fringe benefit, means whichever of the following amounts is applicable:
(a) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution;
(b) the amount of the reimbursement referred to in paragraph 20(b).

providers published air fare, in relation to an airline transport fringe benefit provided over a route in a year of tax, means:
(a) where paragraph (b) does not apply:

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(i) a qualifying air fare charged by the provider in respect of transport over that route; or

(ii) one half of a qualifying air fare charged by the provider in respect of return transport over that route,

during the period of 12 months ending at the end of the year of tax; or

(b) in a case where the provider charges children, students or blind persons a concessional air fare in respect of an air fare to which paragraph (a) applies and the recipient is eligible for such a concessional air fare—the concessional air fare concerned.

provision time, in relation to the provision of property, means the time when the property is provided.

qualifying air fare means an air fare charged by the provider of an airline transport fringe benefit in respect of transport over a route, being:

(a) where the provider has premises in Australia at which air tickets issued by the provider are sold—an air fare that was:

(i) offered as being available to all members of the public by the provider at those premises; and

(ii) specified in a publication authorised by the provider and available at those premises; or

(b) where the provider does not have premises as mentioned in paragraph (a) but an agent of the provider has premises in Australia at which air tickets issued by the provider are sold—an air fare that was:

(i) offered as being available to all members of the public by the agent at those premises; and

(ii) specified in a tariff manual authorised by the provider and available at those premises,

and being, in either case, an air fare that was not subject to special conditions requiring a booking to be made in respect of more than 1 person.

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quarter means a period of 3 calendar months commencing on 1 January, 1 April, 1 July or 1 October.

recipient, in relation to a benefit, means the person to whom the benefit is provided.

recipients allowance, in relation to a living-away-from-home allowance fringe benefit, means the allowance, or the part of the allowance, the payment of which constitutes the fringe benefit.

recipients allowance period, in relation to a living-away-from-home allowance fringe benefit, means the period to which the recipients allowance relates.

recipients benefit, in relation to a residual benefit, means the benefit to which the residual benefit relates.

recipients contribution:

(a) in relation to an airline transport fringe benefit, a car parking fringe benefit, a property fringe benefit, a residual fringe benefit or a board fringe benefit, being a fringe benefit provided in respect of the employment of an employee of an employer, means the amount of any consideration paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the recipients transport, the recipients parking, the recipients property, the recipients benefit or the recipients meal, as the case may be, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration; and

(b) in relation to an expense payment fringe benefit provided in respect of the employment of an employee of an employer, being a fringe benefit to which paragraph 20(a) applies—the amount paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the fringe benefit.

recipients current benefit, in relation to a period residual fringe benefit in relation to a year of tax, means the benefit to which the

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fringe benefit relates, insofar as that benefit was provided during the year of tax.

recipients current housing right, in relation to a housing fringe benefit in relation to a year of tax, means the housing right to which the fringe benefit relates, insofar as that housing right subsisted during the year of tax.

recipients expenditure, in relation to an expense payment benefit, means the expenditure incurred by the recipient as mentioned in paragraph 20(a) or (b), as the case requires.

recipients meal, in relation to a board fringe benefit, means the meal to which the fringe benefit relates.

recipients overall benefit, in relation to a period residual fringe benefit in relation to a year of tax, means the benefit to which the fringe benefit relates, including that benefit as it was or will be provided at any time outside the year of tax.

recipients overall housing right, in relation to a housing fringe benefit in relation to a year of tax, means the housing right to which the fringe benefit relates, including that housing right as it subsisted, or will subsist, outside the year of tax.

recipients parking, in relation to a car parking fringe benefit, means the provision of the parking facilities to which the benefit relates;

recipients portion, in relation to an expense payment fringe benefit, means the recipients expenditure reduced by whichever of the following amounts is applicable:

(a) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution;

(b) the amount of the reimbursement referred to in paragraph 20(b).

recipients property, in relation to a property benefit, means the property to which the benefit relates.

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recipients rent, in relation to a housing fringe benefit in relation to an employee of an employer in relation to a year of tax, means the amount of any rent or other consideration paid to the provider or to the employer by the recipient or the employee in respect of the subsistence, during the year of tax, of the recipients housing right reduced by the amount of any reimbursement paid to the recipient in respect of that consideration.

recipients transport, in relation to an airline transport fringe benefit, means the transport and incidental services to which the benefit relates.

recipients unit of accommodation, in relation to a housing fringe benefit, means the unit of accommodation to which the fringe benefit relates.

recognised long service period, in relation to an employee of an employer, means:

(a) if the employee has an entitlement to long service leave under:
  (i) a law of the Commonwealth, a State, a Territory or a foreign country;
  (ii) an award, order, determination or industrial agreement in force under any such law;
  (iii) a scheme or arrangement by reason of the existence and nature of which the employer has secured an exemption from obligations to comply with any such law relating to long service leave;
  (iv) a contract of employment; or
  (v) the terms of appointment to an office;

  the period by reference to which that long service leave is determined;

(b) if:
  (i) long service leave may be made available to the employee as a privilege; and
  (ii) the availability of that leave is determined by reference to matters similar to matters by reference to which an

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entitlement of the kind referred to in paragraph (a), is ordinarily determined;

the period by reference to which that long service leave is determined; or

(c) in any other case:

(i) the period for which the employee has been employed by the employer; or

(ii) such longer period of employment (whether with that employer or any other employer) as might reasonably be expected to be taken into account in determining long service leave if the employee had an entitlement to long service leave.

recreation includes:

(a) amusement;

(b) sport or similar leisure-time pursuits; and

(c) recreation or amusement provided on, or by means of, a vehicle, ship, vessel or aircraft.

recreational facility means a facility for recreation, but does not include a facility for accommodation or a facility for drinking or dining.

reducible fringe benefit has the meaning given by section 65CC.

reimburse includes any act having the effect or result, direct or indirect, of a reimbursement.

relative has the same meaning as in the *Income Tax Assessment Act 1936*.

religious practitioner means:

(a) a minister of religion;

(b) a student at an institution who is undertaking a course of instruction in the duties of a minister of religion;

(c) a full-time member of a religious order; or

(d) a student at a college conducted solely for training persons to become members of religious orders.

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remote area housing fringe benefit means a housing fringe benefit that is a remote area housing fringe benefit for the purposes of section 29.

rent index number

(a) in relation to a quarter in relation to a State or Territory—means the index number for the rent sub-group of the Consumer Price Index published by the Australian Statistician in respect of that quarter for the capital city of that State or Territory; or

(b) in relation to a quarter in relation to Australia—means the index number for the rent sub-group of the Consumer Price Index, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

residential fuel means any form of fuel (including electricity) for use for domestic purposes.

residual benefit means a benefit that is a residual benefit by virtue of section 45.

residual fringe benefit means a fringe benefit that is a residual benefit.

retention period, in relation to a statutory evidentiary document in relation to an employer in relation to a year of tax, means the period that:

(a) commences on:

(i) where the statutory evidentiary document is maintained by or on behalf of the employer—the day on which the document commences to be maintained; or

(ii) in any other case—the day on which the statutory evidentiary document is given to the employer; and

(b) ends:

(i) in a case to which subparagraph (ii) does not apply—at the end of the period of 6 years commencing on the original assessment date in relation to an assessment of

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the fringe benefits taxable amount of the employer of the year of tax; or

(ii) if, at the end of that period of 6 years, an objection, or a request for amendment of an assessment (not being an objection) relating to a matter, or matters including a matter, to which the statutory evidentiary document is relevant, or a review or appeal arising out of such an objection, has not been determined or otherwise finally disposed of—on the day on which the objection (and any review or appeal arising out of it), the request, or review or appeal (and any appeal or further appeal arising out of it), as the case may be, is determined or so disposed of.

safety award benefit, in relation to an employee of an employer, means a benefit provided to the employee, in respect of the employment of the employee, solely by way of an award in recognition of the special achievements of the employee, or of the employee and another person or persons, in occupational health matters, or in occupational safety matters, relating to the employment of the employee, or of the employee and that other person or persons, but does not include:

(a) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*;

(b) a benefit provided under a non-arm's length arrangement; or

(c) a benefit provided under an arrangement where, having regard to:

(i) the form and substance of the arrangement;

(ii) the achievements recognised by the award; and

(iii) the eligibility of other employees of the employer to be awarded benefits in recognition of their special achievements in occupational health matters or in occupational safety matters; it would be concluded that the arrangement, or any part of the arrangement, was entered into by any of the parties to the arrangement for

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the sole or dominant purpose of enabling the employer to obtain the benefit of the application of section 58R.

salary or wages means assessable income, being salary or wages within the meaning of section 221A of the *Income Tax Assessment Act 1936*.

sales tax means sales tax imposed under a law of the Commonwealth.

Second Commissioner means a Second Commissioner of Taxation.

small expense payment fringe benefit means an expense payment fringe benefit where the recipients expenditure does not exceed $10.

spouse, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person.

standard year of tax means the year of tax commencing on 1 April 1987 or a subsequent year of tax.

stand-by value, in relation to the recipients transport, in relation to an airline transport fringe benefit, means:

(a) where the recipients transport is over a domestic route:

(i) if the recipients transport is on a scheduled passenger air service—37.5% of the economy air fare charged by the provider at or about the comparison time in respect of transport over that route;

(ii) if subparagraph (i) does not apply and Australian Airlines operates a scheduled passenger air service over that route at or about the comparison time—37.5% of the economy air fare charged by Australian Airlines at or about the comparison time in respect of transport over that route;

(iii) if neither subparagraph (i) nor (ii) applies and a carrier other than Australian Airlines operates a scheduled

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passenger air service over that route at or about the comparison time—37.5% of the lowest economy air fare charged by a carrier other than Australian Airlines at or about the comparison time in respect of transport over that route;

(iv) if none of subparagraphs (i), (ii) and (iii) apply and a combination of scheduled passenger air services operated by Australian Airlines at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the combination of economy air fares charged by Australian Airlines at or about the comparison time in respect of transport between the ports of embarkation and disembarkation;

(v) if none of subparagraphs (i), (ii), (iii) and (iv) apply and a combination of scheduled passenger air services operated by a carrier or carriers at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the lowest combination of economy air fares charged by carriers at or about the comparison time in respect of transport between the ports of embarkation and disembarkation; and

(vi) in any other case—75% of the notional value at the comparison time of the recipients transport; and

(b) where the recipients transport is over an international route:

(i) if the recipients transport is on a scheduled passenger air service and there is, at or about the comparison time, a providers published air fare in respect of the route—37.5% of the lowest providers published air fare in respect of that route;

(ii) if subparagraph (i) does not apply and a carrier operates a scheduled passenger air service over that route at or about the comparison time—37.5% of the lowest economy air fare charged by a carrier at or about the comparison time in respect of transport over that route;

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(iii) if neither subparagraph (i) nor (ii) applies and a combination of scheduled passenger air services operated by a carrier or carriers at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the lowest combination of economy air fares charged by carriers at or about the comparison time in respect of transport between the ports of embarkation and disembarkation; and

(iv) in any other case—75% of the notional value at the comparison time of the recipients transport.

statutory evidentiary document, in relation to an employer in relation to a year of tax (in this definition called the ***current year of tax***), means:

(a) a declaration or other document that is:

(i) given to the employer pursuant to a provision of Part III or of a definition in this subsection that is relevant to that Part; and

(ii) relevant for the purposes of determining:

(A) the taxable value of a fringe benefit provided in, or in respect of, the current year of tax in respect of the employment of an employee of the employer;

(AA) the notional taxable value of a benefit provided in, or in respect of, the current year of tax in respect of the employment of an employee of the employer; or

(B) whether a benefit provided in, or in respect of, the current year of tax in respect of the employment of an employee of the employer is an exempt benefit;

(aa) car records that:

(i) are maintained by the employer in relation to the current year of tax; or

(ii) were maintained by the employer in relation to an earlier year of tax but are relevant to the employer's

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liability under this Act in respect of the current year of tax;

(b) a document maintained by the employer in relation to the current year of tax as mentioned in paragraph 10A(b) or 10B(a) or sub-subparagraph 24(1)(c)(ia)(A) or 24(1)(c)(i)(B); and

(c) log book records or odometer records maintained in relation to a particular car where any of the following subparagraphs apply:

(i) both of the following conditions are satisfied:

(A) the current year of tax is not a log book year of tax of the employer in relation to the car;

(B) section 10A required the records to be maintained by or on behalf of the provider of a car fringe benefit in relation to the employer as a condition of the employer being entitled, in respect of the year of tax that was the last log book year of tax of the employer in relation to the car before the current year of tax, to a reduction in the operating cost of the car on account of business journeys undertaken in the car during that last log book year of tax;

(ii) both of the following conditions are satisfied:

(A) the current year of tax is not a log book year of tax of the recipient of a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit in relation to the car while it was held by the recipient during a period in the current year of tax;

(B) section 65E required the records to be maintained by or on behalf of the recipient as a condition of the employer being entitled, in relation to the year of tax that was the last log book year of tax of the recipient before the current year of tax, to a reduction of the taxable value of a fringe benefit on account of business

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journeys undertaken in the car in that last log book year of tax.

statutory food amount, in relation to a person, in relation to a period in relation to a year of tax, means the amount calculated in respect of that period:

(a) in a case where the person had attained the age of 12 years before the beginning of the year of tax—at the rate of $42 per week; and

(b) in any other case—at the rate of $21 per week.

statutory interest rate:

(a) in relation to a year of tax, means:

(i) if there is only 1 benchmark interest rate in relation to the year of tax—that rate;

(ii) if there are 2 or more benchmark interest rates in relation to the year of tax—the lower or lowest of those rates; or

(iii) if there is no benchmark interest rate in relation to the year of tax—such rate as is prescribed; and

(b) in relation to a time (in this paragraph referred to as the ***loan time***) before 1 July 1986, means:

(i) if the loan time occurred after 2 April 1986:

(A) if there is only 1 benchmark interest rate in relation to the loan time—that rate;

(B) if there are 2 or more benchmark interest rates in relation to the loan time—the lower or lowest of those rates; or

(C) if there is no benchmark interest rate in relation to the loan time—such rate as is prescribed;

(ii) if the loan time occurred during a period specified in the Schedule—the rate specified in the Schedule in relation to that period; and

(iii) if the loan time occurred before 1 January 1946—3.875% per annum.

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stratum unit, in relation to a dwelling, means a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles, being a unit that comprises:

(a) a part of a building containing the dwelling, being a part consisting of a flat or home unit; or

(b) a part of a parcel of land, being a part on which the building containing the dwelling is constructed.

superannuation fund means:

(a) an eligible superannuation fund within the meaning of Part IX of the *Income Tax Assessment Act 1936*; or

(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.

supplementary car rate, in relation to a year of tax, means the rate prescribed for the purposes of this definition in relation to the year of tax.

tangible property means goods and includes:

(a) animals, including fish; and

(b) gas and electricity.

tax-exempt body entertainment benefit means a benefit referred to in section 38.

tax-exempt body entertainment fringe benefit means a fringe benefit that is a tax-exempt body entertainment benefit.

taxi means a motor vehicle that is licensed to operate as a taxi.

tenancy period, in relation to a housing fringe benefit in relation to a year of tax, means the period during the year of tax when the housing right to which the fringe benefits relates subsisted.

this Act includes:

(a) the regulations; and

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(b) Part IVC of the *Taxation Administration Act 1953*, insofar as that Part relates to this Act;

transitional year of tax means the year of tax commencing on 1 July 1986.

travel agent, in relation to transport provided in respect of the employment of an employee, means a person who, at or about the time when that transport commenced to be provided, carried on a business that consisted of or included the sale principally to outsiders of airline tickets issued by airline operators.

travel diary, in relation to particular travel undertaken by the recipient of an expense payment fringe benefit, an airline transport fringe benefit, a property fringe benefit or a residual fringe benefit, means a diary or similar document, in the English language, in which, in relation to each activity engaged in by the recipient:

(a) while undertaking that travel; and

(b) in the course of producing assessable income of the recipient,

the recipient has made, before, at the time of, or as soon as reasonably practicable after, the conclusion of the activity, an entry setting out particulars of:

(c) the date on which the entry was made;

(d) the place where the activity was undertaken;

(e) the date and approximate time when the activity commenced;

(f) the duration of the activity; and

(g) the nature of the activity,

and includes a copy of such a diary or document.

Tribunal means the Administrative Appeals Tribunal.

trustee includes:

(a) a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law; or

(b) an executor, administrator or other personal representative of a deceased person; or

(c) a guardian or committee; or

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(d) a receiver or receiver and manager; or

(e) an official manager or liquidator of a company; or

(ea) an administrator, within the meaning of the Corporations Law, of a company; or

(eb) an administrator of a deed of company arrangement executed by a company under Part 5.3A of that Law; or

(f) a person:

(i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust;

(ii) acting in any fiduciary capacity; or

(iii) having the possession, control or management of any real or personal property of a person under any legal or other disability.

underlying business percentage, in relation to a car held by a person during a particular period (in this definition called the ***holding period***) in a year of tax, means the percentage calculated in accordance with the formula:

$$100 \times \frac{BK}{TK}$$

where:

BK is the number of whole kilometres travelled by the car during the holding period in respect of business journeys undertaken in the car; and

TK is the number of whole kilometres travelled by the car during the holding period.

unincorporated company means a company being an unincorporated association or other unincorporated body of persons.

unit of accommodation includes:

(a) a house, flat or home unit;

(aa) accommodation in a house, flat or home unit;

(b) accommodation in a hotel, hostel, motel or guesthouse;

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(c) accommodation in a bunkhouse or any living quarters;
(d) accommodation in a ship, vessel or floating structure; and
(e) a caravan or other mobile home.

unreimbursed expenditure means expenditure no part of which has been reimbursed.

unreimbursed interest means interest no part of which has been reimbursed.

waive includes release.

workers' compensation law means a law of the Commonwealth, a State, a Territory or a foreign country that provides for compensation or other benefits for or in respect of work-related trauma suffered by employees without requiring proof of any breach by, or by persons associated with, employers.

work-related counselling:
(a) in relation to an employee of an employer, means counselling attended by the employee; and
(b) in relation to an associate of an employee of an employer, means counselling attended by the associate where the associate is accompanied by the employee;

where all of the following conditions are satisfied:
(c) the attendance of:
(i) if paragraph (a) applies—the employee; and
(ii) if paragraph (b) applies—both the employee and the associate;

at the counselling gives effect to an objective, purpose, plan or policy devised, adopted or required to be followed, by the employer to:
(iii) improve or maintain the quality of the performance of employees' duties; or
(iv) prepare employees for retirement;
(d) the counselling relates to any of the following matters:
(i) safety;

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(ii) health;
(iii) fitness;
(iv) stress management;
(v) personal relationships;
(vi) retirement problems;
(vii) drug or alcohol abuse;
(viii) rehabilitation or prevention of work-related trauma or of other disease or injury;
(ix) first aid;
(x) any similar matter;

(e) there is no benefit that:
(i) is provided in respect of the employment of the employee;
(ii) consists of the provision of, or relates to, the counselling; and
(iii) is provided wholly or principally as a reward for services rendered or to be rendered by the employee.

work-related medical examination, in relation to a benefit provided in respect of the employment of an employee, means an examination or test carried out by, or on behalf of, an audiometrist or a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to ascertain the physiological or psychological condition of the employee for any or all of the following purposes:

(a) the commencement of the employment of the employee;
(b) the confirmation of probationary employment of the employee;
(c) a change in the duties or location of the employment of the employee;
(d) the employee becoming a member of a superannuation fund.

work-related medical screening, in relation to an employee of an employer, means an examination or test carried out by, or on behalf of, an audiometrist or a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in

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order to ascertain whether the employee has suffered, is suffering or is at risk of suffering, from work-related trauma, but does not include an examination or test that is not made available generally to all employees of the employer:

(a) who are likely to have suffered, be suffering or be at risk of suffering, from similar work-related trauma;

(b) who perform the duties of their employment at or near the place where the employee performs the duties of his or her employment; and

(c) whose duties of employment are similar to those of the employee.

work-related preventative health care, in relation to an employee of an employer, means any form of care provided by, or on behalf of, a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to prevent the employee suffering from work-related trauma, but does not include a form of care that is not made available generally to all employees of the employer:

(a) who are likely to be at risk of suffering from similar work-related trauma;

(b) who perform the duties of their employment at or near the place where the employee performs the duties of his or her employment; and

(c) whose duties of employment are similar to those of the employee.

work-related trauma, in relation to an employee, means:

(a) the injury of the employee (including the aggravation, acceleration or recurrence of an injury of the employee);

(b) the contraction, aggravation, acceleration or recurrence of a disease of the employee;

(c) the loss or destruction of, or damage to:

(i) an artificial limb or other artificial substitute;

(ii) a medical, surgical or similar aid or appliance used by the employee; or

(iii) clothing worn by the employee; or

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(d) the coming into existence, the aggravation, acceleration or recurrence of any other physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee;

that is related to any employment of the employee.

work-related travel, in relation to an employee, means:

(a) travel by the employee between:

(i) the place of residence of the employee; and

(ii) the place of employment of the employee or any other place from which or at which the employee performs duties of his or her employment; or

(b) travel by the employee that is incidental to travel in the course of performing the duties of his or her employment.

year of income has the same meaning as in the *Income Tax Assessment Act 1936*.

year of tax means:

(a) the period commencing on 1 July 1986 and ending on 31 March 1987;

(b) the year commencing on 1 April 1987; and

(c) each subsequent year commencing on 1 April.

(2) In the definition of ***business premises*** in subsection (1), ***premises*** includes a ship, vessel, floating structure, aircraft or train.

136A Reimbursement etc. of tax not to be regarded as consideration in respect of benefit etc.

For the purposes of this Act, an amount paid (including an amount deemed by section 145 to have been paid) in respect of fringe benefits tax shall not be regarded as also being consideration for or in respect of:

(a) the provision of a benefit; or

(b) any other matter.

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137 Salary or wages

(1) For the purpose only of ascertaining whether a person is an employee or an employer within the meaning of this Act, where:

(a) a benefit is provided by a person (in this subsection referred to as the ***first person***) to, or to an associate of, another person (in this subsection referred to as the ***second person***);

(b) but for this subsection, the benefit would not be regarded as having been provided in respect of the employment of the second person; and

(c) either of the following conditions is satisfied:

(i) if the benefit were provided by the first person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the first person to the second person;

(ii) all of the following conditions are satisfied:

(A) subparagraph (i) does not apply in relation to the benefit;

(B) the first person is an associate of a third person or the benefit is provided under an arrangement between the first person and a third person;

(C) if the benefit were provided by the third person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the third person to the second person,

section 221A of the *Income Tax Assessment Act 1936* applies as if the benefit were salary or wages paid to the second person by:

(d) in a case to which subparagraph (c)(i) applies—the first person; or

(e) in a case to which subparagraph (c)(ii) applies—the third person.

(2) For the purposes of this Act (other than the definition of ***current employee*** in subsection 136(1)), the definition of ***salary or wages*** in section 221A of the *Income Tax Assessment Act 1936* applies as if the reference in that definition to an employee were a reference to a current employee within the meaning of this Act.

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138 Double counting of fringe benefits

(1) Where:

(a) a person (in this subsection referred to as the ***employee***) is both:

(i) an employee of an employer (in this section referred to as the ***first employer***); and

(ii) an employee of one or more associates of the first employer;

(b) a benefit is provided to, or to an associate of, the employee by the first employer; and

(c) the benefit is a fringe benefit in relation to the first employer,

the benefit is not a fringe benefit in relation to an employer who is an associate of the first employer.

(2) For the purposes of this Act, where, in a case to which subsection (1) does not apply, a benefit provided to, or to an associate of, an employee would, but for this subsection, be a fringe benefit in relation to 2 or more employers, the benefit shall be taken to be a fringe benefit in relation to such one of those employers as the Commissioner determines and not in relation to any other of those employers.

(3) For the purposes of this Act, where a benefit in respect of the employment of an employee is provided jointly to the employee and one or more associates of the employee, the benefit shall be deemed to have been provided to the employee only.

(4) For the purposes of this Act, where a benefit in respect of the employment of an employee is provided jointly to 2 or more associates of the employee but not to the employee, the benefit shall be taken to have been provided to such one of those associates as the Commissioner determines and not to any other of those associates.

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138A Benefit provided in respect of a year of tax

A reference in this Act to a benefit provided in respect of a year of tax is a reference to a benefit that is deemed to be provided in respect of the year of tax.

138B Benefit provided in respect of the employment of an employee

A reference in this Act to a benefit provided in respect of the employment of an employee is a reference to a benefit provided, or originally provided, as the case may be, in respect of that employment.

138C Application or use of benefit

A reference in this Act to the application or use of a benefit is a reference to the application or use of:

(a) in the case of an airline transport benefit—the recipients transport;

(b) in the case of a board benefit—the recipients meal;

(c) in the case of a loan benefit—the loan to which the benefit relates;

(d) in the case of a property benefit—the recipients property; or

(e) in the case of a residual benefit—the recipients benefit.

139 Date on which return furnished

Where an employer furnishes, on different dates, 2 or more returns to the Commissioner under this Act relating to a year of tax, a reference in this Act to the day on which the return relating to that year was furnished is a reference to the earliest of those dates.

140 Eligible urban areas

(1) In this Act:

(a) a reference to an eligible urban area is a reference to:

(i) an area that:

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(A) is situated in an area described in Schedule 2 to the *Income Tax Assessment Act 1936*; and

(B) is an urban centre with a census population of not less than 28,000; and

(ii) an area that:

(A) is not situated in an area described in Schedule 2 to the *Income Tax Assessment Act 1936*; and

(B) is an urban centre with a census population of not less than 14,000; and

(b) a reference to a location that is adjacent to an eligible urban area is a reference to a location that, as at the date of commencement of this section:

(i) was situated less than 40 kilometres, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of less than 130,000; or

(ii) was situated less than 100 kilometres, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of not less than 130,000.

(2) For the purposes of this section, the distance, by the shortest practicable surface route, between a location (in this subsection referred to as the ***tested location***) and the centre point of an eligible urban area is:

(a) where there is only one location within the eligible urban area from which distances between the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and that location; and

(b) where there are 2 or more locations within the eligible urban area from which distances between parts of the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and the one of those locations that is in the principal one of those parts.

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(3) In this section:

census population, in relation to an urban centre, means the census count on an actual location basis of the population of that urban centre specified in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled "Persons and Dwellings in Local Government Areas and Urban Centres".

surface route means a route other than an air route.

urban centre means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled "Persons and Dwellings in Local Government Areas and Urban Centres".

(4) If, but for this subsection, the whole or any part of a provision of this Act or of the *Fringe Benefits Tax Act 1986* would be invalid by reason of the enactment of paragraph (1)(a) of this section, this Act has effect as if that paragraph were omitted and the following paragraph were substituted:

"(a) a reference to an eligible urban area is a reference to an area that is an urban centre with a census population of not less than 14,000; and".

141 Housing loans, prescribed interests in land or stratum units and proprietary rights in respect of dwellings

(1) For the purposes of this Act, where:

(a) a loan is made to, and used by, a person (whether in his or her own right or jointly with his or her spouse) wholly:

(i) to enable the person to acquire a prescribed interest in land on which a building constituting or containing a dwelling was subsequently to be constructed or to acquire a prescribed interest in land and construct, or

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complete the construction of, such a building on the land;

(ii) to enable the person to construct, or complete the construction of, a building constituting or containing a dwelling on land in which the taxpayer held a prescribed interest;

(iii) to enable the person to acquire a prescribed interest in land on which there was a building constituting or containing a dwelling;

(iv) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling;

(v) to enable the person to extend a building constituting or containing a dwelling, being a building constructed on land in which the taxpayer held a prescribed interest, by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be;

(vi) in a case where the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling;

(vii) to enable the person to acquire a proprietary right in respect of a dwelling, being a flat or a home unit; or

(viii) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in a preceding subparagraph of this paragraph; and

(b) at the time the loan was made, the dwelling was used or proposed to be used as the person's usual place of residence,

the loan shall be taken to be a housing loan relating to the dwelling.

(2) For the purposes of this Act:

(a) where:

(i) a person acquires, holds or held an estate in fee simple in land or in a stratum unit or 2 or more persons acquire, hold or held such an estate in land or in a stratum unit as joint tenants or tenants in common;

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(ii) a person acquires, holds or held an interest in land or in a stratum unit as lessee or licensee, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as lessees or licensees, under a lease or licence, and the Commissioner is satisfied that the lease or licence gives or gave reasonable security of tenure to the lessee or licensee, or to the lessees or licensees, for a period of, or for periods aggregating, not less than 10 years;

(iii) a person acquires, holds or held an interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit, or 2 or more persons acquired, hold or held an interest in land or in a stratum unit as purchasers of such an estate in the land or in the stratum unit as joint tenants or tenants in common, under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments; or

(iv) a person acquires, holds or held an interest in land or in a stratum unit as purchaser, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as purchasers, of the right to be granted a lease of the land or of the stratum unit under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, for the lease to be made at a future time or by instalments and the Commissioner is satisfied that the lease will give or gave reasonable security of tenure, to the lessee or lessees for a period of, or for periods aggregating, not less than 10 years,

that person or those persons shall be taken to acquire or hold, or to have held, as the case may be, a prescribed interest in that land or in that stratum unit, as the case requires; and

(b) where a person acquires, holds or held, or 2 or more persons acquire, hold or held jointly, a right of occupancy of a dwelling, being a flat or a home unit, arising by virtue of the acquiring or holding of shares, or by virtue of a contract to

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purchase shares, in a company that owns or owned the building that contains the flat or home unit, that person, or those persons, as the case requires, shall be taken to acquire or hold, or to have held, as the case may be, a proprietary right in respect of the dwelling;

(c) where:

(i) a loan that but for this paragraph would be a housing loan relating to a dwelling is made by a person (in this paragraph referred to as ***the lender***) to another person (in this paragraph referred to as ***the borrower***);

(ii) the lender does not maintain an account in relation to the loan that is separate and apart:

(A) from any account kept by the lender in relation to any moneys deposited with the lender or applied by the lender on behalf of the borrower otherwise than for the purpose of repaying the loan, in whole or in part, or of paying, in whole or in part, interest that has accrued or will accrue in respect of the loan; and

(B) from any account kept by the lender in relation to any other loan made by the lender to the borrower,

the loan referred to in subparagraph (i) is not a housing loan relating to a dwelling.

(3) For the purposes of this Act, a loan shall not be taken to be a housing loan relating to a dwelling except as provided in this section.

141A Benefits incidental to acquisition or sale of prescribed interests in land or stratum units and proprietary rights in respect of dwellings

(1) For the purposes of this Act, recipients expenditure shall be taken to be incidental to the acquisition or sale of a prescribed interest in land or a stratum unit or of a proprietary right in respect of a dwelling if, and only if:

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(a) in the case of an acquisition of a prescribed interest in land on which the employee or associate concerned proposes to construct, or complete the construction of, a building constituting or containing a dwelling—the recipients expenditure is in respect of any of the following matters:

(i) stamp duty;

(ii) legal services;

(iii) agent's services;

(iv) discharge of a mortgage;

(v) expenses of borrowing;

(vi) any similar matter;

being a matter of a capital nature that is incidental to the construction, or the completion of the construction, of that building;

(b) in all cases—the recipients expenditure is in respect of any of the following matters:

(i) stamp duty;

(ii) advertising;

(iii) legal services;

(iv) agent's services;

(v) discharge of a mortgage;

(vi) expenses of borrowing;

(vii) any similar matter;

being a matter of a capital nature that is incidental to the acquisition or sale of the interest or right; and

(c) in all cases—the recipients expenditure is not in respect of:

(i) interest;

(ii) repayments of principal;

(iii) loan service fees;

(iv) the discharge of a mortgage, or expenses of borrowing, where the money borrowed was not applied wholly in respect of the land, stratum unit or proprietary right or in respect of a building on the land;

(v) insurance; or

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(vi) rates.

(2) For the purposes of this Act, a recipients benefit shall be taken to be incidental to the acquisition or sale of a prescribed interest in land or a stratum unit or of a proprietary right in respect of a dwelling if, and only if:

(a) the recipients benefit consists of any of the following matters:

(i) advertising;

(ii) legal services;

(iii) agent's services;

(iv) services related to borrowing;

(v) any similar matter;

being a matter of a capital nature that is incidental to the acquisition or sale of the interest or right; and

(b) the recipients benefit does not consist of or relate to:

(i) insurance; or

(ii) services related to borrowing where the money borrowed was not applied wholly in respect of the land, stratum unit or proprietary right or in respect of a building on the land.

142 Remote area housing

(1) In this Act, a reference, in relation to a year of tax in relation to an employee of an employer, to a remote area housing loan connected with a dwelling is a reference to a housing loan relating to the dwelling where:

(a) during the whole of the period (in this subsection referred to as the ***occupation period***) in the year of tax when the employee occupied or used the dwelling as his or her usual place of residence:

(i) the dwelling was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

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(ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;

(b) the common conditions set out in subsection (2E) are satisfied in relation to the occupation period; and

(d) the loan was not made to the employee pursuant to:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60.

(1A) In this Act, a reference, in relation to a year of tax in relation to an employee of an employer, to remote area housing rent connected with a unit of accommodation is a reference to rent or other consideration payable in respect of the subsistence of a lease or licence in respect of the unit of accommodation where:

(a) during the whole of the period (in this subsection referred to as the ***occupation period***) in the year of tax when the employee occupied or used the unit of accommodation as his or her usual place of residence:

(i) the unit of accommodation was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

(ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;

(b) the common conditions set out in subsection (2E) are satisfied in relation to the occupation period; and

(d) the lease or licence was not granted under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the

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employer to obtain the benefit of the application of section 60.

(2) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to remote area residential property is a reference to property that consists of an estate or interest in land:

(aa) on which is situated a dwelling occupied or used by the employee immediately after the provision time as his or her usual place of residence; or

(ab) on which the employee proposes, as at the provision time, to construct, or complete the construction of, a dwelling to be occupied or used by the employee as his or her usual place of residence;

where:

(ac) if paragraph (ab) applies—the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:

(i) commence the construction, or commence the completion of the construction, of the dwelling within 6 months after the provision time; and

(ii) occupy or use the dwelling as his or her usual place of residence within 18 months after the provision time;

(a) at the provision time:

(i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

(ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;

(b) the common conditions set out in subsection (2E) are satisfied in relation to the provision time; and

(d) the property was not provided to the employee pursuant to:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for

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purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14A of Part III.

(2A) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to a remote area residential property option fee is a reference to property that consists of a fee paid to the employee by way of consideration in respect of the grant of an option to purchase an estate or interest in land:

(a) held by the employee; and

(b) on which:

(i) there is a dwelling occupied or used by the employee immediately after the provision time as his or her usual place of residence; or

(ii) the employee proposes, as at the provision time, to construct, or complete the construction of, a dwelling to be occupied or used by the employee as his or her usual place of residence;

where:

(c) if subparagraph (b)(ii) applies—the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:

(i) commence the construction, or commence the completion of the construction, of the dwelling within 6 months after the provision time; and

(ii) occupy or use the dwelling as his or her usual place of residence within 18 months after the provision time;

(d) at the provision time:

(i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

(ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;

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(e) the option was granted at or before the time the employee acquired the estate or interest and constituted a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;

(f) the common conditions set out in subsection (2E) are satisfied in relation to the provision time; and

(g) the property was not provided to the employee under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14A of Part III.

(2B) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to remote area residential property repurchase consideration is a reference to property that consists of an amount paid to the employee by way of consideration for the purchase of an estate or interest in land:

(a) held by the employee; and

(b) on which:

(i) there is a dwelling occupied or used by the employee immediately before the provision time as his or her usual place of residence; or

(ii) the employee proposed, as at the time the employee acquired the estate or interest, to construct, or complete the construction of, a dwelling to be occupied or used by the employee as his or her usual place of residence;

where:

(c) if subparagraph (b)(ii) applies—the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:

(i) commence the construction, or commence the completion of the construction, of the dwelling within 6 months after the time the employee acquired the estate or interest; and

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(ii) occupy or use the dwelling as his or her usual place of residence within 18 months after the time the employee acquired the estate or interest;

(d) at the provision time:

(i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

(ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;

(e) at or before the time the employee acquired the estate or interest, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;

(f) the purchase by the provider of the fringe benefit of the estate or interest is in accordance with that obligation;

(g) the common conditions set out in subsection (2E) are satisfied in relation to the provision time; and

(h) the property was not provided to the employee under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14B of Part III.

(2C) In this Act, a reference, in relation to an expense payment fringe benefit in relation to a year of tax in relation to an employee of an employer, to recipients expenditure in respect of remote area residential property is a reference to recipients expenditure that is incurred wholly:

(a) to enable the employee to acquire an estate or interest in land on which a dwelling was subsequently to be constructed or to acquire an estate or interest in land and construct, or complete the construction of, a dwelling on the land;

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(b) to enable the employee to construct, or complete the construction of, a dwelling on land in which the employee holds an estate or interest;

(c) to enable the employee to acquire an estate or interest in land on which there is a dwelling; or

(d) to enable the employee to extend a dwelling, being a dwelling constructed on land in which the employee holds an estate or interest, by adding a room or part of a room to the dwelling, as the case may be;

where:

(e) if paragraph (a) or (b) applies:

(i) at the time the recipients expenditure was incurred, the employee proposed to occupy or use the dwelling as his or her usual place of residence; and

(ii) the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:

(A) commence the construction, or commence the completion of the construction, of the building constituting or containing the dwelling within 6 months after the time the recipients expenditure was incurred; and

(B) occupy or use the dwelling concerned as his or her usual place of residence within 18 months after the time the recipients expenditure was incurred;

(f) if paragraph (c) or (d) applies—as soon as reasonably practicable after the time the recipients expenditure was incurred, the dwelling concerned was occupied or used by the employee as his or her usual place of residence;

(g) at the time the recipients expenditure was incurred:

(i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

(ii) the employee was a current employee of the employer and the usual place of employment of the employee was

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not at a location in, or adjacent to, an eligible urban area;

(h) the common conditions set out in subsection (2E) are satisfied in relation to the time the recipients expenditure was incurred; and

(j) the fringe benefit was not provided to the employee under:

(i) a non-arm's length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14A of Part III.

(2D) In this Act, a reference, in relation to a property fringe benefit or an expense payment fringe benefit in relation to a year of tax in relation to an employee of an employer, to a recognised remote area housing obligation restricting the disposal of an estate or interest in land is a reference to a contractual obligation entered into by the employee with the employer or an associate of the employer not to dispose of the estate or interest concerned except:

(a) to the employer or an associate of the employer; and

(b) for a price specified in, or ascertained in accordance with, the contract concerned;

at any time during a period specified in the contract concerned, being a period that ends not earlier than 5 years after:

(c) in the case of a property fringe benefit where the recipients property is remote area residential property repurchase consideration—the time the employee acquired the estate or interest concerned;

(d) in the case of any other property fringe benefit—the provision time; or

(e) in the case of an expense payment fringe benefit—the time the recipients expenditure was incurred.

(2E) For the purposes of the application of this section to a fringe benefit in relation to a year of tax in relation to an employee of an

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employer, the common conditions in relation to a particular period or in relation to a particular time are as follows:

(a) it is customary for employers in the industry in which the employee was employed during that period or at that time, as the case may be, to provide housing assistance for their employees;

(b) it would be concluded that it was necessary for the employer, during the year of tax, to provide or arrange for the provision of housing assistance for employees of the employer because:

(i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence;

(ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or

(iii) it is customary for employers in the industry in which the employee was employed during that period or at that time, as the case may be, to provide housing assistance for their employees.

(3) A reference in this section to housing assistance is a reference to:

(a) the provision of residential accommodation without charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned;

(aa) the making of payments in discharge or reimbursement of rent or other consideration incurred by a person in respect of the subsistence of a lease or licence in respect of a unit of accommodation;

(b) the making of a housing loan relating to a dwelling, being a loan in respect of which the rate of interest payable is less than the market rate of interest in respect of the loan concerned;

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(c) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of interest incurred in respect of a housing loan relating to a dwelling;

(d) the provision of residential property without charge or for consideration that is less than the market value of the property at the provision time.

(e) the making of payments in discharge or reimbursement of expenditure incurred by a person in acquiring or constructing residential property; or

(f) the provision of a residential property ownership scheme involving:

(i) the granting by employees of options to purchase employees' residential property; or

(ii) the purchase of employees' residential property.

(4) Nothing in section 74 prevents the amendment of an assessment at any time for the purpose of giving effect to paragraph (2)(ac), (2A)(c), (2B)(c) or (2C)(e).

142A Benefits relating to transport

(1) For the purposes of this Act, recipients expenditure that is in respect of, or a recipients benefit that consists of:

(a) accident insurance, airport or departure tax, a passport, a visa or a vaccination; or

(b) any similar matter or thing;

in connection with transport shall be taken to be in respect of the provision of, or to consist of, transport.

(2) For the purposes of this Act, where:

(a) transport is between a particular place and another place;

(b) the transport is provided in consecutive stages; and

(c) apart from this subsection, a particular matter or thing would be in respect of only one, or only some, of those stages;

the matter or thing shall be taken to be in respect of the provision of that transport.

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142B Employee's new place of employment

Where a provision of this Act refers to an employee who is required to change his or her usual place of residence in order to perform the duties of his or her employment, a reference in the provision to the employee's new place of employment shall not be taken as implying that the employee was employed when he or she resided at his or her former usual place of residence.

142C Eligible shared accommodation in a house, flat or home unit

For the purposes of this Act, where:

(a) the recipients unit of accommodation (in this section called the ***shared unit of accommodation***) in relation to a housing fringe benefit in relation to an employee in relation to a year of tax consists of accommodation in a house, flat or home unit; and

(b) throughout the tenancy period, there ordinarily subsisted 3 or more other housing fringe benefits, where each of those other housing fringe benefits was a housing fringe benefit:

(i) where the recipients unit of accommodation consisted of accommodation in the house, flat or home unit; and

(ii) in relation to a different employee;

the shared unit of accommodation shall be taken to be eligible shared accommodation in the house, flat or home unit in relation to the year of tax.

142D Eligible accommodation in an employees hostel

For the purposes of this Act, where:

(a) the recipients unit of accommodation in relation to a housing fringe benefit in relation to an employee in relation to an employer in relation to a year of tax consists of accommodation in a hostel or a similar building that is operated wholly or principally for the purpose of providing accommodation for employees of:

(i) the employer; or

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(ii) if the employer is a company—the employer or a company that is related to the employer; and

(b) the recipient is not entitled to exclusive use of:

(i) cooking facilities in the hostel or building; or

(ii) more than one bedroom in the hostel or building;

the recipients unit of accommodation shall be taken to be eligible accommodation in an employees hostel in relation to the year of tax.

143 Remote area holiday transport

(1) For the purposes of this Act:

(a) the recipients expenditure in relation to an expense payment fringe benefit;

(aa) the recipients property in relation to a property fringe benefit; or

(b) the recipients benefit in relation to a residual fringe benefit,

in relation to an employer, in relation to an employee, in relation to a year of tax shall be taken to be in respect of remote area holiday transport if:

(c) in the case of an expense payment fringe benefit—the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;

(ca) in the case of a property benefit—the recipients property consists of meals in connection with transport;

(d) in the case of a residual fringe benefit—the recipients benefit consists of:

(i) the provision of transport or accommodation in connection with transport; or

(ii) the receipt of an allowance in respect of the cost of obtaining transport, or of obtaining meals or accommodation in connection with transport;

(e) the transport, accommodation or meals is for a family member;

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(f) apart from temporary absences, the employee performs the duties of his or her employment at a place in a State or internal Territory but not at a location in, or adjacent to, an eligible urban area;

(g) the transport is provided wholly or principally to enable the family member to have a holiday for a period of not less than 3 days;

(h) if the transport is for the employee:

(i) the transport is provided while the employee is on recreation leave, being recreation leave of not less than 3 working days; and

(ii) at the completion of that recreation leave, the employee resumes the duties of that employment at the place referred to in paragraph (f);

(j) either of the following subparagraphs applies:

(i) the transport is between:

(A) a place at or near the place referred to in paragraph (f); and

(B) another place;

(ii) the transport is for the spouse, or a child, of the employee, being a spouse or a child of the employee who does not live with the employee at or near the place referred to in paragraph (f), and the transport is between:

(A) a place where the spouse or child, as the case may be, meets the employee; and

(B) another place;

(ja) if the transport is for the spouse, or a child, of the employee—the transport is not provided to enable the spouse or child to accompany the employee:

(i) while the employee is undertaking travel in the course of performing the duties of his or her employment; and

(ii) where the circumstances referred to in paragraph 51AG(1)(c), (d) or (e) of the *Income Tax Assessment Act 1936* apply; and

(k) either of the following conditions is satisfied:

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(i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;

(ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient.

(2) For the purposes of this Act, where:

(a) the recipients expenditure in relation to an expense payment fringe benefit;

(b) the recipients property in relation to a property fringe benefit; or

(c) the recipients benefit in relation to a residual fringe benefit;

is in respect of remote area holiday transport, the fringe benefit shall be taken to be a remote area holiday transport fringe benefit.

(3) Where:

(a) one or more remote area holiday transport fringe benefits in relation to a particular employee in relation to a year of tax relate to a holiday for a particular family member; and

(b) the transport to which that fringe benefit or those fringe benefits relates does not consist wholly of transport, by the most direct practicable route, between:

(i) a place at or near the place referred to in paragraph (1)(f); and

(ii) a place in a State or internal Territory, being:

(A) a place at or near the place that was the employee's usual place of residence immediately before the employee began employment at the place referred to in paragraph (1)(f); or

(B) the capital city of the State or Territory in which the place referred to in paragraph (1)(f) is located;

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the benchmark travel amount in relation to that fringe benefit or those fringe benefits in relation to that holiday for that family member is:

(c) if either of the following subparagraphs apply:

(i) the employee was entitled to be provided with capital city holiday transport assistance pursuant to the provisions of an industrial instrument relating to the employment of the employee;

(ii) there was a custom in the industry in which the employee was employed such that the employee could have been provided with capital city holiday transport assistance by the employer;

the sum of:

(iii) the return economy air fare in respect of the air service, or the total of the return economy air fares in respect of the air services, to which that capital city holiday transport assistance relates; and

(iv) the expenses that could reasonably be expected to have been incurred in respect of the family member (whether by way of airport transfer, meals, accommodation, accident insurance, airport or departure tax or any similar matter or thing) in accordance with the entitlement or custom to which that capital city holiday transport assistance relates and in connection with travelling on that return service or those return services;

(d) if paragraph (c) does not apply but the following conditions are satisfied in respect of one or more return scheduled passenger air services:

(A) the service was operated, at or about the time the holiday commenced, between eligible places;

(B) the nature of the service is such that it would not be unreasonable for the family member to travel on the service;

the lowest of the return economy air fares for those services;

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(e) if neither paragraph (c) nor (d) applies but the following conditions are satisfied in respect of one or more combinations of return scheduled passenger air services:

(A) the combination was operated at or about the time the holiday commenced and would have enabled a person to travel between eligible places;

(B) the nature of the combination, and of the services in the combination, is such that it would not be unreasonable for the family member to travel on the services;

the total of the return economy air fares for the combination that has the lowest total of economy return air fares; or

(f) in any other case—an amount equal to the lowest return fare, or combination of return fares, in respect of travel services in respect of which the following conditions are satisfied:

(A) the service, or combination of services, was operated at or about the time the holiday commenced and would have enabled a person to travel between eligible places;

(B) the nature of the service, or the nature of the combination and of the services included in the combination, is such that it would not be unreasonable for the family member to travel on the service or services.

(4) For the purposes of the application of this section in relation to a benefit provided in respect of the employment of an employee:

(a) a reference in this section to travel, or to the operation of a service or services, between eligible places is a reference to travel, or the operation of a service or services, between:

(i) a place at or near the place referred to in paragraph (1)(f); and

(ii) the capital city of the State or Territory in which the place referred to in paragraph (1)(f) is located;

(b) a reference in this section to the provision of capital city holiday transport assistance to the employee is a reference to:

(i) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of a return scheduled passenger air service or combination of

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return scheduled passenger air services operated by a carrier or carriers between eligible places; or

(ii) the provision of transport on such a service or services;

(c) Adelaide shall be treated as the capital city of the Northern Territory; and

(d) Perth shall be treated as the capital city of the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

143A Relocation transport

For the purposes of this Act, where:

(a) any of the following benefits is provided in, or in respect of, a year of tax to an employee, or to an associate of the employee, in respect of the employment of the employee:

(i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of transport;

(ii) an expense payment benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;

(iii) a property benefit where the recipients property consists of meals in connection with transport;

(iv) a residual benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;

(b) the transport, meals or accommodation is for a family member;

(c) the transport is required solely because:

(i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;

(ii) the employee, having lived away from his or her usual place of residence in order to perform the duties of that employment, is required to return to his or her usual place of residence:

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(A) in order to perform those duties; or

(B) because the employee has ceased to perform those duties; or

(iii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;

(d) the transport is provided to enable a family member to:

(i) if subparagraph (c)(i) applies—take up residence at or near the place where the employee performs the duties of that employment while living away from his or her usual place of residence;

(ii) if subparagraph (c)(ii) applies—take up residence at the employee's usual place of residence; or

(iii) if subparagraph (c)(iii) applies—take up residence at the employee's new usual place of residence;

(e) if the transport is for the spouse, or a child, of the employee—the transport is not provided to enable the spouse or child to accompany the employee:

(i) while the employee is undertaking travel in the course of performing the duties of that employment; and

(ii) where the circumstances referred to in paragraph 51AG(1)(c), (d) or (e) of the *Income Tax Assessment Act 1936* apply;

(f) if the transport is for the employee—the transport is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and

(g) if subparagraph (c)(iii) applies—the benefit is not provided under a non-arm's length arrangement;

the benefit shall be taken to be in respect of relocation transport.

143B Overseas employees

For the purposes of this Act, where:

(a) an employee's usual place of residence is in a particular country (in this section called the ***home country***);

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(b) apart from temporary absences, the employee performs the duties of his or her employment at:

(i) a place outside the home country; or

(ii) 2 or more places outside the home country; and

(c) the employee is required to live outside the home country in order to perform the duties of his or her employment at the place or places referred to in paragraph (b);

the following provisions have effect:

(d) the period commencing when the employee commences to perform the duties of his or her employment at:

(i) if subparagraph (b)(i) applies—the place referred to in that subparagraph; or

(ii) if subparagraph (b)(ii) applies—the first place referred to in that subparagraph at which the employee performs those duties;

and ending when the employee ceases, apart from any temporary absences, to perform those duties at:

(iii) if subparagraph (b)(i) applies—the place referred to in that subparagraph; or

(iv) if subparagraph (b)(ii) applies—the last place referred to in that subparagraph at which the employee performs those duties;

shall be taken to be the overseas posting period of the employee;

(e) the employee shall be taken to be an overseas employee during the overseas posting period;

(f) the place, or each of the places, referred to in paragraph (b) shall be taken to be an overseas employment place.

143C Overseas employment holiday transport

(1) For the purposes of this Act, where:

(a) any of the following fringe benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

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(i) an expense payment fringe benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;

(ii) a property fringe benefit where the recipients property consists of meals in connection with transport;

(iii) a residual fringe benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;

(b) the transport, accommodation or meals is for a family member,

(c) the transport is provided wholly or principally to enable the family member to have a holiday for a period of not less than 3 days;

(d) at the time (in this section called the ***outbound travel time***) immediately before the commencement of travel undertaken by the family member in connection with that holiday:

(i) the employee was an overseas employee; and

(ii) disregarding days of recreation leave, the employee's overseas posting period was a period of not less than 28 days;

(e) if the transport is for the employee:

(i) the transport is provided while the employee is on recreation leave, being recreation leave of not less than 3 working days; and

(ii) at the completion of that recreation leave, the employee resumes the duties of that employment at the place that was the employee's overseas employment place at the outbound travel time;

(f) either of the following subparagraphs applies:

(i) the transport is between:

(A) a place at or near the place that was the employee's overseas employment place at the outbound travel time; and

(B) another place;

(ii) the transport is for the spouse, or a child, of the employee, being a spouse or a child of the employee

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who does not live with the employee at the place that was the employee's overseas employment place at the outbound travel time, and the transport is between:

(A) a place where the spouse or child, as the case may be, meets the employee; and

(B) another place;

(g) in the case of an expense payment fringe benefit—the recipients expenditure is not in respect of remote area holiday transport;

(h) in the case of a property fringe benefit—the recipients property is not in respect of remote area holiday transport;

(j) in the case of a residual fringe benefit—the recipients benefit is not in respect of remote area holiday transport;

(k) if the transport is for the spouse, or a child, of the employee—the transport is not provided to enable the spouse or child to accompany the employee:

(i) while the employee is undertaking travel in the course of performing the duties of his or her employment; and

(ii) where the circumstances referred to in paragraph 51AG(1)(c), (d) or (e) of the *Income Tax Assessment Act 1936* apply; and

(m) either of the following conditions is satisfied:

(i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;

(ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;

the following provisions have effect:

(n) the fringe benefit shall be taken to be in respect of overseas employment holiday transport;

(p) the benchmark travel amount in relation to the family member in relation to the fringe benefit is:

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(i) if either of the following sub-subparagraphs apply:

(A) the employee was entitled to be provided with home country holiday transport assistance pursuant to the provisions of an industrial instrument relating to the employment of the employee;

(B) there was a custom in the industry in which the employee was employed such that the employee could have been provided with home country holiday transport assistance by the employer;

the sum of:

(C) the return economy air fare in respect of the air service, or the total of the return economy air fares in respect of the air services, to which that home country holiday transport assistance relates; and

(D) the expenses that could reasonably be expected to have been incurred in respect of the family member (whether by way of airport transfer, meals, accommodation, accident insurance, airport or departure tax, or any similar matter or thing) in accordance with the entitlement or custom to which that home country holiday transport assistance relates and in connection with travelling on that return service or those return services;

(ii) if subparagraph (i) does not apply but the following conditions are satisfied in respect of one or more return scheduled passenger air services:

(A) the service was operated, at or about the outbound travel time, between eligible places;

(B) the nature of the service is such that it would not be unreasonable for the family member to travel on the service;

the lowest of the return economy air fares for those services;

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(iii) if neither subparagraph (i) nor (ii) applies but the following conditions are satisfied in respect of one or more combinations of return scheduled passenger air services:

(A) the combination was operated at or about the outbound travel time and would have enabled a person to travel between eligible places;

(B) the nature of the combination, and of the services in the combination, is such that it would not be unreasonable for the family member to travel on the services;

the total of the economy return air fares for the combination that has the lowest total of economy return air fares; or

(iv) in any other case—an amount equal to the lowest return fare, or combination of return fares, in respect of travel services in respect of which the following conditions are satisfied:

(A) the service, or combination of services, was operated at or about the outbound travel time and would have enabled a person to travel between eligible places;

(B) the nature of the service, or the nature of the combination and of the services included in the combination, is such that it would not be unreasonable for the family member to travel on the service or services;

(q) if the transport for a particular family member consists wholly of transport:

(i) in respect of a holiday taken by the family member; and

(ii) by the most direct practicable route between:

(A) a place at or near the place that was the employee's overseas employment place at the outbound travel time; and

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(B) a place in the country in which the employee's usual place of residence during the overseas posting period was located;

the fringe benefit shall be taken to be a home country fringe benefit in relation to the holiday for the family member.

(2) For the purposes of the application of this section in relation to a benefit provided in respect of the employment of an employee:

(a) a reference in this section to travel, or to the operation of a service or services, between eligible places is a reference to travel, or the operation of a service or services, between:

(i) a place at or near the place that was the employee's overseas employment place at the outbound travel time; and

(ii) a place at or near the usual place of residence of the employee during the overseas posting period; and

(b) a reference in this section to the provision of home country holiday transport assistance to the employee is a reference to:

(i) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of a return scheduled passenger air service, or combination of return scheduled passenger air services, operated by a carrier or carriers between eligible places; or

(ii) the provision of transport on such a service or services.

143D Employment interviews and selection tests

For the purposes of this Act, where:

(a) any of the following benefits is provided in, or in respect of, a year of tax to an employee of an employer in respect of his or her employment:

(i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of transport;

(ii) an expense payment benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;

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(iii) a property benefit where the recipients property consists of meals in connection with transport;

(iv) a residual benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;

(b) the transport, meals or accommodation is for the employee;

(c) the transport is required solely because the employee is required to attend an interview or selection test in connection with an application by the employee for:

(i) employment;

(ii) promotion; or

(iii) job transfer; and

(d) the benefit is not provided under a non-arm's length arrangement;

the benefit shall be taken to be in respect of an employment interview or selection test.

143E Work-related medical examinations, work-related medical screening, work-related preventative health care, work-related counselling, migrant language training

For the purposes of this Act, where:

(a) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee:

(i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of transport;

(ii) an expense payment benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;

(iii) a property benefit where the recipients property consists of meals in connection with transport;

(iv) a residual benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;

(b) the transport is required solely because:

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(i) the employee attends:

(A) a work-related medical examination of the employee;

(B) work-related medical screening of the employee;

(C) work-related preventative health care of the employee;

(D) work-related counselling of the employee; or

(E) migrant language training of the employee; or

(ii) an associate of the employee attends:

(A) work-related counselling of the associate; or

(B) migrant language training of the associate;

(c) if subparagraph (b)(i) applies—the transport, meals or accommodation is for the employee; and

(d) if subparagraph (b)(ii) applies—the transport, meals or accommodation is for the associate of the employee;

the benefit shall be taken to be associated with:

(e) a work-related medical examination of the employee;

(f) work-related medical screening of the employee;

(g) work-related preventative health care of the employee;

(h) work-related counselling of the employee or of the associate of the employee; or

(j) migrant language training of the employee or of the associate of the employee;

as the case requires.

144 Deemed payment

For the purposes of Part III, any conduct by a person that effects or results in a discharge or extinction of an obligation of another person to pay an amount to a third person shall be taken to constitute the payment of the amount by the first-mentioned person.

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145 Consideration not in cash

(1) For the purposes of this Act, where, upon any transaction, any consideration is given by way of the provision of property (other than money), the money value of that consideration shall be deemed to have been paid or given.

(2) Subsection (1) does not apply for the purpose of determining whether an act or thing constitutes the provision of a benefit to which a particular provision of this Act applies.

146 Amounts to be expressed in Australian currency

For the purposes of this Act, all amounts and values shall be expressed in terms of Australian currency.

147 Obligation to pay or repay an amount

For the purposes of this Act, a person shall be deemed to be under an obligation to pay or repay an amount notwithstanding that the amount is not due for payment or repayment.

148 Provision of benefits

(1) A reference in this Act to the provision of a benefit to a person in respect of the employment of an employee is a reference to the provision of such a benefit:

(a) whether or not the benefit is also provided in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, any other matter or thing;

(b) whether the employment will occur, is occurring, or has occurred;

(c) whether or not the benefit is surplus to the needs or wants of the recipient;

(d) whether or not the benefit is also provided to another person;

(e) whether or not the benefit is, to any extent, offset by any inconvenience or disadvantage;

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(f) whether or not the benefit is provided or used, or required to be provided or used, in connection with that employment;

(g) whether or not the provision of the benefit is, or is in the nature of, income; and

(h) whether or not the benefit is provided as a reward for services rendered, or to be rendered, by the employee.

(2) Where, in respect of the employment of an employee, a benefit is provided by a person (in this subsection referred to as the ***provider***) to a person other than:

(a) the employee; or

(b) a person who, but for this subsection, is an associate of the employee,

under an arrangement between:

(c) the provider, the employer or an associate of the employer; and

(d) the employee or a person who, but for this subsection, is an associate of the employee,

the recipient of the benefit shall be deemed to be an associate of the employee for the purposes of the application of this Act in relation to the provision of that benefit.

(3) Where:

(a) but for the prohibition on the doing of an act or thing, the doing of the act or thing would result in the provision of a benefit in respect of the employment of a person by another person (in this subsection referred to as the ***provider***); and

(b) the prohibition is not consistently enforced,

the provider shall be deemed, for the purposes of this Act, to have provided that benefit in respect of that employment.

(4) For the purposes of this Act, a benefit that is received or obtained by an employee, or by an associate of an employee, in respect of the employment of the employee shall be deemed to have been provided by the provider in respect of that employment.

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(5) A provision of this Act that deems a benefit to have been provided in particular circumstances shall not, by implication, limit the meaning of the expression ***provide*** when used in relation to the provision of a benefit in other circumstances.

149 Provision of benefit during a period

(1) For the purposes of this Act, a benefit shall be taken to be provided during a period if, and only if, the benefit:

(a) is provided, or subsists, during a period of more than 1 day; and

(b) is not deemed by a provision of this Act to be provided at a particular time or on a particular day.

(2) For the purposes of subsection (1), but without limiting the generality of that subsection, a benefit constituted by the subsistence of a lease or licence in respect of property, or a benefit in respect of a loan, shall be taken to be provided during the period when the lease or licence subsists or while a person is under an obligation to repay the whole or any part of the loan, as the case may be.

150 Credit cards

For the purposes of this Act, where, in respect of the employment of an employee of an employer, the employee or an associate of the employee uses a credit card issued by a third person to, or to an associate of, the employer to obtain the provision of a benefit on credit from a fourth person, the following provisions have effect:

(a) the fourth person shall be taken to have provided the benefit, in respect of that employment, under an arrangement between:

(i) the employer or the associate of the employer, as the case requires; and

(ii) the fourth person;

(b) where the employer or the associate of the employer, as the case may be, incurred expenditure to the third person under an arm's length transaction in respect of the provision of the

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benefit—the employer or the associate of the employer, as the case requires, shall be taken to have incurred that expenditure to the fourth person under an arm's length transaction.

151 Employee performing services for person other than employer

Where the employer of an employee contracts with another person (in this section referred to as the ***purchaser***) for the employee to perform services for the purchaser, the following provisions have effect for the purposes of the application of section 54 and the definition of ***board meal*** in subsection 136(1) in relation to the provision of a meal, or food or drink, to the employee in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, the performance of those services:

(a) premises of the purchaser shall be taken to be eligible premises of the employer;

(b) a meal, or food or drink, provided by the purchaser to the employee shall be taken to have been provided by the employer.

152 Provision of entertainment

A reference in this Act to the provision of entertainment is a reference to the provision of entertainment within the meaning of section 51AE of the *Income Tax Assessment Act 1936.*

153 Residual benefits to include provision of property in certain circumstances

For the purposes of this Act, where:

(a) a person carries on a business that consists of, or includes, the entering into of contracts for the provision of property together with the provision of residual benefits;

(b) the person provides property (other than food or drink) and residual benefits to another person;

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(c) but for this section, the provision would constitute a property benefit and a residual benefit; and

(d) the provision is made in the same, or substantially the same, circumstances as a provision of the kind mentioned in paragraph (a),

the provision of the residual benefit shall be taken to include the provision of the property and the provision of the property shall not be taken to constitute a property benefit.

154 Creation of property

For the purposes of this Act, where a person does anything that results in the creation of property in another person, the first-mentioned person shall be deemed to have provided that property to the other person at the time when the property comes into existence.

155 Use of property before title passes

(1) Subject to subsection (2), where, under a transaction, the use of property is obtained by a person for a period at the end of which the title to the property will or may pass to the person, the property shall be deemed, for the purposes of this Act, to have been provided to the person at the time when the use of the property was obtained by the person.

(2) Property shall not be taken to have been provided to a person by virtue of subsection (1) if the period for which the person has the use of the property terminates without the title to the property passing to the person, and nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this subsection.

156 Supply of electricity or gas through reticulation system

For the purposes of this Act, the supply of electricity or gas through a reticulation system shall be deemed not to constitute the provision of property.

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157 Christmas Island and Cocos (Keeling) Islands

(1) A reference in this Act to an internal Territory includes a reference to the Territory of Christmas Island and to the Territory of Cocos (Keeling) Islands.

(2) For the purposes of this Act, a location in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands shall be taken not to be situated in, or adjacent to, an eligible urban area.

158 Related companies

(1) For the purposes of this Act, a company shall be taken to be related to another company if:

(a) one of the companies is a subsidiary of the other company; or

(b) each of the companies is a subsidiary of the same company.

(2) For the purposes of this section, a company (in this subsection referred to as the ***subsidiary company***) shall be taken to be the subsidiary of another company (in this subsection referred to as the ***holding company***) if:

(a) all the shares in the subsidiary company are beneficially owned by:

(i) the holding company;

(ii) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or

(iii) the holding company and a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; and

(b) there is no agreement in force by virtue of which any person is in a position to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

(3) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this subsection), every company that is a subsidiary of the

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first-mentioned company shall be taken to be a subsidiary of that other company.

(4) For the purposes of subsection (2), a person shall be taken to be in a position to affect any rights of a company in relation to another company if that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies or by virtue of any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

159 Associates and relatives

(1) For the purpose only of determining whether a person is an associate or relative of another person within the meaning of this Act, the *Income Tax Assessment Act 1936* applies as if a reference in that Act to the spouse of a person included a reference to a person who is a spouse of the person for the purposes of this Act.

(2) For the purposes of this Act, but without limiting the generality of the expression ***associate***:

(a) a company that is related to another company shall be deemed to be an associate of that other company;

(b) the Commonwealth shall be deemed to be an associate of each authority of the Commonwealth;

(c) an authority of the Commonwealth shall be deemed an associate of each other authority of the Commonwealth;

(d) a State shall be deemed to be an associate of each authority of the State;

(e) an authority of a State shall be deemed to be an associate of each other authority of the State;

(f) a Territory shall be deemed to be an associate of each authority of the Territory; and

(g) an authority of a Territory shall be deemed to be an associate of each other authority of the Territory.

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(3) Where a person is an associate of another person by virtue of paragraph (2)(b), (c), (d), (e), (f) or (g), Part III has effect as if those persons were companies and were related to each other.

(4) For the purposes of this Act, the definition of ***associate*** in section 26AAB of the *Income Tax Assessment Act 1936* has effect as if:

(a) subparagraph (a)(ii) of that definition were omitted and the following subparagraph were substituted:

"(ii) a partner of the taxpayer or a partnership in which the: taxpayer is or was a partner (whether or not the partnership still exists);"; and

(b) subparagraph (b)(i) of that definition were omitted and the following subparagraph were substituted:

"(i) a partner of the taxpayer or a partnership in which the taxpayer is or was a partner (whether or not the partnership still exists);".

160 Continuity of employment where business disposed of, etc.

(1) Where:

(a) a person (in this subsection referred to as the ***former employer***) disposes of the whole or a part of a business or undertaking to another person (in this subsection referred to as the ***new employer***); and

(b) an arrangement relating to the disposal provides for the new employer or an associate of the new employer to provide or to continue to provide, or to arrange for the provision or continued provision of, benefits in respect of the employment of a person (in this subsection referred to as the ***former employee***) by the former employer,

the following provisions have effect:

(c) this Act applies, in relation to any benefit so provided or continued to be provided, as if the employment of the former employee by the former employer were, instead, employment by the new employer;

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(d) where the arrangement provides for the new employer or an associate of the new employer to assume, or arrange for the assumption of, the rights of:

(i) a lender under a loan;

(ii) a lessor under a lease; or

(iii) a licensor under a licence,

being a loan, lease or licence, as the case may be, granted in respect of the employment of the former employee by the former employer, this Act has effect, after the assumption of those rights, as if the employment of the former employee by the former employer were, instead, employment by the new employer and the loan, lease or licence had been granted in respect of that employment by the person who assumed the rights.

(2) Where, for any reason, including:

(a) the formation or dissolution of a partnership; or

(b) a variation in the constitution of a partnership, or in the interests of the partners,

a change has occurred in the ownership of, or in the interests of persons in, property constituting the whole or a part of the assets of a business and the person, or one or more of the persons, who owned the property before the change has or have an interest in the property after the change, this Act has effect as if the persons who owned the property before the change had, on the day on which the change occurred:

(c) disposed of the whole of that business to the person, or all of the persons, by whom the property is owned after the change; and

(d) disposed of the whole of the property to the person, or all of the persons, by whom the property is owned after the change for an amount equal to the notional value of the property.

(3) For the purposes of this Act, the trustee or trustees from time to time of a trust, being an employer or employers, shall be deemed to be one employer.

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161 Business journeys in car

(1) For the purposes of this Act, where:

(a) during a particular period during a day, 2 or more journeys are undertaken in a car; and

(b) each of the journeys in the car during that period is a business journey,

the journeys referred to in paragraph (b) shall be deemed to constitute a single journey.

162 Holding of car

(1) In this Act, unless the contrary intention appears, a reference to a car held by a person is a reference to:

(a) a car owned by the person;

(b) a car leased to the person; or

(c) a car otherwise made available to the person by another person.

(2) For the purposes of the application of section 10 in relation to car fringe benefits in relation to an employer in relation to a particular car, the car shall be taken to be held by a particular person if, and only if, the car is held by the person for use in providing those fringe benefits (whether or not the car was used for any other purpose while it was so held).

(3) For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, a car shall be taken to be held by the recipient of the fringe benefit if, and only if, the car is owned or leased by the recipient for use in the course of producing assessable income of the recipient (whether or not the car was used for any other purpose while it was so owned or leased).

(4) A reference in this Act to a period during which a car was held by a person is a reference to a period during which the car was continuously held by the person.

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162B When car used for the purpose of producing assessable income

For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, the question whether a car is used by a person for the purposes of producing assessable income shall be determined in the same manner as the question whether property is used by a taxpayer for the purpose of producing assessable income is determined under the *Income Tax Assessment Act 1936.*

162C Holding period of car

Unless the contrary intention appears, a reference in this Act to a period in a year of tax during which a person held a car is a reference to the period that:

(a) commences on whichever of the following times is applicable:
  (i) if the person held the car at the time of commencement of the year of tax—that time;
  (ii) in any other case—the time in the year of tax when the person commenced to hold the car; and

(b) ends at whichever of the following times is applicable:
  (i) if the person continued to hold the car until the time of the end of the year of tax—that time;
  (ii) in any other case—the time in the year of tax when the person ceased to hold the car.

162D Deemed specification of matters in car records

Where an employer fails, through inadvertence, to specify any or all of the following matters in car records of the employer for a year of tax:

(a) a period of a kind mentioned in subsection 162H(1) or (2);

(b) a nomination of the kind mentioned in subsection 162K(2) or 162L(2) or particulars of such a nomination;

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(c) a percentage of a kind mentioned in section 10A, 10B, 65E or 65F;

the Commissioner may determine that a period, nomination, particular or percentage of that kind specified by the employer in a document lodged with the Commissioner shall be treated, for the purposes of this Act, as if it had been specified by the employer in those car records.

162E Unsigned or fraudulent entries in log book records

For the purposes of this Act, where log book records maintained by or on behalf of a person for a period in respect of a car held by the person purport to contain an entry of the kind referred to in the definition of ***log book records*** in subsection 136(1) but:

(a) the entry is not signed as mentioned in that definition; or

(b) the entry is false or misleading in a material particular;

the pattern of use of the car purporting to be shown by the log book records shall be determined as if that entry had not been made.

162F Reasonable estimate of underlying business percentage

For the purposes of this Act, the percentage that represents a reasonable estimate of the underlying business percentage applicable to a car held by a person during a period in a year of tax shall be determined having regard to all relevant matters including, but without limiting the generality of the foregoing:

(a) any log book records, odometer records or other records maintained by or on behalf of the person; and

(b) any variations in the pattern of use of the car.

162G Log book year of tax

(1) For the purposes of the application of section 10 in relation to a car fringe benefit in relation to an employer in relation to a particular car while it was held by a particular person (in this subsection called the ***provider***) during a particular period (in this subsection called the ***holding period***) in a year of tax (in this subsection called

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the ***current year of tax***), the current year of tax is a log book year of tax of the employer in relation to the car if, and only if:

(a) the current year of tax is the transitional year of tax;

(b) the employer elects that the current year of tax be treated as a log book year of tax of the employer in relation to the car;

(c) the employer did not make an election that section 10 apply in relation to all the car fringe benefits in relation to the employer in relation to the preceding year of tax that related to the car;

(d) the car was not held by the provider at any time during the preceding year of tax;

(e) the car was held by the provider during a period in the preceding year of tax but there were no car fringe benefits in relation to the employer in relation to the preceding year of tax that related to the car while it was held by the provider;

(f) the preceding year of tax was a log book year of tax of the employer in relation to the car and either of the following conditions is satisfied:

(i) subparagraph 10A(a)(i) or (ii) applied in relation to the car in relation to the preceding year of tax;

(ii) the conditions set out in subparagraphs 10A(b)(i) and (ii) were not satisfied in relation to the car in relation to the preceding year of tax;

(g) the preceding year of tax was not a log book year of tax of the employer in relation to the car and any of the following conditions is satisfied:

(i) the condition set out in paragraph 10B(a) was not satisfied in relation to the car in relation to the preceding year of tax;

(ii) the condition set out in subparagraph 10B(b)(i) was not satisfied in relation to the car in relation to the preceding year of tax;

(iii) both of the following conditions are satisfied:

(A) the employer specified (otherwise than by virtue of section 10C), in the employer's car records for the preceding year of tax, a

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percentage of the kind mentioned in subparagraph 10B(b)(ii);

(B) the percentage calculated in accordance with the formula referred to in that subparagraph exceeded 10%; or

(h) the Commissioner causes a notice in writing to be served on the employer before the commencement of the current year of tax requiring the employer to treat the current year of tax as a log book year of tax of the employer in relation to the car.

(2) For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, in relation to an employer in relation to a particular car held by the recipient of the fringe benefit during a particular period (in this subsection called the ***holding period***) in a year of tax (in this subsection called the ***current year of tax***), the current year of tax is a log book year of tax of the recipient in relation to the car if, and only if:

(a) the current year of tax is the transitional year of tax;

(b) the employer elects that the current year of tax be treated as a log book year of tax of the recipient in relation to the car;

(c) the recipient did not hold the car at any time during the preceding year of tax;

(d) paragraph 19(1)(d), 24(1)(f), 44(1)(e) or 52(1)(e) applied for the purpose of determining the taxable value of one or more fringe benefits in relation to the employer in relation to the recipient in relation to the car in relation to the preceding year of tax;

(e) both of the following conditions are satisfied:

(i) the recipient held the car during a period in the preceding year of tax;

(ii) none of the following provisions was applied for the purpose of determining the taxable value of any fringe benefit in relation to the employer in relation to the

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recipient in relation to the car in relation to the preceding year of tax:

(A) paragraph 19(1)(ca) or (d);

(B) paragraph 24(1)(ea) or (f);

(C) paragraph 44(1)(da) or (e);

(D) paragraph 52(1)(da) or (e);

(f) the preceding year of tax was a log book year of tax of the recipient in relation to the car and either of the following conditions are satisfied:

(i) subparagraph 65E(a)(i) or (ii) applied in relation to the car in relation to the preceding year of tax;

(ii) the conditions set out in subparagraphs 65E(b)(i) and (ii) were not satisfied in relation to the car in relation to the preceding year of tax;

(g) the preceding year of tax was not a log book year of tax of the recipient in relation to the car and any of the following conditions is satisfied:

(i) the condition set out in paragraph 65F(a) was not satisfied in relation to the recipients car in relation to the preceding year of tax;

(ii) the condition set out in subparagraph 65F(b)(i) was not satisfied in relation to the car in relation to the preceding year of tax;

(iii) both of the following conditions are satisfied:

(A) the employer specified (otherwise than by virtue of section 65H), in the employer's car records for the preceding year of tax, a percentage of the kind mentioned in subparagraph 65F(b)(ii);

(B) the percentage calculated in accordance with the formula referred to in that subparagraph exceeded 10%; or

(h) the Commissioner causes a notice in writing to be served on the employer before the commencement of the current year of tax requiring the employer to treat the current year of tax as a log book year of tax of the recipient in relation to the car.

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(3) An election by an employer under this section in relation to a year of tax:

(a) shall be made by notice in writing to the Commissioner; and

(b) shall be lodged with the Commissioner on or before the declaration date.

162H Applicable log book period

(1) For the purposes of the application of section 10 in relation to a car fringe benefit in relation to an employer in relation to a car while it was held by a particular person during a particular period (in this subsection called the ***holding period***) in a year of tax, a reference to the applicable log book period is a reference to:

(a) if the holding period is a period of less than 12 weeks—the holding period; or

(b) in any other case—a continuous period of not less than 12 weeks that:

(i) begins and ends during the holding period; and

(ii) is specified by the employer in the employer's car records for the year of tax.

(2) For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, in relation to an employer in relation to a car held by the recipient of the fringe benefit during a particular period (in this subsection called the ***holding period***) in a year of tax, a reference to the applicable log book period is a reference to:

(a) if the holding period is a period of less than 12 weeks—the holding period; or

(b) in any other case—a continuous period of not less than 12 weeks that:

(i) begins and ends during the holding period; and

(ii) is specified by the employer in the employer's car records for the year of tax.

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162J Business percentage established during log book period

A reference in this Act to the business percentage established during an applicable log book period in relation to a car held by a particular person (in this section called the ***holder***) during a period (in this section called the ***holding period***) in a year of tax is the underlying business percentage that would apply to the car in relation to the holder for the holding period if it were assumed that the actual pattern of use of the car throughout the holding period were the same as the pattern of use of the car purporting to be shown by the log book records and odometer records maintained by or on behalf of the holder for the applicable log book period.

162K Replacement cars—car fringe benefits

(1) This section has effect for the purposes of the application of section 10 in relation to car fringe benefits in relation to an employer in relation to a year of tax (in this section called the ***current year of tax***) or a subsequent year of tax.

(2) Where the employer, in the employer's car records for the current year of tax, nominates a particular car (in this section called the ***replacement car***) as having replaced another car (in this section called the ***original car***) with effect from a specified date in the current year of tax:

(a) the original car shall be treated, with effect from that date, as a different car; and

(b) the replacement car shall be treated, with effect from that date, as the same car as the original car.

(3) A nomination shall specify the make, model and registration number (if any) of the original car and of the replacement car.

(4) This section does not apply for the purposes of the application of subsection 10(5) or section 11 or 12.

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162L Replacement cars—otherwise deductible provisions

(1) This section has effect for the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, in relation to an employer in relation to a year of tax (in this section called the ***current year of tax***) or a subsequent year of tax.

(2) Where the employer, in the employer's car records for the current year of tax, nominates a particular car (in this section called the ***replacement car***) as having replaced another car (in this section called the ***original car***) with effect from a specified date in the current year of tax:

(a) the original car shall be treated, with effect from that date, as a different car; and

(b) the replacement car shall be treated, with effect from that date, as the same car as the original car.

(3) A nomination shall specify the make, model and registration number (if any) of the original car and of the replacement car.

162M Re-acquisition etc. of cars

(1) Subject to sections 162K and 162L, for the purposes of this Act, where:

(a) a person holds a car during a period (in this section called the ***current period***); and

(b) the person held the car during a period that ended, or during 2 or more periods each of which ended, before the commencement of the current period;

the car shall be treated as a different car in each of the periods referred to in this section.

(2) This section does not apply for the purposes of the application of subsection 10(5) or section 11 or 12.

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162N Registration of motor vehicle

For the purposes of this Act, a motor vehicle shall be taken to be registered in a particular place if it may be driven on a public road in that place without contravening the law in force in that place.

163 Application of Act

(1) This Act extends to every external Territory and, except so far as the contrary intention appears, to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

(2) Except where otherwise expressly provided, this Act extends to matters and things whether occurring before or after the commencement of this Act.

(3) This Act binds the Crown in right of each of the States, of the Northern Territory and of Norfolk Island.

(4) In subsection (1), a reference to this Act includes a reference to the *Taxation Administration Act 1953* to the extent to which that Act relates to this Act.

164 Residence

(1) For the purposes of this Act, a person shall be taken to have been a non-resident at a particular time if the person was not a resident of Australia at that time.

(2) For the purposes of this Act, a person shall be taken to have been a resident of Australia at a particular time if:

(a) in the case of a natural person:

(i) the person resided in Australia at that time; or

(ii) except in the case where the Commissioner is satisfied that that person's permanent place of residence at that time was outside Australia—the person was domiciled in Australia at that time;

(b) in the case of an incorporated company:

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(i) the company was incorporated in Australia at that time; or

(ii) at that time the company carried on business in Australia and:

(A) had its central management and control in Australia; or

(B) had its voting power controlled by shareholders who were residents of Australia; or

(c) in the case of a partnership or an unincorporated company—any member of the partnership or company was a resident of Australia at that time by virtue of paragraph (a) or (b).

165 Partnerships

(1) Subject to this section, this Act applies to a partnership as if the partnership were a person.

(2) Where, but for this subsection, an obligation would be imposed on a partnership by virtue of the operation of subsection (1), the obligation is imposed on each partner, but may be discharged by any of the partners.

(3) Where, by virtue of the operation of subsection (1), an amount is payable under this Act by a partnership, the partners are jointly and severally liable to pay that amount.

(4) Where, by virtue of the operation of subsection (1), an offence against this Act is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

(5) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by

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virtue of which the offence is deemed to have been committed.

(6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

166 Unincorporated companies

(1) Subject to this section, this Act applies to an unincorporated company as if the company were a person.

(2) Where, but for this subsection, an obligation would be imposed on an unincorporated company by virtue of the operation of subsection (1), the obligation is imposed on each member of the committee of management of the company, but may be discharged by any of those members.

(3) Where, by virtue of the operation of subsection (1), an offence against this Act is deemed to have been committed by an unincorporated company, that offence shall be deemed to have been committed by each member of the committee of management of the association.

(4) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.

(5) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

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167 Offences by government bodies

Notwithstanding anything in this Act or any other Act, a government body shall not be taken to be guilty of an offence against this Act.

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Schedule—Statutory interest rates for periods between 1 January 1946 and 2 April 1986

Subsection 136(1)

Period		
Date on which period commenced	**Date on which period ended**	**Interest rate (% per annum)**
1 January 1946	1 August 1952	3.875
2 August 1952	31 March 1956	4.5
1 April 1956	28 February 1961	5.0
1 March 1961	10 April 1963	5.25
11 April 1963	31 March 1965	4.75
1 April 1965	31 July 1968	5.0
1 August 1968	31 March 1970	5.5
1 April 1970	30 September 1973	6.25
1 October 1973	13 September 1974	7.25
14 September 1974	28 February 1978	9.25
1 March 1978	31 March 1980	8.75
1 April 1980	31 July 1980	9.25
1 August 1980	31 December 1980	9.75
1 January 1981	31 August 1981	10.75
1 September 1981	31 March 1982	11.75
1 April 1982	31 January 1983	12.75
1 February 1983	30 September 1983	12.50
1 October 1983	30 November 1983	12.00
1 December 1983	15 April 1985	11.50
16 April 1985	14 July 1985	12.00
15 July 1985	30 September 1985	12.50
1 October 1985	2 April 1986	13.50

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

Ord = Ordinance

orig = original

p = page(s)

para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fringe Benefits Tax Assessment Act 1986	39, 1986	24 June 1986	24 June 1986 (s 2)	
Taxation Boards of Review (Transfer of Jurisdiction) Act 1986	48, 1986	24 June 1986	s 46–54: 24 June 1986 (s 2(2))	—
Taxation Laws Amendment Act (No. 3) 1986	112, 1986	4 Nov 1986	s 10, 11 and 46: 4 Nov 1986 (s 2)	s 46
Jurisdiction of Courts (Miscellaneous Amendments) Act 1987	23, 1987	26 May 1987	s 4: 26 May 1987 (s 2(1)) Sch: 1 Sept 1987 (s 2(2) and gaz 1987 No S217)	s 4
Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987	139, 1987	18 Dec 1987	s 4–62: 18 Dec 1987 (s 2)	s 61 and 62
as amended by				
Taxation Laws Amendment Act 1988	11, 1988	26 Apr 1988	s 50: 18 Dec 1987 (s 2(6))	—
Taxation Laws Amendment Act (No. 2) 1988	78, 1988	24 June 1988	s 66: 18 Dec 1987 (s 2(6))	—
Petroleum Resource Rent Tax (Miscellaneous Provisions) Act 1987	145, 1987	18 Dec 1987	Sch: 15 Jan 1988 (s 2)	—
Australian Airlines (Conversion to Public Company) Act 1988	6, 1988	9 Mar 1988	Sch 1: 9 Mar 1988 (s 2(1))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Taxation Laws Amendment Act (No. 2) 1988	78, 1988	24 June 1988	s 4–6: 1 Nov 1988 (s 2(4) and gaz 1988 No S331)	—
Taxation Laws Amendment Act (No. 4) 1988	95, 1988	24 Nov 1988	s 4–10: 24 Nov 1988 (s 2(1))	s 9 and 10
Taxation Laws Amendment (Tax File Numbers) Act 1988	97, 1988	25 Nov 1988	s 29: 1 Jan 1989 (s 2(1))	—
Taxation Laws Amendment Act (No. 5) 1988	153, 1988	26 Dec 1988	s 4–7: 26 Dec 1988 (s 2(1))	s 7
Higher Education Funding Act 1988	2, 1989	6 Jan 1989	s 87: 6 Jan 1989 (s 2(1))	—
Taxation Laws Amendment Act 1989	11, 1989	16 Mar 1989	s 4–20 and Sch: 16 Mar 1989 (s 2)	s 19, 20
Taxation Laws Amendment Act (No. 2) 1989	97, 1989	30 June 1989	s 17 and Sch 2: 30 June 1989 (s 2)	s 17
Taxation Laws Amendment Act (No. 3) 1989	107, 1989	30 June 1989	s 6, 7: 30 June 1989 (s 2(1))	s 7
Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990	37, 1990	7 June 1990	s 12: 18 Feb 1991 (s 2)	—
Taxation Laws Amendment Act (No. 3) 1990	58, 1990	16 June 1990	s 6–8: 16 June 1990 (s 2(1))	s 7, 8

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Training Guarantee (Administration) Act 1990	60, 1990	16 June 1990	Sch: 1 July 1990 (s 2(1))	—
Taxation Laws Amendment Act (No. 5) 1990	135, 1990	28 Dec 1990	s 4, 5: 28 Dec 1990 (s 2(1))	s 5
Taxation Laws Amendment Act 1991	48, 1991	24 Apr 1991	s 4–7: 24 April 1991 (s 2(1))	s 7
Taxation Laws Amendment Act (No. 2) 1991	100, 1991	27 June 1991	s 5, 7, 10, 12, 13 and Sch 1: 27 June 1991 (s 2(1)) s 4, 6, 8, 9, 11 and Sch 2: 28 June 1991 (s 2(2))	s 12, 13
Taxation Laws Amendment Act (No. 3) 1991	216, 1991	24 Dec 1991	s 6-8, 123 and 124 and Sch 3: 24 Dec 1991 (s 2(1)) s 114 and Sch 4: 1 Mar 1992 (s 2(10) and gaz 1992 No. GN7)	s 114, 124
Taxation Laws Amendment Act 1992	35, 1992	25 May 1992	s 4, 5: 25 May 1992 (s 2)	s 5
Superannuation Guarantee (Consequential Amendments) Act 1992	92, 1992	30 June 1992	Sch: 1 July 1992 (s 2)	—
Taxation Laws Amendment (Self Assessment) Act 1992	101, 1992	30 June 1992	s 36: 30 June 1992 (s 2)	—
Sales Tax Amendment (Transitional) Act 1992	118, 1992	30 Sept 1992	Sch: 28 Oct 1992 (s 2)	—
Taxation Laws Amendment Act (No. 4) 1992	191, 1992	21 Dec 1992	s 33: 21 Dec 1992 (s 2)	s 33(2)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporate Law Reform Act 1992	210, 1992	24 Dec 1992	Sch 2: 23 June 1993 (s 2(3) and gaz 1993, No S186)	—
Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992	223, 1992	24 Dec 1992	s 4 and Sch: 1 Apr 1994 (s 2)	s 4
Taxation Laws Amendment (Car Parking) Act 1992	237, 1992	24 Dec 1992	s 4-7: 24 Dec 1992 (s 2)	s 7
Taxation Laws Amendment Act 1993	17, 1993	9 June 1993	s 4-6: 9 June 1993 (s 2(1))	s 5
Taxation Laws Amendment Act (No. 2) 1993	18, 1993	9 June 1993	s 4-6: 9 June 1993 (s 2(1))	s 5, 6

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Endnote 4—Amendment history

Provision affected	How affected
Part II	
s 5	am No 48, 1986; No 97, 1988
Part III	
Division 2	
Subdivision A	
s 8	am No 139, 1987
Subdivision B	
s 9	am No 139, 1987
s 10	am No 139, 1987; No 11, 1989
s 10A	ad No 139, 1987
	am No 11, 1989
s 10B	ad No 139, 1987
	am No 11, 1989
s 10C	ad No 139, 1987
	am No 11, 1989
s 11	am No 139, 1987
Division 3	
Subdivision B	
s 15	am No 139, 1987
Division 4	
Subdivision A	
s 17	am No 139, 1987
Subdivision B	
s 18	am No 139, 1987
s 19	am No 139, 1987; No 11, 1989; No 48, 1991
Division 5	
Subdivision A	
s 21	am No 139, 1987

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Endnote 4—Amendment history

Provision affected	How affected
s 22	am No 139, 1987
Subdivision B	
s 22A	ad No 139, 1987
s 23	am No 139, 1987
s 24	am No 139, 1987; No 11, 1989; No 48, 1991
Division 6	
Subdivision B	
s 26	am No 139, 1987
s 28	am No 139, 1987; No 100, 1991
s 29	am No 139, 1987
s 29A	ad No 139, 1987
Division 7	
Subdivision A	
s 30	am No 139, 1987; No 216, 1991
Subdivision B	
s 31	am No 139, 1987; No 216, 1991
Division 8	
Subdivision B	
s 34	am No 139, 1987
Division 9	
Subdivision B	
s 37	am No 139, 1987; No 17, 1993
Division 10	
Subdivision B	
s 39	am No 139, 1987
Division 10A	
Subdivision A	
s 39A	ad No 237, 1992
s 39B	ad No 237, 1992
Subdivision B	
s 39C	ad No 237, 1992

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Endnote 4—Amendment history

Provision affected	How affected
s 39D	ad No 237, 1992
s 39E	ad No 237, 1992
Division 11	
Subdivision B	
s 44	am No 139, 1987; No 153, 1988; No 48, 1991
Division 12	
Subdivision A	
s 47	am No 139, 1987; No 135, 1990; No 18, 1993
Subdivision B	
s 52	am No 139, 1987; No 153, 1988; No 48, 1991
Division 13	
Division 13 heading	am No 139, 1987
s 57	am No 139, 1987
s 57A	rs No 139, 1987
s 58	am No 139, 1987
s 58A	ad No 139, 1987
s 58B	ad No 139, 1987
s 58C	ad No 139, 1987
s 58D	ad No 139, 1987
s 58E	ad No 139, 1987
s 58F	ad No 139, 1987
s 58G	ad No 139, 1987
	am No 237, 1992
s 58H	ad No 139, 1987
s 58J	ad No 139, 1987
s 58K	ad No 139, 1987
s 58L	ad No 139, 1987
s 58LA	ad No 11, 1989
s 58M	ad No 139, 1987
s 58N	ad No 139, 1987
s 58P	ad No 139, 1987

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Endnote 4—Amendment history

Provision affected	How affected
s 58Q	ad No 139, 1987
s 58R	ad No 139, 1987
s 58S	ad No 139, 1987
s 58T	ad No 139, 1987
s 58U	ad No 139, 1987
s 58V	ad No 139, 1987
Division 14	
Division 14 heading	ad No 139, 1987
s 59	am No 139, 1987
s 60	am No 139, 1987; No 95, 1988
s 60AA	ad No 95, 1988
s 60A	ad No 139, 1987
	am No 11, 1989
s 61	am No 139, 1987; No 11, 1989
s 61A	ad No 139, 1987
	am No 11, 1989; No 100, 1991
s 61B	ad No 139, 1987
	am No 11, 1989; No 100, 1991
s 61C	ad No 139, 1987
	am No 100, 1991
s 61D	ad No 139, 1987
	am No 100, 1991
s 61E	ad No 139, 1987
	am No 11, 1989; No 100, 1991
s 61F	ad No 139, 1987
	am No 11, 1989; No 100, 1991
s 62	am No 139, 1987
s 63	am No 139, 1987; No 100, 1991
s 64A	ad No 2, 1989
s 65A	ad No 139, 1987
	am No 100, 1991

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Endnote 4—Amendment history

Provision affected	How affected
s 65B	ad No 139, 1987
	rep No 100, 1991
s 65C	ad No 139, 1987
	rep No 100, 1991
s 65CAA	ad No 100, 1991
Division 14A	
Division 14A	ad No 95, 1988
s 65CA	ad No 95, 1988
	am No 58, 1990
s 65CB	ad No 95, 1988
Division 14B	
Division 14B	ad No 95, 1988
s 65CC	ad No 95, 1988
Division 15	
Division 15	ad No 139, 1987
s 65D	ad No 139, 1987
s 65E	ad No 139, 1987
	am No 11, 1989
s 65F	ad No 139, 1987
	am No 11, 1989
s 65G	ad No 139, 1987
	am No 11, 1989
s 65H	ad No 139, 1987
	am No 11, 1989
Part IIIA	
Part IIIA	ad No 223, 1992
s 65J	ad No 223, 1992
Part IV	
s 67	am No 48, 1986; No 37, 1990; No 216, 1991; No 223, 1992

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Endnote 4—Amendment history

Provision affected	How affected
Part V	
Division 1	
s 71	am No 78, 1988
Division 2	
s 74A	ad No 101, 1992
s 74B	ad No 101, 1992
s 74C	ad No 101, 1992
s 74D	ad No 101, 1992
s 74E	ad No 101, 1992
s 74F	ad No 101, 1992
s 78A	ad No 216, 1991
Part VI	rs No 48, 1986
	rep No 216, 1991
s 79	rs No 48, 1986; No 23, 1987
	rep No 216, 1991
s 79A	ad No 48, 1986
	rep No 23, 1987
s 80	rs No 48, 1986
	rep No 216, 1991
s 81	rs No 48, 1986
	am No 23, 1987
	rep No 216, 1991
s 82	rs No 48, 1986
	rep No 216, 1991
s 83	rs No 48, 1986
	rep No 216, 1991
s 84	rs No 48, 1986
	am No 112, 1986; No 23, 1987
	rep No 216, 1991
s 85	rs No 48, 1986
	am No 23, 1987

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 216, 1991
s 86	rs No 48, 1986
	rep No 216, 1991
s 86A	ad No 48, 1986
	am No 112, 1986
	rep No 216, 1991
s 86B	ad No 48, 1986
	rep No 23, 1987
s 86C	ad No 48, 1986
	am No 23, 1987
	rep No 216, 1991
s 86D	ad No 48, 1986
	rep No 23, 1987
s 86E	ad No 48, 1986
	am No 23, 1987
	rep No 216, 1991
s 87	rs No 48, 1986
	rep No 23, 1987
s 88	rs No 48, 1986
	rep No 216, 1991
s 89	rep No 48, 1986
Part VII	
Division 1	
s 93	am No 191, 1992
s 96	am No 145, 1987; No 60, 1990; No 92, 1992; No 118, 1992
s 98	am No 48, 1986; No 216, 1991
s 99	am No 216, 1991
Division 2	
Subdivision A	
s 104	am No 139, 1987

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
s 106	am No 139, 1987; No 11, 1989
Subdivision C	
s 110	am No 223, 1992
s 112	am No 191, 1992
Part VIII	
s 115A	ad No 139, 1987
	am No 11, 1989
Part IX	
s 119	am No 48, 1986
s 121	am No 48, 1986; No 78, 1988
s 122	am No 78, 1988
Part X	
Heading to Part X	am No 11, 1989
s 123	am No 139, 1987
s 123A	ad No 11, 1989
s 123B	ad No 35, 1992
Part XI	
s 124A	ad No 139, 1987
	am No 100, 1991
s 126	am No 48, 1986; No 216, 1991
s 133	am No 48, 1986
Part XII	
s 136	am No 48, 1986; No 139, 1987; No 6, 1988; No 95, 1988; No 153, 1988; No 11, 1989; No 97, 1989; No 48, 1991; No 216, 1991; No 210, 1992; No 223, 1992; No 237, 1992; No 17, 1993
s 136AA	ad No 223, 1992
s 136A	ad No 11, 1989
s 138A	ad No 139, 1987
s 139B	ad No 139, 1987
s 139C	ad No 139, 1987

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Endnote 4—Amendment history

Provision affected	How affected
s 141	am No 139, 1987
s 141A	ad No 139, 1987
s 142	am No 139, 1987; No 95, 1988; No 107, 1989
s 142A	ad No 139, 1987
s 142B	ad No 139, 1987
s 142C	ad No 139, 1987
s 142D	ad No 139, 1987
s 143	am No 139, 1987; No 11, 1989; No 100, 1991
s 143A	ad No 139, 1987
s 143B	ad No 139, 1987
s 143C	ad No 139, 1987
s 143D	ad No 139, 1987
s 143E	ad No 139, 1987
s 153	am No 139, 1987
s 157	am No 100, 1991
s 159	am No 139, 1987
s 161	am No 139, 1987
s 162	am No 139, 1987
s 162A	ad No 139, 1987
s 162B	ad No 139, 1987
s 162C	ad No 139, 1987
s 162D	ad No 139, 1987
	rs No 11, 1989
s 162E	ad No 139, 1987
s 162F	ad No 139, 1987
s 162G	ad No 139, 1987
	am No 11, 1989
s 162H	ad No 139, 1987
	am No 11, 1989
s 162J	ad No 139, 1987
s 162K	ad No 139, 1987

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Endnote 4—Amendment history

Provision affected	How affected
	am No 11, 1989
s 162L	ad No 139, 1987
	am No 11, 1989
s 162M	ad No 139, 1987
s 162N	ad No 139, 1987

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