



# **Taxation Laws Amendment Act (No. 2) 1986**

## **Act No. 49 of 1986 as amended**

This compilation was prepared on 9 September 2010  
taking into account amendments up to Act No. 75 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra



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TABLE OF PROVISIONS

PART I - PRELIMINARY

Section

1. Short title [see Note 1]
2. Commencement [see Note 1]

PART II - AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936

3. Principal Act
  4. Officers to observe secrecy
  5. Exemptions
  6. Bad debts
  7. Gifts, pensions, &c.
  8. Rebates for residents of isolated areas
  9. Documentary evidence
  10. Interpretation
  11. Interpretation
  12. Insertion of new sections -
    - 128AA. Deemed interest in respect of transfers of certain securities
    - 128AB. Certificates relating to issue price of certain securities
    - 128AC. Deemed interest in respect of hire-purchase and certain other agreements
    - 128AD. Indemnification, &c., agreements in relation to bills of exchange and promissory notes
  13. Payment of withholding tax
  14. Insertion of new section -
    - 128NA. Special tax payable in respect of certain securities and agreements
  15. Reviews and appeals
  16. Insertion of new Division -

*Division 16E - Accruals assessability, &c., in respect of certain security payments*

    - 159GP. Interpretation
    - 159GQ. Accruals assessability, &c.
    - 159GR. Consequence of actual payments
    - 159GS. Balancing adjustments on transfer of qualifying security
    - 159GT. Deductions allowable to issuer of qualifying security, &c.
    - 159GU. Effect of Division on certain transfer profits and losses
    - 159GV. Consequence of variation of terms of security
    - 159GW. Effect of Division in relation to non-residents
    - 159GX. Effect of Division where certain payments not assessable
    - 159GY. Effect of Division where qualifying security is trading stock
    - 159GZ. Stripped securities
  17. Rebate in respect of annual leave, long service leave and eligible termination payments
  18. Interpretation
  19. Interpretation
  20. Deductions from dividends and interest
  21. Insertion of new section -
    - 221YMA. Effect of section 128AB certificates and section 265B notices
  22. Dividends, &c., not in money not to be paid until payment made to Commissioner on account of tax
  23. Liability of person who fails to make deductions, &c.
  24. Credits in respect of deductions made from dividends or interest
  25. Insertion of new section -
    - 221YSA. Credits in respect of amounts assessed under Division 16E of Part III
-

- 
26. Penalty for false or misleading statements
  27. Insertion of new section -
    - 265B. Notices in relation to certain securities
  29. Application of amendments
- PART III - AMENDMENTS OF THE TAXATION ADMINISTRATION ACT 1953
30. Principal Act
  31. Interpretation
- PART IV - AMENDMENTS OF THE TAXATION LAWS AMENDMENT ACT (No. 4) 1985
32. Principal Act
  33. Commencement
  34. Income of certain persons serving with an armed force under the control of the United Nations
  35. Exemption of certain pensions
  36. Repeal of section 13
  37. Rebate in respect of certain pensions
  38. Prescribed persons
  39. Release of liability of members of the Defence Force on death
- PART V - AMENDMENT OF THE INCOME TAX REGULATIONS
40. Income Tax Regulations
  41. Definitions
  42. Amendment or repeal of Regulations

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TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986 - LONG TITLE

An Act to amend the law relating to taxation

**PART I - PRELIMINARY**

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 1

Short title [see Note 1]

1. This Act may be cited as the Taxation Laws Amendment Act (No. 2) 1986.

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 2

Commencement [see Note 1]

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 33 and 36 shall be deemed to have come into operation immediately after the commencement of section 1 of the Taxation Laws Amendment Act (No. 4) 1985.

(3) Sections 34, 35, 37, 38 and 39 shall be deemed to have come into operation immediately after the commencement of the Veterans' Entitlements Act 1986.

**PART II - AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936**

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 3

Principal Act

3. The Income Tax Assessment Act 1936\*1\* is in this Part referred to as the Principal Act.

\*1\* No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 129, 168, 173 and 174, 1985; and Nos. 41, 46 and 48, 1986.

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TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 4

Officers to observe secrecy

4. Section 16 of the Principal Act is amended by inserting after paragraph (4) (hb) the following paragraph:

"(hc) either-

(i) where the holder of an office established under a law of the Commonwealth is prescribed for the purposes of this paragraph-the holder of that office; or

(ii) where sub-paragraph (i) does not apply-the Secretary to the Department of the Treasury,

for purposes in connection with the supervision or regulation of-

(iii) provident, benefit, superannuation or retirement funds;

(iv) funds that are approved deposit funds within the meaning of Subdivision AA of Division 2 of Part III; or

(v) other similar funds;".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 5

Exemptions

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

"(jca) income derived by a person by way of payments made by the Commonwealth known as Formal Training Allowance, to the extent to which the payments are made-

(i) by reason that the person had a dependent child or children, within

the meaning of section 6 of the Social Security Act 1947, or was making regular contributions towards the maintenance of a child or children;

(ii) by reason that, within the meaning of Part IIa of the Social Security Act 1947, the person was physically present in, and had his or her usual place of residence situated in, a remote area; or

(iii) by reason that the person or the spouse of the person paid rent within the meaning of section 6 of the Social Security Act 1947;".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 6

Bad debts

6. Section 63 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) Where a debt in respect of the whole or a part of a payment that has, or will, become liable to be made under a qualifying security within the meaning of Division 16e is written off as a bad debt by a taxpayer during a year of income, the taxpayer shall, for the purposes of sub-section (1), be taken to have brought to account as assessable income of a year of income so much of the debt as equals the amount (if any) ascertained in accordance with the formula A-B, where-

A is the amount (if any) or the sum of the amounts (if any) included in the assessable income of the taxpayer of any year or years of income under section 159GQ or 159GR that is or are attributable to the payment or to the part of the payment, as the case requires; and

B is the amount (if any) or the sum of the amounts (if any) allowable as a deduction or deductions from the assessable income of the taxpayer of any year

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or years of income under section 159GQ or 159GR that is or are attributable to the payment or to the part of the payment, as the case requires."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 7

Gifts, pensions, &c.

7. Section 78 of the Principal Act is amended by inserting after sub-paragraph (1)(a)(lxxxiv) the following sub-paragraph:

";(lxxxv) the Pearl Watson Foundation Limited,".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 8

Rebates for residents of isolated areas

8. Section 79A of the Principal Act is amended by omitting from sub-section (4) the definition of "prescribed allowance" and substituting the following definition:

" 'prescribed allowance' means-

(a) an allowance paid in accordance with Part IIA of the Social Security

Act 1947 or section 57 of the Veterans' Entitlements Act 1986; or

(b) a payment made by the Commonwealth known as Formal Training Allowance, to the extent to which the payment is made by reason that, within the meaning of Part IIA of the Social Security Act 1947, a person was physically present in, and had his or her usual place of residence situated in, a remote area;".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 9

Documentary evidence

9. Section 82KU of the Principal Act is amended by omitting from paragraphs (1) (b), (2) (b) and (5) (c) "signed, and supplied," and substituting "supplied".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 10

Interpretation

10. Section 103 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) For the purposes of the application of the definition of 'the distributable income' in sub-section (1) in relation to a private company in relation to a year of income, the reference in that definition to the taxable income of the private company shall (other than for the purposes of references in that definition to the tax payable by the private company) be read as a reference to the amount that, if Division 16E were disregarded, would be the taxable income of the private company of the year of income."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 11

Interpretation

11. Section 128A of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

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"(1A) Subject to sub-section (1B), for the purposes of this sub-section and sections 128AA, 128AB, 128AD, 128C and 128NA-

(a) a reference to the reduced issue price of a security that has been partially redeemed on one or more occasions is a reference to the issue price of the security reduced by the amount of the partial redemption or the sum of the amounts of the partial redemptions, as the case may be;

(b) expressions used in this sub-section or those sections that are also used in Division 16E have the same respective meanings as in that Division; and

(c) sections 159GV (other than sub-section 159GV (2)) and 159GZ apply as if references in those sections to 'this Division' were references to 'sub-section 128A (1A) and sections 128AA, 128AB, 128AD, 128C and 128NA'.

"(1B) Sub-section (1A) applies as if paragraph (c) of the definition of 'qualifying security' in sub-section 159GP (1) were omitted."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 12

12. After section 128A of the Principal Act the following sections are inserted:

Deemed interest in respect of transfers of certain securities

"128AA. (1) Where-

(a) a person transfers a qualifying security; and

(b) the transfer price of the security exceeds the issue price or, where the security has been partially redeemed, the reduced issue price of the security, so much of the transfer price as equals the excess referred to in paragraph (b) shall, for the purposes of this Division, be deemed to be income that consists of interest.

"(2) For the purposes of references to the transfer price, issue price or reduced issue price of a qualifying security in sub-section (1), any application of sub-section 159GP (2) shall be disregarded.

Certificates relating to issue price of certain securities

"128AB. (1) Where-

(a) a qualifying security is or was transferred either before or after the commencement of this section; and

(b) at the time of transfer either-

(i) the transferor is or was a resident; or

(ii) the transferor is or was a non-resident and the transfer price is

or

was derived from a source in Australia, the transferee may at any time after the transfer (including a time after the transferee ceases to be the holder of the security) apply to the Commissioner for the issue of a certificate under this section.

"(2) An application under sub-section (1) shall be in accordance with the form required by the Commissioner, by notice in writing published in the Gazette, for the purposes of applications under that sub-section.

"(3) Where the Commissioner is satisfied that the requirements of paragraph (1) (b) are satisfied in relation to the transfer of the qualifying security to which an application under sub-section (1) relates and that the security was transferred on a particular date and for a particular consideration to the applicant, the Commissioner shall issue to the applicant a certificate that-

(a) is expressed to be issued under this section;

(b) identifies the security to which it relates;

(c) specifies that date as the date of transfer;

(d) specifies that consideration, or, where sub-section 159GP(2) applies, the amount that is taken under that sub-section to be the consideration for

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the transfer, as the transfer price; and

(e) specifies the name of the applicant as the transferee.

"(4) Where the Commissioner issues a certificate under this section in relation to a qualifying security that has been transferred to a person, the following provisions have effect:

(a) for the purposes of the application of this Division in relation to the first subsequent transfer (if any) of the qualifying security by the person-

(i) the amount specified in the certificate shall be taken to be the issue price of the security; and

(ii) where the security was partially redeemed before the transfer to the

person-any such partial redemption shall be taken not to have occurred;

(b) if the security is redeemed or partially redeemed without having been subsequently transferred by the person-in determining for the purposes of the application of this Division the extent (if any) to which the redemption payment comprises an amount that is interest by reason only of the definition of 'interest' in sub-section 128A (1)-

(i) the amount specified in the certificate as the transfer price shall

be taken to be the issue price of the security; and

(ii) where the security was partially redeemed before the transfer to the

person-any such partial redemption shall be taken not to have occurred.

"(5) If the Commissioner refuses an application under sub-section (1), the Commissioner shall serve on the applicant, by post or otherwise, notice in writing that the application has been refused.

Deemed interest in respect of hire-purchase and certain other agreements

"128AC. (1) In this section-

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

'attributable agreement payment', in relation to a relevant agreement, means so much of any payment made or liable to be made under the agreement as represents consideration for the use, sale or disposal of the relevant agreement property;

'carry forward interest', in relation to an attributable agreement payment in relation to a relevant agreement, means so much (if any) of the notional interest in relation to the payment as exceeds the amount of the payment;

'eligible value', in relation to the relevant agreement property in relation to a relevant agreement, means the market value of the property at the time at which the agreement commences or commenced to apply in relation to the property;

'formula interest', in relation to an attributable agreement payment in relation to a relevant agreement, means the amount ascertained in

$$\frac{2 AC}{B (B + 1)}$$

accordance with the formula -----, where-

$$B (B + 1)$$

A is the total interest in relation to the relevant agreement;

B is the total number of attributable agreement payments liable to be made under the relevant agreement; and

C is the number that is B, reduced by the number of attributable

agreement payments made under the relevant agreement before the attributable agreement payment concerned;

'notional interest', in relation to an attributable agreement payment in relation to a relevant agreement, means the sum of the formula interest (if

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any) in relation to the payment and the carry forward interest (if any) in relation to the immediately preceding attributable agreement payment in relation to the relevant agreement;

'relevant agreement' means an agreement entered into after 16 December 1984, being-

- (a) a hire-purchase agreement; or
- (b) a lease or any other agreement relating to the use by a person of property owned by another person, being a lease or agreement under which-
  - (i) the lessee or person using the property is entitled to purchase or require the transfer of the lease property or property subject to the agreement on the termination or expiration of the lease or agreement; or
  - (ii) the lease term or term of the agreement is for all, or substantially all, of the effective life of the lease property or property subject to the agreement;

'relevant agreement property', in relation to a relevant agreement, means-

- (a) in the case of a hire-purchase agreement-the property that is the subject of the agreement; and

- (b) in any other case-the property in relation to which sub-paragraph (b)

- (i) or (ii) of the definition of 'relevant agreement' applies;

'total interest', in relation to a relevant agreement, means the sum of all of the attributable agreement payments liable to be made under the relevant agreement, reduced by the eligible value of the relevant agreement property.

"(2) Where an agreement (including a hire-purchase agreement and a lease) relates to the use by a person of 2 or more items of property owned by another person, this section applies as if, instead of the single agreement, there were separate agreements relating to the use of each of the items of property having such of the terms of the first-mentioned agreement as are relevant.

"(3) Where a variation is or was made in the terms of, or liability to make payments under, a relevant agreement, then, for the purposes of the application of this section-

- (a) the relevant agreement shall be taken to be, or to have been, terminated at the time at which the variation has effect; and

- (b) a new relevant agreement shall be taken to be, or to have been, entered into at the time at which the variation has effect and on the terms of the first-mentioned relevant agreement as so varied.

"(4) Where any right or option under an agreement to extend the term of, or otherwise vary the effect of, the agreement is or was exercised, then, for the purposes of this section, the exercise of that right or option shall be taken to be a variation of the terms of the agreement to provide for the extension or other effect.

"(5) Where an attributable agreement payment in relation to a relevant agreement is made, so much of the attributable agreement payment as does not exceed the notional interest in relation to the payment shall, for the purposes of this Division, be deemed to be income that consists of interest.

"(6) Where-

- (a) a relevant agreement is entered into after the commencement of this section; and

- (b) at the time at which the relevant agreement is entered into, the total interest in relation to the relevant agreement exceeds the sum of all amounts that, if all of the attributable agreement payments liable to be made under the relevant agreement were made, would, disregarding this sub-section, be deemed to be income that consists of interest under sub-section (5) in relation to the relevant agreement, the amount of the notional interest in relation to the first attributable agreement payment in relation to the relevant agreement shall, for the purposes of this section, be increased by an

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amount equal to the excess referred to in paragraph (b).

"(7) For the purposes of section 128d, where withholding tax is payable on a part of an attributable agreement payment that is taken under sub-section (5) of this section to be an amount of interest, the withholding tax shall be taken to be payable on the whole of the attributable agreement payment. Indemnification, &c., agreements in relation to bills of exchange and promissory notes

"128AD. (1) Where-

(a) the drawer of a bill of exchange issued after the day on which this section comes into operation pays an amount (in this sub-section referred to as the 'indemnification amount') to the acceptor of the bill to indemnify, reimburse or otherwise compensate the acceptor in respect of the whole or a part of an amount (which whole or part is in this sub-section referred to as the 'eligible presentment amount') that the acceptor has, or will, become liable to pay to the payee under the bill on presentment of the bill;

(b) no part of the indemnification amount is, or will be, included in the assessable income of the acceptor of any year of income; and

(c) the whole or a part (in this sub-section referred to as the 'eligible presentment interest') of the eligible presentment amount consists or will consist of interest, so much of the indemnification amount as indemnifies, reimburses or otherwise compensates the acceptor in respect of the eligible presentment interest shall, for the purposes of this Division, be deemed to be income that consists of interest.

"(2) Where-

(a) a person (in this sub-section referred to as the 'indemnifier') pays an amount (in this sub-section referred to as the 'indemnification amount') to the issuer of a promissory note issued after the day on which this section comes into operation to indemnify, reimburse or otherwise compensate the issuer in respect of the whole or a part of an amount (which whole or part is in this sub-section referred to as the 'eligible presentment amount') that the issuer has, or will, become liable to pay to the payee under the note on presentment of the note;

(b) no part of the indemnification amount is, or will be, included in the assessable income of the issuer of any year of income; and

(c) the whole or a part (in this sub-section referred to as the 'eligible presentment interest') of the eligible presentment amount consists or will consist of interest, so much of the indemnification amount as indemnifies, reimburses or otherwise compensates the issuer in respect of the eligible presentment interest shall, for the purposes of this Division, be deemed to be income that consists of interest."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 13

Payment of withholding tax

13. Section 128C of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

"(4AA) Without limiting the generality of sub-section (4), where-

(a) additional tax is due and payable by a person under sub-section (3) in relation to an amount of withholding tax payable on an amount that, by virtue of the application of section 128AA, is taken to consist of interest paid in relation to the transfer of a qualifying security;

(b) the Commissioner is satisfied that-

(i) before the security was transferred, a notice expressed to be issued

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under sub-section 265B (4) identifying the security was given by the person, in connection with the transfer, to the transferee;

(ii) one or more of the statements made in the notice is incorrect; and

(iii) the person did not know of the circumstance referred to in sub-paragraph (ii) at the time of transfer of the security; and

(c) the proper amount of the withholding tax liability of the person exceeds the amount that would have been the amount of the withholding tax liability if it were determined on the basis that the statements made in the notice were correct, the Commissioner shall remit so much of the amount of the additional tax as bears to that amount the same proportion as the amount of the excess referred to in paragraph (c) bears to the amount of withholding tax."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986 No. 49, 1986

- SECT 14

14. After section 128n of the Principal Act the following section is inserted: Special tax payable in respect of certain securities and agreements

"128NA. (1) Where, but for sub-section 128AA (2)-

(a) the transferor of a qualifying security who is not liable to pay withholding tax in relation to the transfer of the qualifying security would be liable to pay withholding tax in relation to the transfer; or

(b) the transferor of a qualifying security who is liable to pay withholding tax in relation to the transfer of the qualifying security would be liable to pay additional withholding tax in relation to the transfer, then, for the purposes of this section, there shall be taken to be an avoided withholding tax amount in relation to the person who is the transferee of the qualifying security of an amount equal to the withholding tax or the additional withholding tax, as the case may be, that the person would be so liable to pay.

"(2) Where-

(a) an attributable agreement payment or attributable agreement payments were made by a person under a relevant agreement before the commencement of section 128AC; and

(b) the Commissioner is of the opinion that the payment or payments were made before the commencement of that section, or that the payment or payments were of a greater amount than they would otherwise have been, for the sole or dominant purpose of securing the result that the total amount (in this sub-section referred to as the 'actual withholding tax') of withholding tax payable under that section in relation to all attributable agreement payments made under the relevant agreement after the commencement of that section would be less than the amount (in this sub-section referred to as the 'notional withholding tax') that would otherwise have been payable, then, for the purposes of this section, there shall be taken to be an avoided withholding tax amount in relation to the person of an amount equal to the amount by which the notional withholding tax exceeds the actual withholding tax.

"(3) For the purposes of sub-section (2), expressions used in that sub-section that are also used in section 128AC have the same respective meanings in that sub-section as in that section.

"(4) Where there is an avoided withholding tax amount in relation to a person under this section, the person is liable to pay income tax, as imposed by the Income Tax (Securities and Agreements) (Withholding Tax Recoupment) Act 1986, in respect of the avoided withholding tax amount."

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TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 15

Reviews and appeals

15. Section 128P of the Principal Act is amended-

(a) by inserting in sub-section (1) ", and in relation to the specification by the Commissioner of an amount in a certificate under section 128AB," after "this Division";

(b) by adding at the end of paragraph (1) (a) "or to the specification of such an amount, as the case requires;"

(c) by adding at the end of paragraph (1) (c) "or to the fact that a different amount should have been specified, as the case requires."; and

(d) by omitting from sub-section (2) "or direct the issue of a certificate." and substituting ", direct the issue of a certificate or, in the case of a reference that relates to the specification by the Commissioner of an amount in a certificate under section 128AB, direct the variation of the certificate to specify a different amount.".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 16

16. Before Division 17 of Part III of the Principal Act the following Division is inserted:

"Division 16E-Accruals assessability, &c., in respect of certain security payments

Interpretation

"159GP. (1) In this Division, unless the contrary intention appears-

'adjusted term', in relation to a security that has been transferred to a taxpayer, means the part of the term of the security that occurs after the transfer of the security;

'eligible notional accrual period', in relation to a fixed return security issued or transferred to a taxpayer, means-

(a) any notional accrual period in relation to the security the whole of which occurs after the issue or transfer of the security to the taxpayer; and

(b) where the security was issued or transferred to the taxpayer during a

notional accrual period in relation to the security-the part of the notional accrual period that occurs after the issue or transfer of the security;

'fixed return security' means a qualifying security under which the amount or amounts payable are or consist of-

(a) a specified amount or specified amounts;

(b) an amount or amounts the method of calculation of which does not involve an interest or indexation rate or other factor, being a rate or factor that varies or may vary during the term of the security; or

(c) any combination of amounts referred to in paragraph (a) or (b);

'holder', in relation to a security at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be entitled to receive payment of the amount or amounts;

'issue', in relation to a security other than a bill of exchange, means the creation of the liability to pay an amount or amounts under the security;

'issue price', in relation to a security, means the consideration (if any) for the issue of the security;

'issuer', in relation to a security (other than a bill of exchange) at a particular time, means the person who, if the amount or amounts payable under the security were due and payable at that time, would be liable to pay the

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amount or amounts;

'non-varying element', in relation to a payment under a variable return security, means so much (if any) of the payment as consists of a specified amount or any other amount, not being a varying element or an amount of periodic interest;

'notional accrual amount', in relation to an eligible notional accrual period in relation to a fixed return security that was issued or transferred to a taxpayer, means the amount ascertained in accordance with the formula AB-C, where-

A is the taxpayer's yield to redemption in relation to the security, properly adjusted in a case where the eligible notional accrual period is part only of a notional accrual period;

B is-

(a) in the case of the first eligible notional accrual period in the term, or the adjusted term, as the case requires, of the security-the issue price or transfer price, as the case requires, of the security; and

(b) in any other case-the sum of the issue price or transfer price, as

the case requires, and the notional accrual amounts in relation to all preceding eligible notional accrual periods in the term or the adjusted term, as the case requires, of the security; and

C is the amount of any periodic interest payment or payments made or liable to be made during the eligible notional accrual period;

'notional accrual period', in relation to a fixed return security, means any of the following periods:

(a) the period of 6 months ending at the expiration of the period that is, or is at the time of issue of the security reasonably likely to be, the term of the security;

(b) any period of 6 months ending immediately before a period that, under

paragraph (a) or this paragraph, is a notional accrual period in relation to the security;

'partial redemption', in relation to a security, means the discharging of a part (other than the final part) of a liability to pay an amount or amounts under the security representing a return of the issue price of the security;

'partial redemption payment', in relation to a security, means a payment that has the effect of partially redeeming the security;

'qualifying security' means any security-

(a) that is issued after 16 December 1984;

(b) that is not a prescribed security within the meaning of section 26C;

(c) the term of which, ascertained as at the time of issue of the security will, or is reasonably likely to, exceed 1 year;

(d) that has an eligible return; and

(e) where the precise amount of the eligible return is able to be ascertained at the time of issue of the security-in relation to which the amount of the eligible return is greater than 1 1/2% of the amount ascertained by multiplying the amount of the payment or the sum of the payments (excluding any periodic interest) liable to be made under the security by the number (including any fraction) of years in the term of the security;

'redemption', in relation to a security, means the discharging of all liability to pay any amount or amounts under the security representing a return of the issue price of the security;

'redemption payment', in relation to a security, means any payment that has the effect of redeeming the security;

'security' means-

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(a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;

(b) a deposit with a bank, building society or other financial institution;

(c) a secured or unsecured loan; or

(d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured;

'taxpayer's yield to redemption', in relation to a fixed return security held by a taxpayer, means the rate of compound interest per notional accrual period, or part of a notional accrual period, in the term or, where the security was transferred to the taxpayer, the adjusted term of the security, at which the sum of the present values of all amounts payable under the security during the term or adjusted term, as the case may be, of the security equals the issue price or, where the security was transferred to the taxpayer, the transfer price of the security;

'term', in relation to a security, means the period from the issue of the security until the time at which the liability to make the payment or final payment or payments, as the case requires, under the security arises;

'transfer', in relation to a security, means transfer, sell, assign or dispose in any way of the security or of the right to receive payment of the amount or amounts payable under the security, but does not include a redemption or partial redemption of the security;

'transfer price', in relation to the transfer of a security, means the consideration (if any) for the transfer of the security;

'variable return security' means a qualifying security that is not a fixed return security;

'varying element', in relation to a payment under a variable return security, means so much (if any) of the payment as consists of an amount the method of calculation of which involves an interest, indexation or other rate, not being an amount of periodic interest.

"(2) Where-

(a) the Commissioner, having regard to any connection between the parties to the issue or transfer of a security and to any other relevant circumstances, is satisfied that the parties were not dealing with each other at arm's length in relation to the issue or transfer; and

(b) the Commissioner determines that this sub-section should apply in relation to the issue or transfer, then, for the purposes of the application of the definition of 'issue price' or 'transfer price', as the case may be, in sub-section (1) in relation to the issue or transfer, the consideration for the issue or transfer shall be taken to be equal to-

(c) the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer; or

(d) where, for any reason (including an insufficiency of information available to the Commissioner), it is not possible or not practicable for the Commissioner to ascertain the amount referred to in paragraph (c)-such amount as the Commissioner determines.

"(3) For the purposes of this Division, there shall be taken to be an eligible return in relation to a security if at the time when the security is issued it is reasonably likely, by reason that the security was issued at a discount, bears deferred interest or is capital indexed or for any other reason, having regard to the terms of the security, for the sum of all payments (other than periodic interest payments) under the security to exceed the issue price of the security, and the amount of the eligible return is the

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amount of the excess.

"(4) Where, in relation to a variable return security, the sum of the non-varying elements in relation to all payments liable to be made under the security exceeds the issue price of the security, there shall be taken to be an issue discount in relation to the issue of the security of an amount equal to the excess.

"(5) Where, in relation to the transfer of a variable return security-

(a) the sum of the non-varying elements in relation to all payments liable to be made under the security after the transfer and so much of the varying elements of all such payments as is attributable to the period before the transfer exceeds the transfer price-there shall be taken to be a purchase discount in relation to the transfer of the security of an amount equal to the excess; or

(b) the transfer price exceeds the sum referred to in paragraph (a)-there shall be taken to be a purchase premium in relation to the transfer of the security of an amount equal to the excess.

"(6) For the purposes of this Division, where an amount of interest is payable under a security, the amount shall be taken to be periodic interest if the period between the commencement of the period in respect of which the interest is expressed to be payable and the time at which the interest is payable is less than or equal to one year.

"(7) Where-

(a) but for this sub-section, an amount of interest payable under a security would, by reason of the application of sub-section (6), be taken, for the purposes of this Division, to be periodic interest; and

(b) the Commissioner, having regard to the amount of the interest, considers that it is properly attributable to a period in excess of one year, then, for purposes of the application of this Division-

(c) the amount of interest shall not be taken to be periodic interest; and

(d) the amount of interest shall be taken to be attributable to the period to which the Commissioner considers it is properly attributable.

"(8) Where 2 or more of the amounts payable under a security are payable to different persons and in return for consideration given by different persons, the 2 or more amounts shall, for the purposes of this Division, be taken to be payable under a separate security having such of the terms of the first-mentioned security as are relevant.

"(9) For the purposes of the application of this Division in relation to the holding of a security acquired by a taxpayer on transfer, any prior holding of the security by the taxpayer, whether on issue or transfer, shall be disregarded.

Accruals assessability, &c.

"159GQ. (1) Where a taxpayer is the holder of a fixed return security during a period (other than a period at the end of which the taxpayer transfers the security), being the whole or a part of a year of income (which whole or part is in this sub-section referred to as the 'assessability period'), there shall be included in the assessable income of the taxpayer of the year of income an amount equal to the sum of-

(a) if an entire eligible notional accrual period or entire such periods occur in the assessability period-the notional accrual amount or amounts in relation to the eligible notional accrual period or periods; and

(b) if a fraction of an eligible notional accrual period or fractions of such periods occur in the assessability period-the same fraction of the notional accrual amount, or the same fractions of the notional accrual amounts, in relation to the eligible notional accrual period or periods.

"(2) Where a taxpayer is the holder of a variable return security, being a security that was issued to the taxpayer, during a period (other than a period

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at the end of which the taxpayer transfers the security), being the whole or a part of a year of income (which whole or part is in this sub-section referred to as the 'assessability period')-

(a) where there is an issue discount in relation to the issue of the security to the taxpayer-the fraction of the issue discount equal to the fraction of the term of the security represented by the assessability period shall be included in the assessable income of the taxpayer of the year of income; and

(b) so much of any varying element in relation to any payment that will, or in the opinion of the Commissioner may, become payable under the security as, having regard to the method of calculation provided for under the terms of the security and the length of the assessability period, is attributable, or in the opinion of the Commissioner may reasonably be attributed, to the assessability period shall be included in the assessable income of the taxpayer of the year of income.

"(3) Where a taxpayer is the holder of a variable return security, being a security that was transferred to the taxpayer, during a period (other than a period at the end of which the taxpayer transfers the security), being the whole or a part of a year of income (which whole or part is in this sub-section referred to as the 'assessability period')-

(a) where there is a purchase discount in relation to the transfer of the security to the taxpayer-the fraction of the purchase discount equal to the fraction of the term occurring after the transfer that is represented by the assessability period shall be included in the assessable income of the taxpayer of the year of income;

(b) where there is a purchase premium in relation to the transfer of the security to the taxpayer-the fraction of the purchase premium in relation to the transfer of the security to the taxpayer equal to the fraction of the term occurring after the transfer of the security to the taxpayer that is represented by the assessability period shall be allowable as a deduction from the assessable income of the taxpayer of the year of income; and

(c) so much of the varying elements in relation to payments that will, or in the opinion of the Commissioner may, become liable to be made after the transfer as, having regard to the method of calculation provided for under the terms of the security and to the length of the assessability period, is attributable, or in the opinion of the Commissioner may reasonably be attributed, to the assessability period shall be included in the assessable income of the taxpayer of the year of income.

Consequence of actual payments

"159GR. (1) Where a payment (not being a payment that is, or to the extent that it consists of, a periodic interest payment, a redemption payment or a partial redemption payment) is made or liable to be made in a year of income to a taxpayer under a qualifying security-

(a) no amount shall be included in the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under section 159GQ or sub-section (2) of this section; and

(b) where the taxpayer acquired the qualifying security on transfer-no amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under section 159GQ or sub-section (2) of this section.

"(2) Where-

(a) a payment (not being a periodic interest payment) is made or liable to be made in a year of income to a taxpayer under a variable return security; and

(b) by reason that, in the application of sub-section 159GQ (2) or (3) in relation to the taxpayer in relation to any year or years of income, the

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amount of the payment was taken to be different from the actual amount of the payment, the sum of the amounts included in the assessable income of the taxpayer, reduced by any amount allowable as a deduction from that assessable income, under section 159GQ in relation to the security (the amount of which sum as so reduced is in this sub-section referred to as the 'actual taxable amount') differs from the amount (in this sub-section referred to as the 'correct taxable amount') that would have been the actual taxable amount if the amount of the payment had not been taken to be different from the actual amount of the payment, the following provisions have effect:

(c) where the correct taxable amount exceeds the actual taxable amount-an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made;

(d) where the actual taxable amount exceeds the correct taxable amount-an amount equal to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made.

Balancing adjustments on transfer of qualifying security

"159GS. (1) Where there is a profit amount in relation to the transfer of a qualifying security by a taxpayer in a year of income-

(a) if there is a net assessable amount in relation to the transfer and-

(i) the profit amount exceeds the net assessable amount-an amount equal

to the excess shall be included in the assessable income of the taxpayer of the year of income; or

(ii) the net assessable amount exceeds the profit amount-an amount equal

to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income; and

(b) if there is a net deductible amount in relation to the transfer-an amount equal to the sum of that amount and the profit amount shall be included in the assessable income of the taxpayer of the year of income.

"(2) Where there is a loss amount in relation to the transfer of a qualifying security by a taxpayer in a year of income and-

(a) there is a net assessable amount in relation to the transfer-an amount equal to the net assessable amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income; or

(b) there is a net deductible amount in relation to the transfer that exceeds the loss amount-an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income.

"(3) For the purposes of the application of this section in relation to the transfer (in this sub-section referred to as the 'relevant transfer') of a qualifying security by a taxpayer-

(a) where the transfer price, as increased by the amount of any payments (other than periodic interest payments) made to the taxpayer under the security in respect of the period when the security was held by the taxpayer exceeds-

(i) the issue price of the security; or

(ii) where the security was acquired by the taxpayer on transfer-the transfer price in relation to that transfer,

there shall be taken to be a profit amount in relation to the relevant transfer of an amount equal to the excess;

(b) where the issue price of the security or, where the security was acquired by the taxpayer on transfer, the transfer price in relation to that transfer exceeds the sum of the transfer price in relation to the relevant transfer and any payments (other than periodic interest payments) made to the

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taxpayer under the security in respect of the period when the security was held by the taxpayer, there shall be taken to be a loss amount in relation to the relevant transfer of an amount equal to the excess;

(c) where the sum of all amounts (if any) included under sections 159GQ and 159GR in the assessable income of the taxpayer in respect of the security in respect of the period when the security was held by the taxpayer exceeds the sum of all amounts (if any) allowable under those sections as deductions from the assessable income of the taxpayer in respect of the security in respect of that period, there shall be taken to be a net assessable amount in relation to the relevant transfer of an amount equal to the excess; and

(d) where the sum of all amounts (if any) allowable under sections 159GQ and 159GR as deductions from the assessable income of the taxpayer in respect of the security in respect of the period when the taxpayer held the security exceeds the sum of all amounts (if any) included under those sections in the assessable income of the taxpayer in respect of the security in respect of that period, there shall be taken to be a net deductible amount in relation to the relevant transfer of an amount equal to the excess.

Deductions allowable to issuer of qualifying security, &c.

"159GT. (1) Subject to this section, a taxpayer who during the whole or a part (which whole or part is in this sub-section referred to as the 'relevant period') of a year of income is an issuer of a qualifying security to which this section applies is entitled to a deduction in the assessment of the taxpayer of the year of income of an amount equal to the amount that, disregarding sections 159GW, 159GX and 159GY, would be included in the assessable income of the taxpayer under section 159GQ in respect of the relevant period if the security had been issued to the taxpayer and the taxpayer were holder of the security during the whole of the relevant period and did not transfer the security at the end of the relevant period.

"(2) A deduction is not allowable to a taxpayer under sub-section (1) in relation to a qualifying security to which this section applies unless the taxpayer would, but for this Division, be entitled to a deduction under section 51 in respect of payments (not being redemption payments, partial redemption payments or periodic interest payments) made or liable to be made under the security in respect of the relevant period referred to in that sub-section.

"(3) Where a payment (not being a payment that is, or to the extent that it consists of, a periodic interest payment, a redemption payment or a partial redemption payment) is made or liable to be made in a year of income by a taxpayer under a qualifying security to which this section applies, no amount shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in respect of the payment otherwise than under this section.

"(4) Where-

(a) a payment (not being a periodic interest payment) is made or liable to be made in a year of income under a variable return security by a taxpayer being the issuer of the security at the time the payment is made or liable to be made; and

(b) by reason that, in the application of sub-section (1) in relation to the taxpayer in relation to any year or years of income, the amount of the payment was taken to be different from the actual amount of the payment, the sum of the amounts allowable as deductions from the assessable income of the taxpayer under that sub-section in relation to the security (the amount of which sum is in this sub-section referred to as the 'actual total deductions') differs from the amount (in this sub-section referred to as the 'correct total deductions') that would have been the actual total deductions if the amount of the payment had not been taken to be different from the actual amount of the

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payment, the following provisions have effect:

(c) where the actual total deductions exceed the correct total deductions-an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made;

(d) where the correct total deductions exceed the actual total deductions-an amount equal to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made.

"(5) This section applies to-

(a) any qualifying security issued on or before 22 May 1986; and

(b) any qualifying security issued in Australia after 22 May 1986 other than a negotiable instrument issued payable to bearer.

Effect of Division on certain transfer profits and losses

"159GU. (1) Where, apart from this Division, a profit that is made by a resident taxpayer in relation to a transfer of a qualifying security that does not form part of the trading stock of the taxpayer would be included in the assessable income of the taxpayer of a year of income, the profit shall not be so included in the assessable income of the taxpayer.

"(2) Where, apart from this Division, a loss that is incurred by a resident taxpayer in relation to a transfer of a qualifying security that does not form part of the trading stock of the taxpayer would be allowable as a deduction from the assessable income of the taxpayer of a year of income and there is a net deductible amount, within the meaning of section 159gs, in relation to the transfer, so much only of the amount of the loss as exceeds the net deductible amount shall be so allowable as a deduction.

Consequence of variation of terms of security

"159GV. (1) Where, after 22 May 1986, a material variation is made in the terms of a security, for the purposes of the application of this Division in relation to the security in respect of the period after the variation and before any subsequent material variation-

(a) the security shall be taken to have been issued on the terms on which it was originally issued as varied by the material variation and any prior variation;

(b) where consideration for the variation is paid or payable by the holder of the security-the issue price of the security shall be taken to be an amount equal to the amount that was the issue price of the security immediately before this application of this sub-section increased by the amount of that consideration;

(c) where consideration for the variation is paid or payable by the issuer of the security-the issue price of the security shall be taken to be an amount equal to the amount that was the issue price of the security immediately before this application of this sub-section reduced by the amount of that consideration; and

(d) paragraph (a) of the definition of 'qualifying security' in sub-section 159GP (1) shall be disregarded.

"(2) Where-

(a) sub-section (1) applies in relation to a security held by a taxpayer in relation to a material variation in the terms of the security; and

(b) if-

(i) that sub-section had effect not only in relation to the period after

the variation but also in relation to the whole of the term of the security before the variation; and

(ii) any previous material variations were taken into account but any subsequent material variations were disregarded,

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the sum (in this sub-section referred to as the 'total notional taxable income') of the taxable incomes of the taxpayer in respect of the year of income in which the variation is made and all previous years of income would have differed from the sum (in this sub-section referred to as the 'total actual taxable income') of the actual taxable incomes of the taxpayer of those years of income, the following provisions have effect:

(c) where the total notional taxable income exceeds the total actual taxable income-an amount equal to the excess shall be included in the assessable income of the taxpayer of the year of income in which the variation is made;

(d) where the total actual taxable income exceeds the total notional taxable income-an amount equal to the excess shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the variation is made.

"(3) In this section, a reference to a material variation of the terms of a security is a reference to a variation of the terms of the security-

(a) that has the effect that a security that was not a qualifying security before the variation would, if the security had been originally issued with the terms as varied and if paragraph (a) of the definition of 'qualifying security' in sub-section 159GP (1) were disregarded, have been a qualifying security when the security was issued;

(b) that has the effect that a security that is a qualifying security would, if originally issued with the terms as varied, not have been a qualifying security at the time of issue; or

(c) that has the effect that the amount, or time of making, of a payment under the security, or that the holder or issuer of the security, is varied.

"(4) Where any right or option under a security to extend the term of, or otherwise vary the effect of, the security is exercised, then, for the purposes of this section, the exercise of that right or option shall be taken to be a variation of the terms of the security to provide for the extension or other effect.

Effect of Division in relation to non-residents

"159GW. (1) Subject to sub-section (2), where during the whole or a part of a year of income (which whole or part is in this sub-section referred to as the 'period of non-residence') a taxpayer is not a resident-

(a) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under section 159GQ in relation to the period of non-residence;

(b) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under sub-section 159GR (2) in relation to any payment made or liable to be made to the taxpayer during the period of non-residence; and

(c) no amount shall be included in, or allowable as a deduction from, the assessable income of the taxpayer of the year of income under section 159GS in relation to any transfer of the security that occurred during the period of non-residence.

"(2) Where-

(a) a payment is made or liable to be made under a qualifying security to a resident taxpayer; and

(b) the taxpayer was not a resident for the whole or a part (which whole or part is in this sub-section referred to as the 'period of non-residence') of the period during which the taxpayer held the security, the following provisions have effect:

(c) there shall be included in the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made an amount equal to the amount that, but for sub-section (1), would have been included in

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the assessable income of the taxpayer of any year or years of income under section 159GQ in respect of the payment in respect of the period of non-residence;

(d) there shall be allowable as a deduction from the assessable income of the taxpayer of the year of income in which the payment is made or liable to be made an amount equal to the amount that, but for sub-section (1), would have been allowable as a deduction from the assessable income of the taxpayer of any year or years of income under section 159GQ in respect of the payment in respect of the period of non-residence.

Effect of Division where certain payments not assessable

"159GX. Where, but for this section, an amount would be included in, or allowable as a deduction from, the assessable income of a taxpayer of a year of income under section 159GQ or 159GR in respect of the whole or a part of a payment under a qualifying security, no amount shall be so included or allowable unless the payment or a part of the payment, when actually made or liable to be made, would, disregarding section 128D, be included in the assessable income of the taxpayer of a year of income.

Effect of Division where qualifying security is trading stock

"159GY. No amount shall be included in, or allowable as a deduction from, the assessable income of a taxpayer-

(a) under section 159GQ in relation to a qualifying security in respect of any year or part of a year of income during which the qualifying security forms part of the trading stock of the taxpayer;

(b) under section 159GR in respect of the whole or a part of a payment made or liable to be made under a qualifying security during any year or part of a year of income during which the qualifying security forms part of the trading stock of the taxpayer; or

(c) under section 159GS in relation to the transfer of a qualifying security by the taxpayer where, immediately before the transfer, the qualifying security was or formed part of the trading stock of the taxpayer.

Stripped securities

"159GZ. (1) Where-

(a) at any time a taxpayer acquires or acquired a security (in this sub-section referred to as the 'underlying security') in relation to which there are or were 2 or more payment rights; and

(b) the taxpayer transfers or transferred one or some but not all of those rights to a particular person or particular persons jointly, for the purposes of the application of this Division (including any subsequent application of this sub-section) in relation to any period after the transfer of the right or rights-

(c) instead of the underlying security, there shall be taken to have been originally issued-

(i) a separate security under which the payment right or payment rights

transferred to the person or persons referred to in paragraph (b) were created;

(ii) where at the time at which that right or those rights were transferred, another payment right or other payment rights in relation to the underlying security was or were transferred to another person or to other persons jointly-a separate security under which that other right or those other rights were created; and

(iii) where immediately after the transfer the taxpayer retains or retained any payment right or rights-a separate security under which that right or those rights were created;

(d) where the underlying security was issued to the taxpayer-the issue price of each separate security referred to in paragraph (c) shall be taken to

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be so much of the issue price of the underlying security as bears to that amount the proportion that the market value of the separate security at the time of issue of the underlying security bears to the market value of the underlying security at that time; and

(e) where the underlying security was acquired by the taxpayer on transfer-the transfer price, in relation to that transfer, of each separate security referred to in paragraph (c) shall be taken to be so much of the transfer price of the underlying security as bears to that amount the proportion that the market value of the separate security at the time of transfer bears to the market value of the underlying security at that time.

"(2) Where, by reason of the application of sub-section (1) in relation to the transfer after 16 December 1984 of a payment right or payment rights in relation to a security to a particular person or particular persons jointly, the payment right or rights is or are taken to comprise a separate security, then, for the purposes of the application of this Division in relation to the separate security in relation to any period after the transfer, paragraph (a) of the definition of 'qualifying security' in sub-section 159GP (1) shall be disregarded.

"(3) In sub-sections (1) and (2), 'payment right', in relation to a security, means a right to receive a particular payment that is liable to be made under the security.

"(4) Where-

(a) at any time a taxpayer acquires or acquired a security (in this sub-section referred to as the 'underlying security') on issue or transfer;

(b) after 16 December 1984, the taxpayer issues a qualifying security (in this sub-section referred to as the 'stripped security'); and

(c) but for this sub-section, a deduction of an amount equal to the whole or a part of the issue price or, where the underlying security was acquired on transfer, the transfer price of the underlying security would be allowable from the assessable income of the taxpayer of the year of income in which the taxpayer issues the stripped security in respect of the issue of the stripped security, the amount of the deduction allowable shall be an amount that bears to the issue price or transfer price, as the case may be, of the underlying security the same proportion of the market value of the stripped security at the time of issue or purchase, as the case may be, bears to the market value of the underlying security at that time."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 17

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

17. Section 160AA of the Principal Act is amended-

(a) by omitting paragraph (1) (d) and substituting the following paragraph:

"(d) the additional tax amount in relation to the taxpayer in relation to the year of income exceeds the sum of-

(i) 15% of the qualifying 15% amount (if any) in relation to the taxpayer in relation to the year of income;

(ii) 25% of the qualifying 25% amount (if any) in relation to the taxpayer in relation to the year of income; and

(iii) 30% of so much (if any) of the relevant income amount in relation to the taxpayer in relation to the year of income as exceeds the sum of the amounts referred to in sub-paragraphs (i) and (ii);"

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(b) by inserting after the definition of "non-resident taxpayer" in sub-section (2) the following definitions:

" 'non-15% taxable income' means the amount ascertained by deducting from the taxable income of the taxpayer of the year of income the qualifying 15% amount (if any);

'notional (non-lump sum) taxable income' means the amount ascertained by deducting from the taxable income of the taxpayer of the year of income the relevant income amount;"; and

(c) by inserting after the definition of "notional tax amount" in sub-section (2) the following definitions:

" 'qualifying 15% amount' means so much (if any) of-

(a) any amount included in the assessable income of the taxpayer of the year of income under sub-section 27B (1) in respect of an age 55 termination payment; or

(b) where 2 or more such amounts are so included-the aggregate of those amounts,

as does not exceed the lesser of the residual amount and the relevant income amount;

'qualifying 25% amount' means-

(a) where the taxpayer is a resident taxpayer in relation to the year

of income and the notional (non-lump sum) taxable income does not exceed \$12,500-the amount (if any) by which the lesser of \$12,500 and the non-15% taxable income exceeds the notional (non-lump sum) taxable income; and

(b) any other case-nil;".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 18

Interpretation

18. Section 221A of the Principal Act is amended by inserting after paragraph (h) of the definition of "salary or wages" in sub-section (1) the following paragraph:

"(ha) by way of Formal Training Allowance;".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 19

Interpretation

19. Section 221YK of the Principal Act is amended by omitting from sub-section (1) the definition of "interest" and substituting the following definition:

" 'interest' means any amount that is, or is deemed to consist of, interest for the purposes of Division 11A of Part III."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 20

Deductions from dividends and interest

20. Section 221YL of the Principal Act is amended by inserting in sub-section (4) ", or an amount of interest to which section 128AA, 128AC or 128AD applies," after "dividend".

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21. After section 221YM of the Principal Act the following section is inserted:

Effect of section 128AB certificates and section 265B notices

"221YMA. (1) Subject to sub-section (3), where-

(a) the holder of a security transfers the security to another person; and  
(b) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice expressed to be issued under section 265B and identifying the security, then, for the purposes only of determining under this Division whether, or the extent to which, any amount is deemed to consist of interest under section 128AA in relation to the transfer of the security, that section shall be taken to apply as if the matters specified in the notice, being matters required to be stated under sub-section 265B (4), were correct and as if no variation or partial redemption of the security, other than any variation or partial redemption stated in the notice or advised in writing by the holder before the transfer, had occurred.

"(2) Where the requirements of paragraph (1) (b) are satisfied in relation to 2 or more notices, sub-section (1) applies only in relation to the notice that bears, as the stated time and date of issue of the notice, the later or latest time and date.

"(3) Where a certificate expressed to be issued under section 128AB is either-

(a) given by the person specified in the certificate to another person before, and in connection with, the transfer of the qualifying security identified in the certificate by the person specified in the certificate to the other person; or

(b) given by the person specified in the certificate to the issuer of the qualifying security identified in the certificate before, and in connection with, the redemption or partial redemption of the security from the person specified in the certificate, then, for the purposes of any application of this Division in relation to the transfer, redemption or partial redemption, as the case may be, of the security-

(c) the amount of the transfer price specified in the certificate shall be taken to be the issue price of the security; and

(d) any partial redemption of the security that took place before the date specified in the certificate shall be taken not to have occurred.

"(4) Where 2 or more certificates expressed to be issued under section 128ab that identify the same security are given to a person in circumstances referred to in paragraph (3) (a) or (b), sub-section (3) applies only in relation to the certificate in which is specified the later or latest date.

"(5) Where, before the transfer to a person, or the redemption or partial redemption by a person, of a qualifying security, no certificate expressed to be issued under section 128AB that identifies the qualifying security was given to the person in connection with the transfer, redemption or partial redemption, then, for the purposes only of the application of this Division in relation to the transfer to the person, or the redemption or partial redemption by the person, of the qualifying security, any certificate issued under section 128AB that identifies the security shall be taken not to have been issued.

"(6) Subject to sub-section (7), for the purposes of this section-

(a) expressions used in this section that are also used in Division 16E of Part III have the same respective meanings as in that Division; and

(b) sections 159GV (other than sub-section 159GV (2)) and 159GZ apply as if references in those sections to 'this Division' were references to 'section

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221YMA'.

"(7) Sub-section (6) applies as if paragraph (c) of the definition of 'qualifying security' in sub-section 159GP (1) were omitted."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 22

Dividends, &c., not in money not to be paid until payment made to Commissioner on account of tax

22. Section 221YP of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

"(3A) Where-

(a) interest to which section 128AA, 128AC or 128AD applies is to be paid by a person; and

(b) the person would, but for sub-section 221YL (4), be required to make a deduction under section 221YL from the interest, the person shall not pay or credit the interest to any person until an amount equal to the amount that, but for that sub-section, would have been required to be deducted has been paid to the Commissioner in respect of the interest."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 23

Liability of person who fails to make deductions, &c.

23. Section 221YQ of the Principal Act is amended by omitting from sub-section (1) "or (2) in relation to a dividend" and substituting ", (2) or (3A) in relation to a dividend or interest".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 24

Credits in respect of deductions made from dividends or interest

24. Section 221YS of the Principal Act is amended by inserting in sub-section (2) "or interest" after "dividend".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 25

25. After section 221YS of the Principal Act the following section is inserted:

Credits in respect of amounts assessed under Division 16E of Part III

"221YSA. (1) Where-

(a) the amount of any withholding tax that has become payable by a taxpayer on a payment of interest under, or in relation to the transfer of, a qualifying security has been paid;

(b) there is a net Division 16E amount in relation to the taxpayer in relation to-

(i) where the payment of interest is a payment in relation to the transfer of the qualifying security-the security;

(ii) where the payment of interest is such a payment by virtue of the application of section 128AC in relation to an attributable agreement payment within the meaning of that section-the attributable agreement payment; or

(iii) in any other case-the payment of interest; and

(c) the amount of the withholding tax payable on the interest exceeds the amount that would have been payable on the interest if the interest were

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reduced by the net Division 16E amount, the taxpayer may apply to the Commissioner for a credit of an amount equal to the excess referred to in paragraph (c).

"(2) An application under sub-section (1) shall-

(a) be in writing; and  
(b) set out details of the amounts referred to in paragraphs (1) (a), (b) and (c).

"(3) Where, on an application under sub-section (1), the Commissioner is satisfied as to the matters referred to in paragraphs (1) (a), (b) and (c), the applicant is entitled to a credit of an amount equal to the excess referred to in paragraph (1) (c).

"(4) Subject to sub-section (5), for the purposes of this section-

(a) there shall be taken to be a net Division 16E amount in relation to a taxpayer in relation to a qualifying security, an attributable agreement payment or a payment of interest under a qualifying security if the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the security or the payment, as the case may be, under section 159GQ or 159GR exceeds the sum of all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the security or the payment, as the case may be, under those sections;

(b) the net Division 16E amount is an amount equal to the excess referred to in paragraph (a);

(c) expressions used in this section that are also used in Division 16E of Part III have the same respective meanings as in that Division; and

(d) sections 159GV (other than sub-section 159GV (2)) and 159GZ apply as if references in those sections to 'this Division' were references to 'section 221YSA'.

"(5) Sub-section (4) applies as if paragraph (c) of the definition of 'qualifying security' in sub-section 159GP (1) were omitted."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 26

Penalty for false or misleading statements

26. Section 223 of the Principal Act is amended by inserting after sub-section (9) the following sub-sections:

"(9A) Where-

(a) a person to whom a notice is issued under section 265B gives the notice to another person in connection with the transfer of a qualifying security to the other person; or

(b) a person gives advice in writing to another person, in connection with the transfer of a qualifying security, of a variation or partial redemption of the qualifying security, any statement in the notice when so issued or given, or in the advice when so given, to the other person shall, for the purposes of this Part, be taken to have been made by the person giving the notice or advice, as the case may be, to the other person for a purpose in connection with the operation of this Act.

"(9B) Where-

(a) the holder of a qualifying security transfers the security to another person;

(b) by virtue of the application of section 128AA, the holder is liable to pay withholding tax in relation to the transfer of the qualifying security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice issued to the holder under section 265B identifying the security;

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(d) after the notice was issued to the holder, the security was varied or partially redeemed; and

(e) the holder did not advise the transferee in writing of the variation or partial redemption, the holder shall, for the purposes of this Part, be taken to have made for a purpose in connection with the operation of this Act a statement that the qualifying security was not so varied or partially redeemed.

"(9C) Where-

(a) the holder of a qualifying security who acquired the security on transfer (in this sub-section referred to as the 'current acquisition transfer') transfers the security to another person;

(b) by virtue of the application of section 128AA, the holder is liable to pay withholding tax in relation to the transfer of the security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a certificate issued to the holder under section 128AB identifying the security; and

(d) the holder had acquired the security on transfer on any occasion before the current acquisition transfer, the holder shall, for the purposes of this Part, be taken to have made for a purpose in connection with the operation of this Act a statement that the certificate relates to the current acquisition transfer.

"(9D) Where-

(a) a qualifying security is redeemed or partially redeemed from the holder;

(b) the holder acquired the security on transfer (in this sub-section referred to as the 'current acquisition transfer');

(c) the holder is liable to pay withholding tax in relation to the redemption or partial redemption of the security;

(d) before the security was redeemed or partially redeemed, the holder gave to the issuer, in connection with the redemption or partial redemption, a certificate issued to the holder under section 128ab identifying the security; and

(e) the holder had acquired the security on transfer on any occasion before the current acquisition transfer, the holder shall, for the purposes of this Part, be taken to have made for a purpose in connection with the operation of this Act a statement that the certificate relates to the current acquisition transfer.

"(9E) Subject to sub-section (9F), for the purposes of sub-sections (9A) to (9D) (inclusive)-

(a) expressions used in those sub-sections that are also used in Division 16E of Part III have the same respective meanings as in that Division; and

(b) sections 159GV (other than sub-section 159GV (2)) and 159GZ apply as if references in those sections to 'this Division' were references to 'section 223'.

"(9F) Sub-section (9E) applies as if paragraph (c) of the definition of 'qualifying security' in sub-section 159GP (1) were omitted."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 27

27. After section 265A of the Principal Act the following section is inserted:

Notices in relation to certain securities

"265B. (1) Subject to sub-section (2), for the purposes of this section-

(a) expressions used in this section that are also used in Division 16E of Part III have the same respective meanings as in that Division; and (b)

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sections 159GV (other than sub-section 159GV (2)) and 159GZ apply as if references in those sections to 'this Division' were references to 'section 265B'.

"(2) Sub-section (1) applies as if paragraph (c) of the definition of 'qualifying security' in sub-section 159GP (1) were omitted.

"(3) The holder of a security, not being a prescribed security within the meaning of section 26C, may apply at any time to the issuer for a notice under this section in relation to the security.

"(4) Where the issuer of a security receives an application under sub-section (3) in relation to the security, the issuer shall within 21 days of receipt of the application issue a notice in writing to the applicant, expressed to be issued under this section and identifying the security, that states that the notice was issued at a specified time on a specified date and-

(a) where the security is not a qualifying security-that the security is not

a qualifying security; or (b) where the security is a qualifying security-that-

(i) the security is a qualifying security;

(ii) the security was issued for a specified consideration;

(iii) where the security was partially redeemed on one or more occasions

before the time of issue of the notice-that the security was partially redeemed by a specified amount or amounts on a specified date or dates; and

(iv) where the security was varied to become a qualifying security-the security was varied, for a specified consideration, to become a qualifying security."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 29

Application of amendments

29. (1) In this section, "amended Act" means the Principal Act as amended by this Act.

(2) The amendments made by sections 5 and 8 apply to assessments in respect of income of the year of income that commenced on 1 July 1985 and of all subsequent years of income.

(3) Section 79A of the amended Act applies to assessments in respect of income of the year of income that commenced on 1 July 1985 as if an allowance paid in accordance with section 98AA of the Repatriation Act 1920 (including that section as applied by virtue of Division 5A, 6, 7, 8 or 9 of Part III of that Act or by virtue of the Repatriation (Special Overseas Service) Act 1962) were a prescribed allowance within the meaning of that first-mentioned section.

(4) The amendments made by sections 6, 10 and 16 apply as if they had come into operation on 17 December 1984.

(5) The amendment made by section 7 applies to gifts made after 22 May 1986.

(6) The amendment made by section 9 applies in relation to an expense, as defined in sub-section 82KT (1) of the amended Act, incurred by a taxpayer during a year of income commencing on or after 1 July 1986.

(7) The amendments made by section 17 apply to assessments in respect of income of the year of income that commenced on 1 July 1984 and of all subsequent years of income.

(8) In the application of section 160AA of the amended Act to assessments in respect of income of the year of income that commenced on 1 July 1984, references in that section to 25% shall be read as references to 26.67%.

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**PART III - AMENDMENTS OF THE TAXATION ADMINISTRATION ACT 1953**

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 30

Principal Act

30. The Taxation Administration Act 1953\*2\* is in this Part referred to as the Principal Act.

\*2\* No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; Nos. 4, 47, 65, 104 and 123, 1985; and Nos. 41, 46 and 48, 1986.

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 31

Interpretation

31. Section 8J of the Principal Act is amended by adding at the end the following sub-sections:

"(12) Where-

(a) a person issues a notice to another person under section 265B of the Income Tax Assessment Act 1936;

(b) a person to whom a notice is issued under that section gives the notice to another person in connection with the transfer of a qualifying security to the other person; or

(c) a person gives advice in writing to another person, in connection with the transfer of a qualifying security, of a variation or partial redemption of the qualifying security, any statement in the notice when so issued or given, or in the advice when so given, to the other person shall, for the purposes of this Division, be taken to have been made by the issuer or person giving the notice or advice, as the case may be, to the other person for a purpose in connection with the operation of a taxation law.

"(13) Where-

(a) the holder of a qualifying security transfers the security to another person;

(b) by virtue of the application of section 128AA of the Income Tax Assessment Act 1936, the holder is liable to pay withholding tax in relation to the transfer of the qualifying security;

(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice issued to the holder under section 265B of that Act identifying the security;

(d) after the notice was issued to the holder, the security was varied or partially redeemed; and

(e) the holder did not advise the transferee in writing of the variation or partial redemption, the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the qualifying security was not so varied or partially redeemed.

"(14) Where-

(a) the holder of a qualifying security who acquired the security on transfer (in this sub-section referred to as the 'current acquisition transfer') transfers the security to another person;

(b) by virtue of the application of section 128AA of the Income Tax Assessment Act 1936, the holder is liable to pay withholding tax in relation to the transfer of the security;

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(c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a certificate issued to the holder under section 128AB of that Act identifying the security; and

(d) the holder had acquired the security on transfer on any occasion before the current acquisition transfer, the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the certificate relates to the current acquisition transfer.

"(15) Where-

(a) a qualifying security is redeemed or partially redeemed from the holder;

(b) the holder acquired the security on transfer (in this sub-section referred to as the 'current acquisition transfer');

(c) the holder is liable to pay withholding tax in relation to the redemption or partial redemption of the security;

(d) before the security was redeemed or partially redeemed, the holder gave to the issuer, in connection with the redemption or partial redemption, a certificate issued to the holder under section 128AB of the Income Tax Assessment Act 1936 identifying the security; and

(e) the holder had acquired the security on transfer on any occasion before the current acquisition transfer, the holder shall, for the purposes of this Division, be taken to have made for a purpose in connection with the operation of a taxation law a statement that the certificate relates to the current acquisition transfer.

"(16) Subject to sub-section (17), for the purposes of sub-sections (12) to (15) (inclusive)-

(a) expressions used in those sub-sections that are also used in Division 16E of Part III of the Income Tax Assessment Act 1936 have the same respective meanings as in that Division; and

(b) sections 159GV (other than sub-section 159GV (2)) and 159GZ of the Income Tax Assessment Act 1936 apply as if references in those sections to 'this Division' were references to 'section 8j of the Taxation Administration Act 1953'.

"(17) Sub-section (16) applies as if paragraph (c) of the definition of 'qualifying security' in sub-section 159GP (1) of the Income Tax Assessment Act 1936 were omitted."

#### **PART IV - AMENDMENTS OF THE TAXATION LAWS AMENDMENT ACT (No. 4) 1985**

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 32

Principal Act

32. The Taxation Laws Amendment Act (No. 4) 1985\*3\* is in this Part referred to as the Principal Act.

\*3\* No. 173, 1985.

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 33

Commencement

33. Section 2 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

"(4) Section 4, sub-section 5 (3) and sections 17, 20, 21 and 22 shall come into operation on the day on which the Veterans' Entitlements Act 1986 comes into operation."

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TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 34

Income of certain persons serving with an armed force under the control of the United Nations

34. Section 4 of the Principal Act is amended by omitting "Veterans' Entitlements Act 1985" and substituting "Veterans' Entitlements Act 1986".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 35

Exemption of certain pensions

35. Section 5 of the Principal Act is amended-

(a) by omitting from sub-section (3) "Veterans' Entitlements Act 1985" (wherever occurring) and substituting "Veterans' Entitlements Act 1986"; and

(b) by omitting from sub-section (3) "Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1985" (wherever occurring) and substituting "Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 36

Repeal of section 13

36. Section 13 of the Principal Act is repealed.

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 37

Rebate in respect of certain pensions

37. Section 17 of the Principal Act is amended by omitting "Veterans' Entitlements Act 1985" and substituting "Veterans' Entitlements Act 1986".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 38

Prescribed persons

38. Section 21 of the Principal Act is amended by omitting "Veterans' Entitlements Act 1985" and substituting "Veterans' Entitlements Act 1986".

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 39

Release of liability of members of the Defence Force on death

39. Section 22 of the Principal Act is amended by omitting "Veterans' Entitlements Act 1985" (wherever occurring) and substituting "Veterans' Entitlements Act 1986".

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**PART V - AMENDMENT OF THE INCOME TAX REGULATIONS**

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 40

Income Tax Regulations

40. The Income Tax Regulations are in this Part referred to as the Regulations.

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 41

Definitions

41. Regulation 54ZF of the Regulations is amended by omitting from sub-regulation (1) the definition of "interest" and substituting the following definition:

" 'interest' means any amount that is, or is deemed to consist of, interest for the purposes of Division 11A of Part III of the Act."

TAXATION LAWS AMENDMENT ACT (No. 2) 1986No. 49, 1986

- SECT 42

Amendment or repeal of Regulations

42. The amendment of the Regulations by this Part does not prevent the amendment or repeal, by regulations, of the Regulations as amended by this Part.

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## Notes to the *Taxation Laws Amendment Act (No. 2) 1986*

### Note 1

The *Taxation Laws Amendment Act (No. 2) 1986* as shown in this compilation comprises Act No. 49, 1986 amended as indicated in the Tables below.

#### Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 2) 1986</i>	49, 1986	24 June 1986	See s. 2	
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: 24 June 1986 (see s. 2(31))	—
<i>Tax Laws Amendment (2010 Measures No. 2) Act 2010</i>	75, 2010	28 June 2010	Schedule 6 (item 38): 29 June 2010	—

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## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 9 .....	am. No. 141, 1987
S. 28 .....	rep. No. 75, 2010