Income Tax Assessment Amendment (Capital Gains) Act 1986

No. 52 of 1986

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Income Tax Assessment Amendment (Capital Gains) Act 1986

No. 52 of 1986

An Act to amend the law relating to income tax

[*Assented to 24 June 1986*]

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

Short title, &c.

1. (1) This Act may be cited as the *Income Tax Assessment Amendment (Capital Gains) Act 1986*.

(2) The *Income Tax Assessment Act 1936*[1] is in this Act referred to as the Principal Act.

Commencement

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

Interpretation

3. Section 6 of the Principal Act is amended—

(a) by inserting after the definition of "resident" or "resident of Australia" in sub-section (1) the following definition:

" 'return of income' means a return of income, or of profits or gains of a capital nature, or of both income and such profits or gains;"; and

(b) by adding "or deriving profits or gains of a capital nature" at the end of the definition of "taxpayer" in sub-section (1).

Cost of certain shares

4. Section 6BA of the Principal Act is amended by omitting paragraph (3) (b) and substituting the following paragraph:

"(b) where any of the original shares or any of the bonus shares are not articles of trading stock of the taxpayer—

(i) the amount or value of the consideration paid in respect of the acquisition of any of those shares for the purposes of Part IIIA; or

(ii) the amount of any profit or loss arising on the sale or disposal of any of those shares,".

Money credited, reinvested, &c., to be deemed to be derived

5. Section 19 of the Principal Act is amended by inserting "or money" after "Income".

Exemptions

6. Section 23 of the Principal Act is amended—

(a) by omitting from paragraph (q) "derived by a resident from sources out of Australia and Papua New Guinea, where that income is not exempt from income tax in the country where it is derived, or where the taxpayer is liable to pay royalty or export duty in any country outside Australia and Papua New Guinea in respect of goods from the sale of which the income is derived" and substituting ", or profits or gains of a capital nature, derived by a resident from sources out of Australia and Papua New Guinea, where that income is not, or those profits or gains are not, exempt from tax in the country where the income is, or the profits or gains are, derived, or where the taxpayer is liable to pay royalty or export duty in any country outside Australia and Papua New Guinea in respect of goods from the sale of which the income is, or the profits or gains are, derived"; and

(b) by omitting the proviso to paragraph (q) and substituting the following proviso:

"Provided that this paragraph does not apply to exempt any income, or any profits or gains of a capital nature, unless—

(i) where there is a liability for tax in the country where that income is, or those profits or gains are, derived—the Commissioner is satisfied that the tax has been or will be paid; or

(ii) where the outgoings incurred in producing that income or those profits or gains exceed that income or those profits or gains, as the case may be—the Commissioner is satisfied that the tax would have been paid in the country where the income is, or the profits or gains are, derived if the income, or the profits or gains, as the case may be, had exceeded the outgoings;".

Interpretation

7. Section 24B of the Principal Act is amended by adding at the end the following sub-section:

"(4) This Division applies in relation to profits or gains of a capital nature in the same manner as it applies in relation to income.".

Assessable income to include certain profits

8. Section 25A of the Principal Act is amended by inserting before sub-section (1) the following sub-section:

"(1A) This section does not apply in respect of the sale of property acquired on or after 20 September 1985.".

Shares and rights acquired under scheme for the acquisition of shares by employees

9. Section 26AAC of the Principal Act is amended—

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

"(8A) Where a taxpayer has acquired a right (whether that right was unconditional or was subject to conditions) to acquire a share in a company under a scheme for the acquisition of shares by employees, being a right issued after 19 September 1985, the taxpayer may elect that sub-section (8C) is to apply in relation to that right.

"(8B) An election under sub-section (8A) in relation to a right—

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

(b) does not have effect unless it is lodged with the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the right was acquired, or before such later date as the Commissioner allows.

"(8C) Where a taxpayer has made an election under sub-section (8A) in relation to a right—

(a) the assessable income of the taxpayer of the year of income during which that right was issued to the taxpayer includes the value of that right at the time when it was issued to the taxpayer less the amount, if any, paid or payable by the taxpayer as consideration for the right;

(b) no amount shall be included in the assessable income of the taxpayer of any year of income in respect of that right by virtue of any other provision of this section; and

(c) no amount shall be included in the assessable income of the taxpayer of any year of income by virtue of sub-section (5) in respect of a share acquired by the taxpayer as a result of the exercise or operation of the right.

"(8D) Where—

(a) a taxpayer has made an election under sub-section (8A) in relation to a right;

(b) by virtue of paragraph (8C) (a), an amount has been included, or would, but for this sub-section, be included, in the assessable income of the taxpayer of a year of income in respect of that right; and

(c) by virtue of any conditions or restrictions (being conditions or restrictions applicable only to rights to acquire shares in the company acquired under a scheme for the acquisition of shares by employees) attached to, or to the issue of, the right, the taxpayer has been divested of ownership of the right,

then, notwithstanding paragraph (8C) (a), the assessable income of the taxpayer of the year of income referred to in paragraph (b) of this sub-section shall be deemed not to have included, or not to include, as the case may be, the amount referred to in that paragraph.";

(b) by inserting after sub-section (11) the following sub-section:

"(11A) Sub-section (11) does not apply in relation to a disposition of a right to acquire a share in a company if Part IIIA applies in relation to that disposition.";

(c) by inserting after sub-section (12) the following sub-section:

"(12A) Sub-section (12) does not apply in relation to a disposition of a share in a company if Part IIIA applies in relation to that disposition.";

(d) by inserting after sub-section (13) the following sub-section:

"(13A) Sub-section (13) does not apply in relation to a disposition of a share in a company if Part IIIA applies in relation to that disposition.";

(e) by inserting after sub-section (15) the following sub-sections:

"(15A) A taxpayer may elect that sub-section (15) is not to apply in relation to a share specified in the election, being a share issued to the taxpayer after 19 September 1985.

"(15B) An election under sub-section (15A) in relation to a share—

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

(b) does not have any effect unless it is lodged with the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the share was issued, or within such further period as the Commissioner allows.

"(15C) Where—

(a) a taxpayer has made an election under sub-section (15A) in relation to a share;

(b) by virtue of sub-section (5), an amount has been included, or would, but for this sub-section, be included, in the assessable income of the taxpayer of a year of income in respect of that share; and

(c) by virtue of any conditions or restrictions mentioned in paragraph (15) (b) attached to, or to the issue of, the share, the taxpayer has been divested of ownership of the share,

then, notwithstanding sub-section (5), the assessable income of the taxpayer of the year of income referred to in paragraph (b) of this sub-section shall be deemed not to have included, or not to include, as the case may be, the amount referred to in that paragraph."; and

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

"(18) For the purposes of this section, in determining the value of a share or of a right to acquire a share, the share or the right, and any share that may be acquired as a consequence of the exercise or operation of the right, shall be deemed not to be subject to any conditions or restrictions (being conditions or restrictions applicable only to shares in, or rights to acquire shares in, the company acquired under a scheme for the acquisition of shares by employees).

"(19) Nothing in section 170 prevents the amendment of an assessment made in relation to a taxpayer if the amendment is made for the purpose of giving effect to sub-section (8D) or (15C) and effects a reduction in the liability of the taxpayer.".

10. Before section 51 of the Principal Act the following section is inserted in Subdivision A of Division 3 of Part III:

Deductions not allowable in certain circumstances

"51AAA. Where—

(a) an amount is included in the assessable income of a taxpayer of a year of income by section 160ZO;

(b) a deduction would, but for this section, be allowable under this Subdivision to the taxpayer; and

(c) if the amount had not been included in the assessable income the deduction would not be allowable,

the deduction is not allowable.".

Loss on property acquired for profit-making

11. Section 52 of the Principal Act is amended by inserting before sub-section (1) the following sub-section:

"(1A) This section does not apply in respect of the sale of property acquired on or after 20 September 1985.".

12. Section 82KZE of the Principal Act is repealed and the following section is substituted:

Carry forward of excess rental property loan interest

"82KZE. Where the rental property loan interest of the taxpayer in relation to a year of income exceeds the sum of—

(a) the amount (if any) of the deduction allowable to the taxpayer under section 51 in the year of income in respect of that rental property loan interest; and

(b) the amount (if any) by which a capital gain or capital gains that, but for sub-section 160ZA(1), would be deemed by Part IIIA to have accrued to the taxpayer during the year of income in respect of the disposal of a prescribed asset or prescribed assets (within the meaning of section 160ZA) is reduced by virtue of sub-section 160ZA (1),

the excess amount shall, for the purposes of section 51, this Subdivision and Part IIIA, be deemed to have been incurred by the taxpayer at the beginning of the next succeeding year of income.".

Transfer of excess rental property loan interest within company group

13. Section 82KZF of the Principal Act is amended—

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

"(a) the rental property loan interest of a company that is a resident (in this section referred to as the 'transferor') in relation to a year of income exceeds the sum of—

(i) the amount (if any) of the deduction allowable to the transferor under section 51 in the year of income in respect of that rental property loan interest; and

(ii) the amount (if any) by which a capital gain or capital gains that, but for sub-section 160ZA (1), would be deemed by Part IIIA to have accrued to the transferor during the year of income in respect of the disposal of a prescribed asset or prescribed assets (within the meaning of section 160ZA) is reduced by virtue of sub-section 160ZA (1); and";

(b) by omitting from sub-section (1) "and this Subdivision" and substituting ", this Subdivision and Part IIIA"; and

(c) by omitting from sub-section (3) "the rental property income of the transferee of that year of income" and substituting "the sum of the rental property income of the transferee of that year of income and the amount (if any) of the capital gain or capital gains that, but for sub-section 160ZA (1), would be deemed by Part IIIA to have accrued to the transferee during the year of income in respect of the disposal of a prescribed asset or prescribed assets (within the meaning of section 160ZA)".

14. Section 82KZG of the Principal Act is repealed and the following section is substituted:

Special provision relating to partnerships

"82KZG. Section 82KZE does not apply in relation to a taxpayer being a partnership but, where the rental property loan interest of the partnership in relation to a year of income exceeds the sum of—

(a) the amount (if any) of the deduction allowable to the partnership under section 51 in relation to the year of income in respect of that rental property loan interest; and

(b) the amount (if any) by which a capital gain or capital gains that, but for sub-section 160ZA (1), would be deemed by Part IIIA to have accrued to the partnership in respect of the disposal of a prescribed asset or prescribed assets (within the meaning of section 160ZA) during the year of income is reduced by virtue of sub-section 160ZA (1),

each partner in the partnership shall be deemed, for the purposes of section 51, this Subdivision and Part IIIA, to have incurred—

(c) in a case where the year of income is the transitional year of income—in that year of income and immediately after the commencement date; and

(d) in any other case—at the beginning of the year of income,

in gaining or producing assessable income, rental property loan interest equal to the partner's portion of the excess.".

Exemption of income attributable to superannuation policies and certain annuities

15. Section 112A of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) The reference in sub-section (1) to an amount of income derived during the year of income from the assets included in an Australian statutory fund of a life assurance company or in any other fund maintained by such a company in respect of the life assurance business of the company shall be construed as including a reference to an amount of a capital gain that is to be taken for the purposes of Part IIIA to have accrued to the company

during the year of income as a result of the disposal of an asset included in such a fund.".

Interpretation

16. Section 121F of the Principal Act is amended by omitting paragraph (c) of the definition of "relevant exempting provision" in sub-section (1) and substituting the following paragraphs:

"(c) section 112A;

(ca) sub-section 160Z (8); and".

17. After section 149 of the Principal Act the following section is inserted:

Capital gains to be disregarded

"149A. (1) For the purposes of the application of this Division in relation to a taxpayer (including the purpose of determining whether this Division applies to the income of a taxpayer), references in this Division to the assessable income or taxable income of the taxpayer of any year of income shall be read as references to the respective amounts (if any) that would have been the assessable income and taxable income of the taxpayer of that year of income but for section 160ZO.

"(2) A reference in sub-section (1) to the assessable income or taxable income of a taxpayer of a year of income shall, in relation to a taxpayer in the capacity of trustee of a trust estate, be read as a reference to the assessable income or net income, as the case may be, of the trust estate of the year of income.".

Rebates for dependants

18. Section 159J of the Principal Act is amended by inserting before paragraph (a) of the definition of "separate net income" in sub-section (6) the following paragraph:

"(aa) includes any amount that is included in the assessable income of the dependant by Part IIIA;".

19. After Part III of the Principal Act the following Part is inserted:

"PART IIIA—CAPITAL GAINS AND CAPITAL LOSSES

"Division 1—Interpretation

Assets to which Part applies

"160A. In this Part, unless the contrary intention appears, 'asset' means any form of property and includes—

(a) an option, a debt, a chose in action, any other right, goodwill and any other form of incorporeal property;

(b) currency of a foreign country; and

(c) any form of property created or constructed, or otherwise coming to be owned without being acquired,

but does not include a motor vehicle of a kind mentioned in paragraph 82AF (2) (a).

Personal-use assets

"160B. (1) For the purposes of this Part, 'personal-use asset', in relation to a taxpayer, means—

(a) an asset (other than land, or a building that is deemed to be a separate asset from land by virtue of section 160P) owned by the taxpayer and used or kept primarily for the personal use or enjoyment of the taxpayer, of an associate or associates of the taxpayer or of the taxpayer and any one or more of the associates of the taxpayer;

(b) a debt owed to the taxpayer—

(i) in respect of an asset that was formerly a personal-use asset of the taxpayer; or

(ii) that came to be owed otherwise than in the course of the gaining or producing of income by the taxpayer or the carrying on of a business by the taxpayer; and

(c) an option or right of the taxpayer to acquire an asset that would, if acquired by the taxpayer, be an asset to which paragraph (a) would apply.

"(2) For the purposes of this Part, 'listed personal-use asset', in relation to a taxpayer, means a personal-use asset of the taxpayer the consideration in respect of the acquisition of which by the taxpayer exceeded $100 and which is—

(a) any of the following:

(i) a print, etching, drawing, painting, sculpture or other similar work of art;

(ii) jewellery;

(iii) a rare folio, rare manuscript or rare book;

(iv) a postage stamp or first day cover;

(v) a coin or medallion;

(vi) an antique;

(vii) an interest in an asset referred to in any of the preceding sub-paragraphs;

(b) a debt owed in respect of an asset referred to in paragraph (a); or

(c) an option or right to acquire an asset referred to in paragraph (a).

"(3) For the purposes of this Part, 'non-listed personal-use asset' means a personal-use asset other than a listed personal-use asset.

"(4) Where—

(a) a taxpayer owned two or more articles being non-listed personal-use assets of a kind that would not ordinarily be disposed of otherwise than by one transaction as a set of articles; and

(b) the taxpayer has disposed of the articles by two or more transactions, whether the articles were disposed of to the same person or to different persons,

this Part applies, and shall be deemed to have applied, as if the articles constituted a single non-listed personal-use asset and as if each disposal were a disposal of part of that asset.

"(5) Sub-section (4) does not apply if the disposal of the articles by several transactions instead of a single transaction was effected solely for a reason or reasons unrelated to the operation of this Part.

"(6) Nothing in section 170 prevents the amendment of an assessment for the purpose of giving effect to sub-section (4).

Taxpayer

"160C. (1) A reference in this Part to a taxpayer, in relation to an asset that has been disposed of or in relation to a capital gain or listed personal-use asset gain that accrued or a capital loss or a listed personal-use asset loss that was incurred in respect of such an asset, is a reference—

(a) except where paragraph (b) applies—to the person who owned the asset immediately before the disposal took place; or

(b) where the disposal resulted from an act that is, by virtue of sub-section 160V (1) or section 160W, deemed to be the act of a person other than the person who owned the asset immediately before the disposal took place—to that other person.

"(2) A reference in this Part to a taxpayer, in relation to an asset that has been acquired, is a reference to the person who owned the asset immediately after the acquisition took place.

Money or other property applied for benefit of taxpayer

"160D. (1) For the purposes of this Part—

(a) a taxpayer shall be deemed to have received money or other property if the money or other property has been applied for the benefit, or in accordance with the directions, of the taxpayer; and

(b) a taxpayer shall be deemed to be entitled to receive money or other property if the taxpayer is entitled to have the money or other property applied for the benefit, or in accordance with the directions, of the taxpayer.

"(2) For the purposes of this Part, a reference in sub-section (1) to the application of money or other property for the benefit of a taxpayer includes, without limiting the generality of the expression, a reference to the application of money or other property in the discharge, in whole or in part, of a debt due by the taxpayer.

"(3) Nothing in this section limits the operation of section 19.

Associated persons

"160E. A reference in this Part to an associate of a taxpayer is a reference to—

(a) in the case of a taxpayer who is a natural person, other than a taxpayer in the capacity of a trustee—

(i) a relative of the taxpayer;

(ii) a partner of the taxpayer;

(iii) if a person who is an associate of the taxpayer by virtue of sub-paragraph (ii) is a natural person—the spouse or a child of that person;

(iv) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of another sub-paragraph of this paragraph benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; or

(v) a company where—

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

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

(b) in the case of a taxpayer being a company, other than a taxpayer in the capacity of a trustee—

(i) a partner of the taxpayer;

(ii) if a person who is an associate of the taxpayer by virtue of sub-paragraph (i) is a natural person—the spouse or a child of that person;

(iii) a trustee of a trust estate where the taxpayer or another person who is an associate of the taxpayer by virtue of another sub-paragraph of this paragraph benefits or is capable

(whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts;

(iv) another person where—

(A) the taxpayer company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person, or of that person and another person or other persons, whether those directions, instructions or wishes are communicated directly to the taxpayer company or its directors, or through any interposed companies, partnerships or trusts; or

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

(v) another company where—

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

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

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

by virtue of paragraph (a), by virtue of another sub-paragraph of this paragraph or by virtue of paragraph (c);

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

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

(ii) where a person who is an associate of the taxpayer by virtue of sub-paragraph (i) is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of paragraph (a) or this paragraph; or

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

(d) in the case of a taxpayer being a partnership—

(i) a partner in the partnership;

(ii) where any partner in the partnership is a natural person—any person who, if that natural person were the taxpayer, would be an associate of that natural person by virtue of paragraph (a) or (c); or

(iii) where any partner in the partnership is a company—any person who, if the company were the taxpayer, would be an associate of the company by virtue of paragraph (b) or (c).

Associated trust estates

"160F. (1) For the purposes of this Part, a trust estate is associated with another trust estate if a person who benefits or is capable of benefiting from the first-mentioned trust estate benefits or is capable of benefiting from the other trust estate.

"(2) For the purposes of this Part, trust estates that are associated with the same trust estate (including trust estates that are so associated by another application or other applications of this sub-section) are associated with each other.

Related companies

"160G. (1) For the purposes of this Part, a company shall be taken to be related to another company if—

(a) one of the companies is a subsidiary of the other company; or

(b) each of the companies is a subsidiary of the same company.

"(2) For the purposes of this section, a company (in this sub-section referred to as the 'subsidiary company') shall be taken to be the subsidiary

of another company (in this sub-section referred to as the 'holding company') if—

(a) all the shares in the subsidiary company are beneficially owned by—

(i) the holding company;

(ii) a company that is, or two or more companies each of which is, a subsidiary of the holding company; or

(iii) the holding company and a company that is, or two or more companies each of which is, a subsidiary of the holding company; and

(b) no person is in a position to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

"(3) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this sub-section), every company that is a subsidiary of the first-mentioned company shall be taken to be a subsidiary of that other company.

"(4) For the purposes of sub-section (2), a person shall be taken to be in a position to affect any rights of a company in relation to another company if that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies, by virtue of any agreement or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

"(5) In sub-section (4), 'agreement' means an 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.

Resident trust estates, partnerships and unit trusts

"160H. (1) For the purposes of this Part, a trust estate shall be taken to be a resident trust estate in relation to the year of income if—

(a) a trustee of the trust estate was a resident at any time during the year of income; or

(b) the central management and control of the trust estate was in Australia at any time during the year of income.

"(2) For the purposes of this Part, a partnership shall be taken to be a resident partnership in relation to the year of income if—

(a) a partner in the partnership was a resident at any time during the year of income; or

(b) the central management and control of the business or of the principal business of the partnership was in Australia at any time during the year of income.

"(3) For the purposes of this Part, a unit trust shall be taken to be a resident unit trust in relation to the year of income if, at any time during the year of income—

(a) either of the following conditions was satisfied:

(i) any property of the unit trust was situated in Australia;

(ii) the trustee of the unit trust carried on business in Australia; and

(b) either of the following conditions was satisfied:

(i) the central management and control of the unit trust was in Australia;

(ii) a person who was a resident or persons who were residents held more than 50% of—

(A) the beneficial interests in the income of the unit trust; or

(B) the beneficial interests in the property of the unit trust.

Asset passing to personal representative or beneficiary

"160J. In this Part—

(a) a reference to an asset that formed part of the estate of a deceased person passing to the legal personal representative of the deceased person is a reference to an asset that formed part of the estate of a deceased person coming into the ownership of a person as the executor of the will, or as the administrator of the estate, of the deceased person; and

(b) a reference to an asset that formed part of the estate of a deceased person passing to a beneficiary in that estate is a reference to an asset that formed part of the estate of the deceased person coming into the ownership of a person as a beneficiary—

(i) under the will of the deceased person, or under that will as varied by an order of a court; or

(ii) by operation of law as a result of the intestacy of the deceased person, or by operation of law as a result of that intestacy as the operation of the law is varied by an order of a court,

whether the asset was transmitted directly to that person or was transferred to that person by the executor of the will, or by the administrator of the estate, of the deceased person.

Other interpretative provisions

"160K. (1) In this Part, unless the contrary intention appears—

'building' includes a structure;

'land' includes—

(a) a legal or equitable estate or interest in land;

(b) a right, power or privilege over, or in connection with, land;

(c) a legal or equitable estate or interest in a stratum unit; or

(d) a share in a company that owns land on which a building is erected, being a share that entitles the holder to a right of occupancy of a dwelling of a kind known as a flat or home unit contained in the building;

'relevant exempting provision' means any of the following provisions:

(a) paragraphs 23 (d), (e), (ea), (eb), (ec), (f), (g), (h), (i), (j), (jaa), (ja) and (x);

(b) section 23F, 23FA or 23FB;

(c) any provision of an Act other than this Act to the effect that income of a particular person or body is not subject to taxation under any law of the Commonwealth or to the effect that a particular person or body is not subject to taxation under any law of the Commonwealth;

'stratum unit' means a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles, being a unit that comprises—

(a) a part of a building containing a dwelling, being a part consisting of a flat or home unit; or

(b) a part of a parcel of land, being a part on which a building containing the dwelling is constructed;

'transfer' includes conveyance;

'will' includes a codicil.

"(2) In this Part other than section 160ZZM, or in a provision of this Act other than this Part in so far as that provision has effect for the purposes of this Part—

(a) a reference to the spouse of a person (in this paragraph referred to as the 'relevant person')—

(i) includes a reference to a de facto spouse of the relevant person; but

(ii) does not include a reference to a person who is legally married to the relevant person but is living separately and apart from the relevant person on a permanent basis; and

(b) a reference to the de facto spouse of a person (in this paragraph referred to as the 'relevant person') is a reference to a person who is living with the relevant person as the husband or wife of the relevant person on a *bona fide* domestic basis although not legally married to the relevant person.

"(3) A reference in this Part to a person being entitled to receive money or property other than money includes a reference to a person being entitled to receive money or property other than money either immediately or at a future date and, in the case of money, either in a lump sum or by instalments.

"(4) A reference in this Part to a person being required to pay money or give property other than money includes a reference to a person being required to pay money or give property other than money either immediately or at a future date and, in the case of money, either in a lump sum or by instalments.

"(5) Where an amount of money, or the value of any property, that is to be taken into account for the purposes of this Part as, or as part of—

(a) the cost base to a taxpayer in respect of an asset; or

(b) the consideration in respect of the disposal of an asset,

would, but for this sub-section, be an amount in the currency of a foreign country, the amount to be so taken into account is the equivalent amount in Australian currency at the time when the costs were incurred or the time of disposal of the asset, as the case may be.

"(6) Where by virtue of a provision of this Part a taxpayer is deemed for the purposes of this Part to have paid or given any consideration in respect of the acquisition of an asset, the taxpayer shall be deemed, unless the contrary intention appears, to have paid or given that consideration at the time when the taxpayer acquired the asset.

"(7) Where a provision of this Part refers to a person who did not pay or give any consideration in respect of the acquisition of an asset, a person shall not be taken by reason of sub-section 160ZH (9) not to be a person to whom the provision applies.

"(8) Where a provision of this Part refers to a person who did not receive any consideration in respect of the disposal of an asset, a person shall not be taken by reason of sub-section 160ZD (2) not to be a person to whom the provision applies.

"(9) A provision of this Part that provides that this Part does not apply in respect of a disposal of an asset has effect only in relation to the person disposing of the asset and does not have effect in relation to the person who acquired the asset as a result of the disposal.

"(10) In this Part, unless the contrary intention appears, a reference to the trustee of a trust estate includes a reference to the trustee of a unit trust.

"*Division 2—Application*

Part applies in respect of disposals of assets

"160L. (1) Subject to this section, this Part applies in respect of every disposal on or after 20 September 1985 of an asset, whether situated in Australia or elsewhere, that—

(a) immediately before the disposal took place, was owned by—

(i) a person (not being a person in the capacity of a trustee) who was a resident of Australia; or

(ii) a person in the capacity of a trustee of a resident trust estate or of a resident unit trust; and

(b) was acquired by that person on or after 20 September 1985.

"(2) Subject to this section, this Part also applies in respect of every disposal on or after 20 September 1985 of a taxable Australian asset that—

(a) immediately before the disposal took place, was owned by—

(i) a person (not being a person in the capacity of a trustee) who was not a resident of Australia; or

(ii) a person in the capacity of a trustee of a trust estate that was not a resident trust estate or of a unit trust that was not a resident unit trust; and

(b) was acquired by that person on or after 20 September 1985.

"(3) This Part does not apply in respect of a disposal of an asset, not being an asset referred to in sub-section (4) or (5), if—

(a) immediately before its disposal the asset constituted trading stock of the taxpayer for the purposes of this Act;

(b) as a result of the disposal an amount has been or will be included in the assessable income of the taxpayer of any year of income by virtue of section 26AAA; or

(c) as a result of the disposal an amount has been or will be, or but for section 23H would have been or would be, included in the assessable income of the taxpayer of any year of income by virtue of section 26AG.

"(4) This Part does not apply in respect of a disposal of an asset, being an asset which was owned by a taxpayer in the capacity of a trustee of a trust estate and to which a beneficiary was absolutely entitled immediately before the disposal, if—

(a) immediately before its disposal, the asset constituted trading stock of the trustee for the purposes of this Act;

(b) as a result of the disposal an amount has been or will be included in the assessable income of the beneficiary, or the net income of the trust estate, of any year of income by virtue of section 26AAA; or

(c) as a result of the disposal an amount has been or will be, or but for section 23H would have been or would be, included in the assessable income of the beneficiary, or the net income of the trust estate, of any year of income by virtue of section 26AG.

"(5) This Part does not apply in respect of a disposal of an asset of a partnership if—

(a) immediately before its disposal, the asset constituted trading stock of the partnership for the purposes of this Act;

(b) as a result of the disposal an amount has been or will be included in the net income of the partnership, or in the assessable income of a partner in the partnership, or taken into account in ascertaining

the amount of the partnership loss, of any year of income by virtue of section 26AAA; or

(c) as a result of the disposal an amount has been or will be, or but for section 23H would have been or would be, included in the net income of the partnership, or in the assessable income of a partner in the partnership, or taken into account in ascertaining the amount of the partnership loss, of any year of income by virtue of section 26AG.

"(6) This Part does not apply in respect of a disposal of a decoration awarded for valour or brave conduct if the person disposing of the decoration did not pay or give any consideration in respect of his or her acquisition of the decoration.

"(7) This Part does not apply in respect of a disposal being a sale, transfer or assignment of rights to mine if paragraph 23 (pa) applies in relation to the sale, transfer or assignment.

What constitutes a disposal or acquisition

"160M. (1) Subject to this Part, where a change has occurred in the ownership of an asset, the change shall be deemed, for the purposes of this Part, to have effected a disposal of the asset by the person who owned it immediately before the change and an acquisition of the asset by the person who owned it immediately after the change.

"(2) A reference in sub-section (1) to a change in the ownership of an asset is a reference to a change that has occurred in any way, including any of the following ways:

(a) by the execution of an instrument;

(b) by the entering into of a transaction;

(c) by the transmission of the asset by operation of law;

(d) by the delivery of the asset;

(e) by the doing of any other act or thing;

(f) by the occurrence of any event.

"(3) Without limiting the generality of sub-section (2), a change shall be taken to have occurred in the ownership of an asset by—

(a) a declaration of trust in relation to the asset under which the beneficiary is absolutely entitled to the asset as against the trustee;

(b) in the case of an asset being a debt, a chose in action or any other right, or an interest or right in or over property—the cancellation, release, discharge, satisfaction, surrender, forfeiture, expiry or abandonment, at law or in equity, of the asset;

(c) in the case of an asset being a share in or debenture of a company—the redemption in whole or in part, or the cancellation, of the share or debenture; or

(d) subject to sub-section (4), a transaction in relation to the asset under which the use and enjoyment of the asset was or is obtained

by a person for a period at the end of which the title to the asset will or may pass to that person.

"(4) A change shall not be taken to have occurred in the ownership of an asset by a transaction referred to in paragraph (3) (d) if the period for which the person referred to in that paragraph has the use and enjoyment of the asset terminates without the title to the asset passing to that person and nothing in section 170 prevents the amendment of an assessment for the purpose of giving effect to this sub-section.

"(5) For the purposes of this Part—

(a) an issue or allotment of shares in a company constitutes an acquisition of the shares by the person to whom they were issued or allotted but does not constitute a disposal of the shares by the company;

(b) the construction of an asset by or for a person constitutes the acquisition of the asset by the person; and

(c) the creation of an asset by or for a person constitutes the acquisition of the asset by the person.

"(6) A disposal of an asset that did not exist (either by itself or as part of another asset) before the disposal, but is created by the disposal, constitutes a disposal of the asset for the purposes of this Part, but the person who so disposes of the asset shall be deemed not to have paid or given any consideration, or incurred any costs or expenditure, referred to in paragraph 160ZH (1) (a), (b), (c) or (d), (2) (a), (b), (c) or (d) or (3) (a), (b), (c) or (d) in respect of the asset.

"(7) Without limiting the generality of sub-section (2) but subject to the other provisions of this Part, where—

(a) an act or transaction has taken place in relation to an asset or an event affecting an asset has occurred; and

(b) a person has received, or is entitled to receive, an amount of money or other consideration by reason of the act, transaction or event (whether or not any asset was or will be acquired by the person paying the money or giving the other consideration) including, but not limited to, an amount of money or other consideration—

(i) in the case of an asset being a right—in return for forfeiture or surrender of the right or for refraining from exercising the right; or

(ii) for use or exploitation of the asset,

the act, transaction or event constitutes a disposal by the person who received, or is entitled to receive, the money or other consideration of an asset created by the disposal and, for the purposes of the application of this Part in relation to that disposal—

(c) the money or other consideration constitutes the consideration in respect of the disposal; and

(d) the person shall be deemed not to have paid or given any consideration, or incurred any costs or expenditure, referred to in

paragraph 160ZH (1) (a), (b), (c) or (d), (2) (a), (b), (c) or (d) or (3) (a), (b), (c) or (d) in respect of the asset.

"(8) Where a taxpayer, being a resident, has, on or after 20 September 1985, ceased to be a resident, the taxpayer shall be deemed for the purposes of this Part—

(a) to have, at the time when the taxpayer ceased to be a resident (in this sub-section referred to as the 'relevant time'), disposed of every asset that was owned by the taxpayer immediately before the relevant time, other than—

(i) a taxable Australian asset;

(ii) any other asset that was acquired by the taxpayer before 20 September 1985; or

(iii) an asset to which sub-section (9), (10) or (11) applies; and

(b) to have so disposed of every such asset for a consideration equal to the market value of the asset at the relevant time.

"(9) Where a resident trust estate has, on or after 20 September 1985, ceased to be a resident trust estate, the trustee of the trust estate shall be deemed for the purposes of this Part—

(a) to have, at the time when the resident trust estate ceased to be a resident trust estate (in this sub-section referred to as the 'relevant time'), disposed of every asset that was, immediately before the relevant time, owned by the trustee as a trustee of that trust estate, other than—

(i) a taxable Australian asset; or

(ii) any other asset that was acquired by the trustee before 20 September 1985; and

(b) to have so disposed of every such asset for a consideration equal to the market value of the asset at the relevant time.

"(10) Where a resident unit trust has, on or after 20 September 1985, ceased to be a resident unit trust, the trustee of the unit trust shall be deemed for the purposes of this Part—

(a) to have, at the time when the resident unit trust ceased to be a resident unit trust (in this sub-section referred to as the 'relevant time'), disposed of every asset that was, immediately before the relevant time, owned by the trustee as a trustee of that unit trust, other than—

(i) a taxable Australian asset; or

(ii) any other asset that was acquired by the trustee before 20 September 1985; and

(b) to have so disposed of every such asset for a consideration equal to the market value of the asset at the relevant time.

"(11) Where a resident partnership has, on or after 20 September 1985, ceased to be a resident partnership, the partners in the partnership shall be deemed for the purposes of this Part—

(a) to have, at the time when the partnership ceased to be a resident partnership (in this sub-section referred to as the 'relevant time'), disposed of every asset that was owned by the partners in the partnership, and was the property of the partnership, immediately before the relevant time, other than—

(i) a taxable Australian asset; or

(ii) any other asset that was acquired by the partners before 20 September 1985; and

(b) to have so disposed of every such asset for a consideration equal to the market value of the asset at the relevant time.

"(12) Where a taxpayer, being a non-resident, has, on or after 20 September 1985, become a resident, every asset that was owned by the taxpayer immediately before the time when the taxpayer became a resident (in this sub-section referred to as the 'relevant time'), other than—

(a) a taxable Australian asset;

(b) any other asset that was acquired by the taxpayer before 20 September 1985; or

(c) an asset to which sub-section (13), (14) or (15) applies,

shall be deemed for the purposes of this Part to have been acquired by the taxpayer at the relevant time and to have been so acquired for a consideration equal to the market value of the asset at the relevant time.

"(13) Where a trust estate, other than a resident trust estate, has, on or after 20 September 1985, become a resident trust estate, every asset that was, immediately before the time when the trust estate became a resident trust estate (in this sub-section referred to as the 'relevant time'), owned by the trustee as a trustee of that trust estate, other than—

(a) a taxable Australian asset; or

(b) any other asset that was acquired by the trustee before 20 September 1985,

shall be deemed for the purposes of this Part to have been acquired by the trustee as the trustee of that trust estate at the relevant time and to have been so acquired for a consideration equal to the market value of the asset at the relevant time.

"(14) Where a unit trust, other than a resident unit trust, has, on or after 20 September 1985, become a resident unit trust, every asset that was, immediately before the time when the unit trust became a resident unit trust (in this sub-section referred to as the 'relevant time'), owned by the trustee as a trustee of that unit trust, other than—

(a) a taxable Australian asset; or

(b) any other asset that was acquired by the trustee before 20 September 1985,

shall be deemed for the purposes of this Part to have been acquired by the trustee as the trustee of that unit trust at the relevant time and to have

been so acquired for a consideration equal to the market value of the asset at the relevant time.

"(15) Where a partnership, other than a resident partnership, has, on or after 20 September 1985, become a resident partnership, every asset that was owned by the partners in the partnership, and was the property of the partnership, immediately before the time when the partnership became a resident partnership (in this sub-section referred to as the 'relevant time'), other than—

(a) a taxable Australian asset; or

(b) any other asset that was acquired by the partners before 20 September 1985,

shall be deemed for the purposes of this Part to have been acquired by the partners as property of the partnership and to have been so acquired for a consideration equal to the market value of the asset at the relevant time.

Assets lost or destroyed

"160N. For the purposes of this Part but subject to the other provisions of this Part—

(a) the entire loss or destruction of an asset constitutes a disposal of the asset; and

(b) the loss or destruction of part of an asset constitutes a disposal of that part of the asset,

whether or not any amount of money or other consideration by way of compensation or otherwise is received as a result of or in respect of the loss or destruction.

Composite assets

"160P. (1) Where—

(a) land on which a building is erected was acquired by a taxpayer before 20 September 1985;

(b) after the acquisition of the land by the taxpayer the building was demolished and a new building was constructed on the land in replacement of the demolished building; and

(c) if the new building were a separate asset from the land, the new building would be taken for the purposes of this Part to have been acquired by the taxpayer on or after 20 September 1985,

the new building shall be deemed for the purposes of this Part to be an asset separate from the land.

"(2) Where—

(a) land was acquired by a taxpayer before 20 September 1985;

(b) after the acquisition of the land by the taxpayer a building was constructed on the land; and

(c) if the building were a separate asset from the land, the building would be taken for the purposes of this Part to have been acquired by the taxpayer on or after 20 September 1985,

the building shall be deemed for the purposes of this Part to be an asset separate from the land.

"(3) Where—

(a) land was acquired by a taxpayer before 20 September 1985; and

(b) on or after that date the taxpayer acquired land (whether or not a building was or is erected on that last-mentioned land) adjacent to the first-mentioned land,

the adjacent land shall be deemed for the purposes of this Part to be a separate asset from the first-mentioned land.

"(4) Where a building or other improvement of a capital nature made to land is treated for the purposes of this Act other than this Part as an asset separate from the land, the building or other improvement shall be deemed for the purposes of this Part to be a separate asset from the land.

"(5) Where an asset forming part of a building is treated for the purposes of this Act other than this Part as an asset separate from the building, the asset shall be deemed for the purposes of this Part to be a separate asset from the building.

"(6) Where —

(a) an asset acquired by a taxpayer before 20 September 1985 has been disposed of on or after that date;

(b) an improvement of a capital nature to the asset was made after the taxpayer acquired the asset;

(c) if the improvement were a separate asset from the asset to which it was made—

(i) the improvement would be taken for the purposes of this Part to have been acquired by the taxpayer on or after 20 September 1985; and

(ii) subject to section 160Q, the indexed cost base to the taxpayer of the improvement would exceed $50,000; and

(d) the amount of the indexed cost base referred to in sub-paragraph (c) (ii) exceeds 5% of the consideration in respect of the disposal of the asset to which the improvement was made,

the improvement shall be deemed for the purposes of this Part to be an asset separate from the asset to which the improvement was made.

"(7) On the disposal of an asset that is, by this section, deemed for the purposes of this Part to comprise two or more separate assets, the consideration in respect of the disposal of the first-mentioned asset shall be apportioned between the separate assets.

"(8) Except as provided by this section, land, and any building or other improvement made to the land, shall be deemed for the purposes of this Part to be a single asset.

Indexation of indexed cost base limit

"160Q. (1) Subject to sub-section (2), sub-paragraph 160P (6) (c) (ii) has effect in relation to a relevant year of income as if, for the reference in that sub-paragraph to $50,000, there were substituted a reference to an amount calculated by multiplying—

(a) in a case to which paragraph (b) does not apply—$50,000; or

(b) where sub-paragraph 160P (6) (c) (ii) has had effect in relation to a year of income or years of income preceding the relevant year of income as if a reference to another amount were substituted for the reference in that sub-section to $50,000 or would have so had effect but for the operation of sub-section (2) of this section—the substituted amount or the last substituted amount, or the amount or the last amount that would, but for the operation of sub-section (2), have been so substituted, as the case may be,

by the factor ascertained in accordance with sub-section (3).

"(2) Sub-section (1) does not have effect in relation to a relevant year of income where, if it did so have effect, the amount that would be substituted in sub-paragraph 160P (6) (c) (ii) would not exceed $50,000.

"(3) The factor to be ascertained for the purposes of sub-section (1) in relation to a relevant year of income is the number (calculated to 3 decimal places) ascertained by dividing the sum of—

(a) the index number in respect of the March quarter immediately preceding that relevant year of income; and

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

by the sum of—

(c) the index number in respect of the March quarter immediately preceding the year of income that next preceded that relevant year of income; and

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

"(4) Subject to sub-section (5), if at any time, whether before or after the commencement of this Part, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

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

"(6) Where the factor ascertained in accordance with sub-section (3) in relation to a relevant year of income would, if it were calculated to 4

decimal places, end with a number greater than 4, the factor ascertained in accordance with that sub-section in relation to that relevant year of income shall be taken to be the factor calculated to 3 decimal places in accordance with that sub-section and increased by 0.001.

"(7) The Treasurer shall cause to be published in the *Gazette* before the commencement of each relevant year of income—

(a) the factor ascertained in accordance with sub-section (3) (as affected by sub-section (6)) in relation to that year of income; and

(b) the amount that is to be substituted in sub-paragraph 160P (6) (c) (ii) in relation to that year of income for improvements to which sub-section 160P (6) applies.

"(8) Where, but for this sub-section, this section would, by virtue of the preceding provisions of this section, have effect in relation to a relevant year of income as if, for the reference in sub-section 160P (6) to $50,000, there were substituted a reference to another amount, being an amount that consists of a number of whole dollars and a number of cents (in this sub-section referred to as the 'relevant number of cents')—

(a) in the case where the relevant number of cents is less than 50—the other amount shall be reduced by the relevant number of cents; or

(b) in any other case—the other amount shall be increased by the amount by which the relevant number of cents is less than $1.

"(9) Where, but for sub-section (2), this section would, by virtue of the preceding provisions of this section, have effect in relation to a relevant year of income as if, for the reference in sub-section 160P (6) to $50,000, there were substituted a reference to another amount, being an amount that consists of a number of whole dollars and a number of cents (in this sub-section referred to as the 'relevant number of cents'), then, for the purposes of the application of paragraph (1) (b)—

(a) in a case where the relevant number of cents is less than 50—the other amount shall be reduced by the relevant number of cents; or

(b) in any other case—the other amount shall be increased by the amount by which the relevant number of cents is less than $1.

"(10) In this section—

(a) a reference to a relevant year of income is a reference to the year of income in which the asset to which the improvement referred to in paragraph 160P (6) (b) was disposed of, being the year of income commencing on 1 July 1986 or a subsequent year of income; and

(b) a reference to an index number, in relation to a quarter, is a reference to the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

Part disposals

"160R. For the purposes of this Part, a reference to a disposal of an asset includes, unless the contrary intention appears, a reference to a disposal of part of an asset.

Transfers by way of security, &c.

"160S. (1) For the purposes of this Part, the transfer by way of security of an asset or of an interest or right in or over an asset, or the transfer of a subsisting interest or right by way of security in or over an asset (including a re-transfer on redemption of the security), does not constitute an acquisition or disposal of the asset.

"(2) For the purposes of this Part—

(a) an asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of acquisition and as having been disposed of free of any such interest or right subsisting at the time of disposal; and

(b) where an asset is acquired subject to any such interest or right—the full amount of the liability thereby assumed by the person acquiring the asset forms part of the consideration for the acquisition of the asset by that person, and for the disposal of the asset by the person from whom it was acquired, in addition to any other consideration paid or given for the acquisition and disposal.

Disposal of taxable Australian assets

"160T. For the purposes of this Part, a disposal of an asset shall be deemed to have been a disposal of a taxable Australian asset if—

(a) the asset comprised land or a building situated in Australia;

(b) the asset has at any time been used by the taxpayer in carrying on a trade or business wholly or partly at or through a permanent establishment in Australia;

(c) the asset comprised a share, or an interest in a share, in a company that, in relation to the year of income of the company in which the disposal took place, was a resident of Australia and was a private company;

(d) the asset comprised a share, or an interest in a share, in a company that, in relation to the year of income of the company in which the disposal took place, was a resident of Australia and was not a private company and at any time during so much of the period of 5 years immediately preceding the disposal as occurred after 19 September 1985—

(i) the taxpayer or an associate of the taxpayer was the beneficial owner of; or

(ii) any associates of the taxpayer, or the taxpayer and any associate or associates of the taxpayer, together were the beneficial owners of,

not less than 10% of the issued share capital of the company (excluding any part of that share capital that carried no right to participate beyond a specified amount in a distribution of either profits or capital);

(e) the asset comprised an interest in a partnership that was a resident partnership in relation to the year of income in which the disposal took place;

(f) the asset comprised an interest in a trust estate that was a resident trust estate in relation to the year of income in which the disposal took place;

(g) the asset comprised a unit of a unit trust that, in relation to the year of income of the unit trust in which the disposal took place, was a resident unit trust, and at any time during so much of the period of 5 years immediately preceding the time of the disposal as occurred after 19 September 1985 the taxpayer or an associate of the taxpayer was the beneficial owner of, or any associates of the taxpayer or the taxpayer and any associate or associates of the taxpayer together were the beneficial owners of, not less than 10% of the issued units of the unit trust; or

(h) the asset comprised an option or right to acquire an asset referred to in a preceding paragraph of this section.

Time of disposal and acquisition

"160U. (1) Subject to the provisions of this Part other than this section, where an asset has been acquired or disposed of, the time of acquisition or disposal for the purposes of this Part shall be ascertained in accordance with this section.

"(2) If the time of acquisition or disposal as ascertained under a sub-section of this section is different from the time of acquisition or disposal as ascertained under a subsequent sub-section of this section, the time of acquisition or disposal shall be taken to have been the time of acquisition or disposal as ascertained under that subsequent sub-section.

"(3) Where the asset was acquired or disposed of under a contract, the time of acquisition or disposal shall be taken to have been the time of the making of the contract.

"(4) Where the asset was acquired or disposed of otherwise than under a contract, the time of acquisition or disposal shall be taken to have been the time when the change in the ownership of the asset that constituted or gave rise to the acquisition or disposal occurred.

"(5) Where the asset was constructed by a person otherwise than pursuant to a contract under which the person constructed the asset for another person, the time of acquisition of the asset by the first-mentioned person shall be taken to have been the time when the construction commenced.

"(6) Where the asset was created by a person otherwise than pursuant to a contract under which the person created the asset for another person, the asset shall be taken to have been acquired by the first-mentioned person—

(a) if the asset did not exist (either by itself or as part of another asset) before the disposal—immediately before the asset was disposed of; or

(b) in any other case—at the time of commencement of work on, or of work that resulted in, the creation of the asset.

"(7) Where the acquisition or disposal of the asset occurred as a result of a transaction referred to in paragraph 160M (3) (d), the time of acquisition or disposal shall be taken to have been the time when the use and enjoyment of the asset was first obtained by the person mentioned in that paragraph.

"(8) Where the asset was disposed of as a result of the exercise of a power of compulsory acquisition conferred by a law, the time of disposal shall be taken to have been the time when the earliest of the following events occurred:

(a) an amount or an asset by way of compensation for the acquisition was received;

(b) the person acquiring the asset became the owner of the asset;

(c) the person acquiring the asset entered on the asset under the powers conferred on the person by that law;

(d) the person acquiring the asset took possession of the asset under the powers conferred on the person by that law.

"(9) Where the asset is taken to have been disposed of by reason of the loss or destruction of the asset, the time of disposal shall be taken to have been—

(a) if an amount is or amounts are, or an asset is or assets are, received in respect of the loss or destruction—the time when the amount or the first amount, or the asset or the first asset, was received; or

(b) in any other case—the time when the loss was discovered or the destruction occurred, as the case may be.

Disposals by bare trustees and persons enforcing securities

"160V. (1) If an asset is held by a person as trustee for another person who is absolutely entitled to the asset as against the trustee, this Part applies as if the asset were vested in the other person and any acts of the trustee were the acts of the other person.

"(2) Where—

(a) a person entitled to an asset by way of security or entitled to the benefit of a charge or encumbrance on an asset does any act in relation to the asset for the purpose of enforcing or giving effect to the security, charge or encumbrance; or

(b) a person appointed to enforce or give effect to a security in relation to an asset or to enforce or give effect to a charge or encumbrance on an asset does any act in relation to the asset for the purpose of enforcing or giving effect to the security, charge or encumbrance,

this Part applies as if the act were the act of the person who owned the asset that was subject to the security, charge or encumbrance.

Effect of bankruptcy, &c.

"160W. Where an asset owned by a person—

(a) becomes vested, as a result of the bankruptcy of the person, in—

(i) the Official Trustee in Bankruptcy or a registered trustee; or

(ii) the holder of a similar office under the law of a foreign country;

(b) becomes vested in a trustee—

(i) under a deed of assignment or deed of arrangement made under Part X of the *Bankruptcy Act 1966* or a similar instrument executed under the law of a foreign country; or

(ii) by virtue of a composition or scheme of arrangement approved under Part IV, or a composition accepted under Part X, of that Act or a similar arrangement with creditors under the law of a foreign country; or

(c) in the case of a person being a company, becomes vested—

(i) in the liquidator of the company under section 374 of the *Companies Act 1981* or the corresponding law of a State or Territory; or

(ii) in the holder of a similar office under the law of a foreign country,

this Part applies as if the asset continued to be vested in the first-mentioned person and any act done in relation to the asset by the person in whom the asset so vested were the act of the first-mentioned person.

Death not to constitute disposal, &c.

"160X. (1) This section has effect subject to section 160Y.

"(2) An asset owned by a person shall not be taken, for the purposes of the application of this Part in relation to that person, to have been disposed of by that person by reason of the death of that person.

"(3) Where an asset that formed part of the estate of a deceased person has passed to the legal personal representative of the deceased person—

(a) if the asset subsequently passes to a beneficiary in that estate—the asset shall not thereby be taken, for the purposes of this Part, to have been disposed of by the legal personal representative; but

(b) if the asset is subsequently disposed of by the beneficiary—the cost base, the indexed cost base or the reduced cost base to the beneficiary of the asset for the purposes of this Part shall include any amount

that would, if the legal personal representative had disposed of the asset at the time when the asset passed to the beneficiary, have been included in the cost base, the indexed cost base or the reduced cost base, as the case may be, of the asset to the legal personal representative as a result of the legal personal representative having incurred expenditure in respect of the asset.

"(4) Where a person died before 20 September 1985, any asset that formed part of the estate of the deceased person and passed to the legal personal representative of the deceased person or to a beneficiary in the estate of the deceased person shall be deemed, for the purposes of this Part, to have been acquired by the legal personal representative or the beneficiary before that date notwithstanding that the asset was transmitted or transferred to the legal personal representative or beneficiary on or after that date.

"(5) Where an asset that formed part of the estate of a person who died on or after 20 September 1985 has passed to the legal personal representative of the deceased person or to a beneficiary in the estate of the deceased person—

(a) if the asset was acquired by the deceased person before 20 September 1985—the asset shall be deemed, for the purposes of this Part, to have been acquired by the legal personal representative or the beneficiary on the date of the person's death and to have been so acquired for a consideration equal to the market value of the asset at the date of the person's death; or

(b) if the asset was acquired by the deceased person on or after 20 September 1985, the asset shall be deemed, for the purposes of this Part, to have been acquired by the legal personal representative or the beneficiary on the date of the person's death and—

(i) for the purpose of ascertaining whether a capital gain accrued to the legal personal representative or the beneficiary in the event of a subsequent disposal of the asset by the legal personal representative or the beneficiary—to have been so acquired for a consideration equal to the amount that would have been the indexed cost base to the deceased person of the asset for the purposes of this Part if the deceased person had disposed of the asset immediately before his or her death;

(ii) for the purpose of ascertaining whether the legal personal representative or the beneficiary incurred a capital loss in the event of a subsequent disposal of the asset by the legal personal representative or the beneficiary—to have been so acquired for a consideration equal to the amount that would have been the reduced cost base to the deceased person of the asset for the purposes of this Part if the deceased person had disposed of the asset immediately before his or her death; and

(iii) in the case of an asset that was a personal-use asset of the deceased person—to be a personal-use asset of the legal

personal representative or of the beneficiary, as the case may be.

"(6) If, in the case of an asset to which sub-paragraph (5) (b) (i) applies, the asset was disposed of by the legal personal representative or the beneficiary within 12 months after the day on which the asset was acquired by the deceased person, the reference in that sub-paragraph to the indexed cost base to the deceased person of the asset shall be construed as a reference to the cost base to the deceased person of the asset.

Asset bequeathed to tax-exempt person

"160Y. (1) A person is a tax-exempt person in relation to the year of income for the purposes of this section if the person is a person whose income of the year of income is exempt from tax by virtue of a relevant exempting provision.

"(2) Where—

(a) a person died on or after 20 September 1985;

(b) an asset that formed part of the estate of the deceased person and was acquired by the deceased person on or after that date has passed to a beneficiary in the estate of the deceased person; and

(c) the beneficiary is a tax-exempt person in relation to the year of income,

section 160X does not apply in respect of the asset but the following provisions of this section have effect.

"(3) The asset shall be deemed for the purposes of this Part to have been disposed of by the deceased person, and acquired by the beneficiary, immediately before the death of the person for a consideration equal to the market value of the asset at the date of the death.

"(4) If the asset passed from the legal personal representative of the deceased person to the beneficiary, then, on the subsequent disposal of the asset by the beneficiary, the cost base, the indexed cost base or the reduced cost base to the beneficiary of the asset for the purposes of this Part shall include any amount that would, if this section did not apply, have been included in that cost base, indexed cost base or reduced cost base, as the case may be, by virtue of paragraph 160X (3) (b).

"Division 3—Determination of Capital Gains and Capital Losses

Capital gains and capital losses

"160Z. (1) Subject to this Part, where an asset other than a personal-use asset has been disposed of during the year of income—

(a) if the consideration in respect of the disposal exceeds the indexed cost base to the taxpayer in respect of the asset—a capital gain equal to the excess shall be deemed for the purposes of this Part to have accrued to the taxpayer during the year of income; or

(b) if the reduced cost base to the taxpayer in respect of the asset exceeds the consideration in respect of the disposal—a capital loss equal to the excess shall be deemed for the purposes of this Part to have been incurred by the taxpayer during the year of income.

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

(a) a non-listed personal-use asset has been disposed of during the year of income; and

(b) the consideration in respect of the disposal exceeds the indexed cost base to the taxpayer in respect of the asset,

a capital gain equal to the excess shall be deemed for the purposes of this Part to have accrued to the taxpayer during the year of income.

"(3) If the disposal of an asset referred to in sub-section (1) or (2) occurred within 12 months after the day on which the asset was acquired by the taxpayer, the reference in the sub-section concerned to the indexed cost base to the taxpayer in respect of the asset shall be construed as a reference to the cost base to the taxpayer in respect of the asset.

"(4) The reference in sub-section (3) to the day on which an asset was acquired by the taxpayer shall, if the asset formed part of the estate of a deceased person and passed to the taxpayer as the legal personal representative of the deceased person or as a beneficiary in the estate of the deceased person, be construed as a reference to the day on which the asset was acquired by the deceased person.

"(5) The reference in sub-section (3) to the day on which an asset was acquired by the taxpayer shall, if the asset was deemed to be acquired by the taxpayer by virtue of sub-paragraph 160ZZD (4) (a) (i) or (5) (a) (i) (including the sub-paragraph concerned as it applies by virtue of sub-section 160ZZD (6)), be construed as a reference to the day on which the asset was actually acquired by the taxpayer.

"(6) Nothing in this Part operates to deem a capital gain to have accrued to a taxpayer during the year of income where the relevant disposal related to an asset that was used by the taxpayer solely for the purpose of producing exempt income.

"(7) Nothing in this Part operates to deem a capital loss to have been incurred in respect of the disposal of a personal-use asset but this sub-section does not preclude a listed personal-use asset loss from being taken into account in accordance with section 160ZQ.

"(8) A capital gain shall not be deemed for the purposes of this Part to have accrued to a taxpayer during the year of income if the taxpayer is a person whose income of the year of income is exempt from tax by virtue of a relevant exempting provision.

"(9) A capital loss shall not be deemed for the purposes of this Part to have been incurred by a taxpayer during the year of income where—

(a) the taxpayer is a person whose income of the year of income is exempt from tax by virtue of a relevant exempting provision;

(b) in the case of a taxpayer being a company, Subdivision B of Division 2A of Part III applies in relation to the company in relation to the year of income;

(c) the relevant disposal related to an asset that was used by the taxpayer solely for the purpose of producing exempt income; or

(d) the relevant disposal was the expiry, surrender, forfeiture or assignment of a lease or sub-lease (other than a lease or sub-lease that was granted in perpetuity or for a period of not less than 99 years) that was not used by the lessee or sub-lessee wholly or principally for gaining or producing assessable income.

Reductions of capital gains in certain circumstances

"160ZA. (1) Where—

(a) a capital gain is, or capital gains are, deemed to have accrued to a taxpayer during the year of income in respect of the disposal of a prescribed asset or prescribed assets (in this sub-section referred to as the 'relevant capital gain or gains'); and

(b) an amount of excess rental property loan interest was incurred by the taxpayer in respect of the year of income,

the amount of the relevant capital gain or gains shall be reduced by so much of that amount of excess rental property loan interest as does not exceed the amount of the relevant capital gain or capital gains.

"(2) For the purposes of sub-section (1)—

(a) an asset is a prescribed asset in relation to a taxpayer in relation to the year of income if—

(i) the asset is an interest in land that was used by the taxpayer at any time for rent-producing purposes;

(ii) the asset is a share in a company that is a rental property company in relation to—

(A) the year of income; or

(B) a preceding year of income, being a year of income during the whole or any part of which the share was owned by the taxpayer;

(iii) the asset is an interest in a partnership that is a rental property partnership in relation to—

(A) the year of income; or

(B) a preceding year of income, being a year of income during the whole or any part of which the interest was owned by the taxpayer; or

(iv) the asset is an interest in a trust estate that is a rental property trust estate in relation to—

(A) the year of income; or

(B) a preceding year of income, being a year of income during the whole or any part of which the interest was owned by the taxpayer; and

(b) an amount of excess rental property loan interest shall be taken to have been incurred by a taxpayer in respect of a year of income if the rental property loan interest of the taxpayer in relation to the year of income exceeded the amount (if any) of the deduction allowable to the taxpayer under section 51 in the year of income in respect of that rental property loan interest.

"(3) Expressions used in Subdivision G of Division 3 of Part III that are also used in sub-section (1) or (2) of this section have, in those sub-sections, unless the contrary intention appears, the same meanings as those expressions have in that Subdivision.

"(4) Where—

(a) a capital gain is deemed for the purposes of this Part to have accrued to a taxpayer during the year of income in respect of the disposal of an asset;

(b) as a result of the disposal of the asset an amount or amounts has or have been, or will be, included in the assessable income of the taxpayer in respect of any year of income (in this sub-section referred to as the 'actual amount' or the 'actual amounts') under a provision of this Act other than this Part; and

(c) if the consideration in respect of the disposal of the asset were reduced by an amount equal to the amount of the capital gain, the amount or the sum of the amounts that would have been or would be included in the assessable income of the taxpayer as mentioned in paragraph (b) (in this sub-section referred to as the 'notional amount') would have been or would be less than the actual amount or the sum of the actual amounts,

the amount of the capital gain shall be reduced by so much of the difference between the notional amount, and the actual amount or the sum of the actual amounts, as does not exceed the amount of the capital gain.

Exemption of certain gains and losses

"160ZB. (1) A capital gain shall not be taken to have accrued to a taxpayer by reason of the taxpayer having obtained a sum by way of compensation or damages for any wrong or injury suffered by the taxpayer to his or her person or in his or her profession or vocation and no such wrong or injury, or proceeding instituted or other act done or transaction entered into by the taxpayer in respect of such a wrong or injury, shall be taken to have resulted in the taxpayer having incurred a capital loss.

"(2) A capital gain shall not be taken to have accrued to a taxpayer by reason of the taxpayer having received winnings from betting (including pool betting), a lottery or other form of gambling or a game with prizes but

this sub-section does not apply in relation to an amount of money or other consideration received by a taxpayer as a result of the disposal of an asset obtained from betting (including pool betting), a lottery or other form of gambling or a game with prizes.

"(3) A taxpayer shall not be taken to have incurred a capital loss as a result of any act done or transaction entered into by the taxpayer by way of betting (including pool betting) or participating in a lottery or other form of gambling or a game with prizes.

Net capital gains and net capital losses

"160ZC. (1) For the purposes of this Part, a net capital gain shall be taken to have accrued to a taxpayer in respect of the year of income if a capital gain or capital gains accrued to the taxpayer during the year of income and—

(a) the taxpayer did not incur a capital loss during the year of income and did not incur a net capital loss in respect of the immediately preceding year of income; or

(b) where the taxpayer incurred a capital loss or capital losses during the year of income or incurred a net capital loss in respect of the immediately preceding year of income, the capital gain or the sum of the capital gains exceeded—

(i) if the taxpayer incurred a capital loss or capital losses during the year of income but did not incur a net capital loss in respect of the immediately preceding year of income—that capital loss or the sum of those capital losses;

(ii) if the taxpayer did not incur a capital loss during the year of income but incurred a net capital loss in respect of the immediately preceding year of income—that net capital loss; or

(iii) if the taxpayer incurred a capital loss or capital losses during the year of income and incurred a net capital loss in respect of the immediately preceding year of income—the sum of that capital loss or those capital losses and that net capital loss.

"(2) The amount of the net capital gain that, by virtue of sub-section (1), is to be taken for the purposes of this Part to have accrued to a taxpayer in respect of the year of income is an amount equal to—

(a) in a case to which paragraph (1) (a) applies—the capital gain or the sum of the capital gains referred to in sub-section (1); or

(b) in a case to which paragraph (1) (b) applies—the excess referred to in that paragraph.

"(3) For the purposes of this Part, a net capital loss shall be taken to have been incurred by a taxpayer in respect of the year of income if—

(a) where no capital gain accrued to the taxpayer during the year of income—the taxpayer incurred a capital loss or capital losses during

the year of income or incurred a net capital loss in respect of the immediately preceding year of income; or

(b) where a capital gain or capital gains accrued to the taxpayer during the year of income—

(i) if the taxpayer incurred a capital loss or capital losses during the year of income but did not incur a net capital loss in respect of the immediately preceding year of income—that capital loss or the sum of those capital losses;

(ii) if the taxpayer did not incur a capital loss during the year of income but incurred a net capital loss in respect of the immediately preceding year of income—that net capital loss; or

(iii) if the taxpayer incurred a capital loss or capital losses during the year of income and incurred a net capital loss in respect of the immediately preceding year of income—the sum of that capital loss or those capital losses and that net capital loss,

exceeded the capital gain or the sum of the capital gains that accrued to the taxpayer during the year of income.

"(4) The amount of the net capital loss that, by virtue of sub-section (3), is to be taken for the purposes of this Part to have been incurred by a taxpayer in respect of the year of income is an amount equal to—

(a) in a case to which paragraph (3) (a) applies—

(i) if the taxpayer incurred a capital loss or capital losses during the year of income but did not incur a net capital loss in respect of the immediately preceding year of income—that capital loss or the sum of those capital losses;

(ii) if the taxpayer did not incur a capital loss during the year of income but incurred a net capital loss in respect of the immediately preceding year of income—that net capital loss; or

(iii) if the taxpayer incurred a capital loss or capital losses during the year of income and incurred a net capital loss in respect of the immediately preceding year of income—the sum of that capital loss or those capital losses and that net capital loss; or

(b) in a case to which paragraph (3) (b) applies—the excess referred to in that paragraph.

"(5) A net capital loss that is to be taken to have been incurred by a taxpayer being a company in respect of a year of income shall not be taken into account in ascertaining whether a net capital gain accrued to the taxpayer, or the taxpayer incurred a net capital loss, in the next succeeding year of income where, if the net capital loss were a loss incurred by the taxpayer within the meaning of section 80, the loss would not be taken into

account for the purposes of that section by reason of the operation of section 80A or 80DA.

Consideration in respect of disposal

"160ZD. (1) Subject to this Part, for the purposes of this Part, the consideration in respect of a disposal of an asset is—

(a) if the taxpayer has received or is entitled to receive an amount or amounts of money as a result of or in respect of the disposal—that amount or the sum of those amounts;

(b) if the taxpayer has received or is entitled to receive property other than money as a result of or in respect of the disposal—the market value of that property at the time of the disposal; or

(c) if the taxpayer has received or is entitled to receive both an amount or amounts of money and property other than money as a result of or in respect of the disposal—the sum of that amount or those amounts and the market value of that property at the time of the disposal.

"(2) Where a taxpayer has disposed of an asset to another person and—

(a) there is no consideration in respect of the disposal;

(b) the whole or a part of the consideration received by the taxpayer in respect of the disposal cannot be valued; or

(c) the consideration received by the taxpayer in respect of the disposal would, but for this paragraph, be greater or less than the market value of the asset at the time of the disposal and the taxpayer and the other person were not dealing with each other at arm's length in connection with the disposal of the asset,

the taxpayer shall be deemed to have received as consideration in respect of the disposal an amount equal to the market value of the asset at the time of the disposal.

"(3) Sub-section (2) does not apply by virtue of paragraph (a) of that sub-section in relation to a disposal where another provision of this Part (however expressed) deems no consideration to have been received in respect of the disposal.

"(4) Where any consideration paid or given in respect of a transaction relates in part only to the disposal of a particular asset, so much of that consideration as may reasonably be attributed to the disposal of the asset shall be taken to relate to the disposal of the asset.

"(5) Where—

(a) a decrease has taken place in the market value of a personal-use asset that is owned by a company or is the property of a partnership or of a trust estate;

(b) a disposal takes place of shares in the company or in a company that is related to the company or of an interest in the partnership or in the trust estate; and

(c) the amount that, under the preceding provisions of this section, would be the consideration in respect of the disposal is less than the amount (in this sub-section referred to as the 'notional amount') that, but for the decrease, would, under those provisions, be that consideration,

the consideration in respect of the disposal shall be deemed to be the notional amount.

Consideration in respect of disposal of non-listed personal-use assets

"160ZE. (1) For the purposes of this Part but subject to sub-section (2), if the consideration in respect of a disposal of a non-listed personal-use asset would, but for this section, be less than $5,000, the consideration in respect of that disposal of that asset shall be deemed to be $5,000.

"(2) Where there is a disposal of a non-listed personal-use asset (in this sub-section referred to as the 'relevant asset') that formed part of another non-listed personal-use asset (in this sub-section referred to as the 'original asset'), sub-section (1) does not apply in relation to the disposal but the consideration in respect of the disposal of the relevant asset shall be deemed to be whichever is the greater of the following amounts:

(a) the amount that would, but for this section, be the consideration in respect of the disposal;

(b) the amount that bears to $5,000 the same proportion as the amount that would, but for section 160ZG, be the indexed cost base to the taxpayer of the relevant asset bears to the amount that would, but for that section, have been the indexed cost base to the taxpayer of the original asset if the whole of the original asset had been disposed of at the time of the disposal of the relevant asset.

Adjustment where consideration not received

"160ZF. (1) Subject to sub-section (3), where the whole or a part of the consideration in respect of the disposal of an asset has not been, and is not likely to be, received by the taxpayer, this Part (other than sub-section 160ZD (2)) applies as if there were no consideration in respect of the disposal or the consideration in respect of the disposal did not include that part of the consideration, as the case may be, and the debt that arose in relation to or by reason of the disposal shall be deemed not to be an asset to which this Part applies.

"(2) Sub-section (1) does not apply where the non-receipt or likely non-receipt by the taxpayer of the whole or part of the consideration is attributable to an act or thing done or omitted to be done by the taxpayer or by an associate of the taxpayer or the taxpayer has not taken all reasonable action to secure payment of the consideration or the unpaid part of the consideration.

"(3) If, after the making in respect of the taxpayer of an assessment for the purposes of which sub-section (1) has been applied, the consideration or part of the consideration is received by the taxpayer, that sub-section

shall be deemed not to have been applicable, or not to have been applicable in relation to that part of the consideration, as the case may be.

"(4) Nothing in section 170 prevents the amendment of an assessment for the purpose of giving effect to this section.

Cost base, &c., of non-listed personal-use assets

"160ZG. (1) For the purposes of this Part but subject to sub-section (2), if the indexed cost base to a taxpayer of a non-listed personal-use asset would, but for this section, be less than $5,000, the indexed cost base to the taxpayer of that asset shall be deemed to be $5,000.

"(2) Where a non-listed personal-use asset (in this sub-section referred to as the 'relevant asset') that formed part of another non-listed personal-use asset (in this sub-section referred to as the 'original asset') is disposed of by a taxpayer, sub-section (1) does not apply in relation to the disposal but the indexed cost base to the taxpayer of the relevant asset shall be deemed to be whichever is the greater of the following amounts:

(a) the amount that would, but for this section, be the indexed cost base to the taxpayer of the relevant asset;

(b) the amount that bears to $5,000 the same proportion as the amount ascertained under paragraph (a) bears to the amount that would, but for this section, have been the indexed cost base to the taxpayer of the original asset if the whole of the original asset had been disposed of at the time of the disposal of the relevant asset.

"(3) For the purposes of this Part but subject to sub-section (4), if the cost base to a taxpayer of a non-listed personal-use asset would, but for this section, be less than $5,000, the cost base to the taxpayer of that asset shall be deemed to be $5,000.

"(4) Where a non-listed personal-use asset (in this sub-section referred to as the 'relevant asset') that formed part of another non-listed personal-use asset (in this sub-section referred to as the 'original asset') is disposed of by a taxpayer, sub-section (3) does not apply in relation to the disposal but the cost base to the taxpayer of the relevant asset shall be deemed to be whichever is the greater of the following amounts:

(a) the amount that would, but for this section, be the cost base to the taxpayer of the relevant asset;

(b) the amount that bears to $5,000 the same proportion as the amount ascertained under paragraph (a) bears to the amount that would, but for this section, have been the cost base to the taxpayer of the original asset if the whole of the original asset had been disposed of at the time of the disposal of the relevant asset.

Cost base, &c.

"160ZH. (1) Subject to the following provisions of this section, for the purposes of this Part, the cost base to a taxpayer of an asset is the sum of—

(a) the amount of any consideration in respect of the acquisition of the asset;

(b) the amount of the incidental costs to the taxpayer of the acquisition of the asset;

(c) the amount of any expenditure of a capital nature incurred by the taxpayer to the extent to which it was incurred for the purpose of enhancing the value of the asset and is reflected in the state or nature of the asset at the time of disposal of the asset;

(d) the amount of any expenditure of a capital nature incurred by the taxpayer to the extent to which it was incurred in establishing, preserving or defending the taxpayer's title to, or a right over, the asset; and

(e) the amount of the incidental costs to the taxpayer of the disposal of the asset.

"(2) Subject to the following provisions of this section, for the purposes of this Part, the indexed cost base to a taxpayer of an asset is the sum of—

(a) the indexed amount of any consideration in respect of the acquisition of the asset;

(b) the indexed amount of the incidental costs to the taxpayer of the acquisition of the asset;

(c) the indexed amount of any expenditure of a capital nature incurred by the taxpayer to the extent to which it was incurred for the purpose of enhancing the value of the asset and is reflected in the state or nature of the asset at the time of disposal of the asset;

(d) the indexed amount of any expenditure of a capital nature incurred by the taxpayer to the extent to which it was incurred in establishing, preserving or defending the taxpayer's title to, or a right over, the asset; and

(e) the indexed amount of the incidental costs to the taxpayer of the disposal of the asset.

"(3) Subject to the following provisions of this section, for the purposes of this Part, the reduced cost base to a taxpayer of an asset is the sum of—

(a) the reduced amount of any consideration in respect of the acquisition of the asset;

(b) the reduced amount of the incidental costs to the taxpayer of the acquisition of the asset;

(c) the reduced amount of any expenditure of a capital nature incurred by the taxpayer to the extent to which it was incurred for the

purpose of enhancing the value of the asset and is reflected in the state or nature of the asset at the time of disposal of the asset;

(d) the reduced amount of any expenditure of a capital nature incurred by the taxpayer to the extent to which it was incurred in establishing, preserving or defending the taxpayer's title to, or a right over, the asset; and

(e) the reduced amount of the incidental costs to the taxpayer of the disposal of the asset.

"(4) Subject to the following provisions of this section, for the purposes of this Part, the consideration in respect of the acquisition of an asset is—

(a) if the taxpayer has paid or is required to pay an amount or amounts of money in respect of the acquisition—that amount or the sum of those amounts;

(b) if the taxpayer has given or is required to give property other than money in respect of the acquisition—the market value of that property at the time of the acquisition; or

(c) if the taxpayer has given or is required to give both an amount or amounts of money and property other than money in respect of the acquisition—the sum of that amount or those amounts and the market value of that property at the time of the acquisition.

"(5) Subject to sub-section (6), a reference in sub-section (1), (2) or (3) to the incidental costs to a taxpayer of the acquisition of an asset is a reference to any expenditure incurred by the taxpayer to the extent to which it was incurred in connection with the acquisition, being—

(a) fees, commission or remuneration for the professional services of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser;

(b) costs of transfer, including stamp duty or other similar duty;

(c) costs of advertising to find a seller; or

(d) costs in relation to the making of any valuation or apportionment under or for the purposes of this Part in respect of the acquisition,

but excluding any expenditure by way of fees, commission or remuneration paid for professional advice concerning the operation of this Act or of any other law relating to taxation.

"(6) The incidental costs to a taxpayer of the acquisition of an asset do not include any amount referred to in paragraph (5) (a), (b), (c) or (d) that has been allowed or is allowable as a deduction to the taxpayer in respect of any year of income.

"(7) Subject to sub-section (8), a reference in sub-section (1), (2) or (3) to the incidental costs to a taxpayer of the disposal of an asset is a reference to any expenditure incurred by the taxpayer to the extent to which it was incurred in connection with the disposal, being—

(a) fees, commission or remuneration for the professional services of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser;

(b) costs of transfer, including stamp duty or other similar duty;

(c) costs of advertising to find a buyer; or

(d) costs in relation to the making of any valuation or apportionment under or for the purposes of this Part in respect of the disposal,

but excluding any expenditure by way of fees, commission or remuneration paid for professional advice concerning the operation of this Act or of any other law relating to taxation.

"(8) The incidental costs to a taxpayer of the disposal of an asset do not include any amount referred to in paragraph (7) (a), (b), (c) or (d) that has been allowed or is allowable as a deduction to the taxpayer in respect of any year of income.

"(9) For the purposes of the application of sub-section (1), (2) or (3) in determining the cost base, the indexed cost base or the reduced cost base to a taxpayer of an asset, if—

(a) the taxpayer acquired the asset from another person and did not pay or give any consideration in respect of the acquisition;

(b) the whole or a part of the consideration paid or given by the taxpayer in respect of the acquisition cannot be valued; or

(c) the consideration paid or given by the taxpayer in respect of the acquisition would, but for this paragraph, be greater or less than the market value of the asset at the time of the acquisition and the taxpayer and the person from whom the taxpayer acquired the asset were not dealing with each other at arm's length in connection with the acquisition of the asset,

the taxpayer shall be deemed to have paid or given as consideration in respect of the acquisition of the asset an amount equal to the market value of the asset at the time of the acquisition.

"(10) Sub-section (9) does not apply by virtue of paragraph (a) of that sub-section in relation to an acquisition by a taxpayer where another provision of this Part (however expressed) deems no consideration to have been paid or given by the taxpayer in respect of the acquisition.

"(11) In determining the cost base, the indexed cost base or the reduced cost base to a taxpayer of an asset, account shall not be taken of the amount or value of any part of the consideration paid or given by the taxpayer, or of the amount of any costs or expenditure incurred by the taxpayer, in respect of which the taxpayer has been recouped, or is entitled to be recouped, by any person.

"(12) If, in the case of the happening of any of the following events without any change in the beneficial ownership of the asset or assets concerned, that is to say—

(a) two or more assets having been merged or an asset having been divided into two or more assets; or

(b) an asset having been changed in whole or in part into an asset of a different nature,

the value of an asset as it existed after the happening of the relevant event (in sub-sections (13) and (14) referred to as the 'relevant asset') is in whole or in part derived from or otherwise attributable to an asset as it existed immediately before the happening of the relevant event (in sub-sections (13) and (14) referred to as the 'original asset'), then sub-sections (13) and (14) have effect.

"(13) For the purpose of determining the cost base, the indexed cost base or the reduced cost base to a taxpayer of the relevant asset on the disposal of that asset, any amount that would have been included in the cost base, the indexed cost base or the reduced cost base, as the case may be, to the taxpayer of the original asset if—

(a) the relevant event had not happened;

(b) the original asset had been disposed of at the time of the relevant event; and

(c) this Part had been in force and applied in relation to the disposal,

shall, to such extent as is reasonable, be included in the cost base, the indexed cost base or the reduced cost base, as the case may be, to the taxpayer of the relevant asset.

"(14) If the original asset continued in existence to any extent after the happening of the relevant event—

(a) for the purpose of determining the cost base, the indexed cost base or the reduced cost base to the taxpayer of the original asset as so continuing in existence in the event of the disposal of that asset, the amount that would, if the relevant event had not happened, be that cost base, indexed cost base or reduced cost base, as the case may be, shall be reduced by any amount that, by virtue of the application of sub-section (13) in relation to the original asset, is included in the cost base, indexed cost base or reduced cost base, as the case may be, to the taxpayer of the relevant asset; and

(b) to the extent (if any) to which it is necessary to apply this paragraph for the purpose of determining the cost base, the indexed cost base or the reduced cost base to the taxpayer of the original asset as so continuing in existence in the event of the disposal of that asset before the disposal of the relevant asset, the amount that would, if the relevant event had not happened, be that cost base, indexed cost base or reduced cost base shall be reduced by any amount that would have been included in the cost base, the indexed cost base or the reduced cost base, as the case may be, to the taxpayer of the relevant asset by virtue of sub-section (13) if the relevant asset had been disposed of immediately before the disposal of the original asset.

Apportionment of cost base upon disposal of part of asset

"160ZI. (1) Where part of an asset is disposed of, each amount (in this sub-section referred to as the 'relevant amount') that, under section 160ZH, is attributable to the asset shall be apportioned as follows:

(a) in respect of the part that is disposed of there shall be attributed so much of the relevant amount as bears to the relevant amount the same proportion as the amount of the consideration in respect of the disposal bears to the sum of the amount of that consideration and the market value of the part that remains undisposed of; and

(b) the remainder of the relevant amount shall be attributed to the part that remains undisposed of.

"(2) Sub-section (1) shall not be taken as requiring the apportionment of an amount that, on the facts, is wholly attributable to the part of an asset that is disposed of, or is wholly attributable to the part of the asset that remains undisposed of.

Indexation of amounts for purposes of indexed cost base

"160ZJ. (1) In this section, 'index number', in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

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

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

"(4) Where a taxpayer has, in respect of an asset, paid or given any consideration referred to in paragraph 160ZH (2) (a) or incurred any costs referred to in paragraph 160ZH (2) (b) or (e) or any expenditure referred to in paragraph 160ZH (2) (c) or (d), the reference in paragraph 160ZH (2) (a) to the indexed amount of the consideration, the reference in paragraph 160ZH (2) (b) or (e) to the indexed amount of the costs or the reference in paragraph 160ZH (2) (c) or (d) to the indexed amount of the expenditure is a reference to—

(a) if the factor ascertained in accordance with sub-sections (5) and (6) in relation to the amount of the consideration, the amount of the costs or the amount of the expenditure, as the case may be, is greater than 1—the amount of the consideration, the amount of the

costs, or the amount of the expenditure, as the case may be, multiplied by that factor; or

(b) in any other case—the amount of the consideration, the amount of the costs, or the amount of the expenditure, as the case may be.

"(5) The factor to be ascertained for the purposes of sub-section (4) in relation to the amount of any consideration, the amount of any costs or the amount of any expenditure is the number (calculated to 3 decimal places) ascertained by dividing the index number in respect of the quarter of the year in which that asset was disposed of by the taxpayer by the index number in respect of the quarter of the year in which the liability to pay or give the consideration arose, the costs were incurred or the expenditure was incurred, as the case may be.

"(6) Where the factor ascertained in accordance with sub-section (5) in relation to the amount of any consideration, the amount of any costs or the amount of any expenditure would, if it were calculated to 4 decimal places, end with a number greater than 4, that factor shall be taken to be the factor calculated to 3 decimal places in accordance with that sub-section and increased by 0.001.

Reduction of amounts for purposes of reduced cost base

"160ZK. (1) A reference in sub-section 160ZH (3) to the reduced amount of any consideration, the reduced amount of incidental costs, or the reduced amount of any expenditure, in respect of an asset is a reference to the sum of—

(a) the amount of the consideration, the amount of the costs or the amount of the expenditure, as the case may be, reduced by any part of the consideration, of the costs or of the expenditure that has been allowed or is allowable, or would but for section 61 be allowable, as a deduction to the taxpayer in respect of any year of income; and

(b) any amount that, as a result of the disposal of the asset by the taxpayer, is included in the assessable income of the taxpayer of any year of income by virtue of a provision of this Act other than this Part and is attributable to the part of the consideration, the part of the costs or the part of the expenditure, as the case may be, that was allowed or is allowable as a deduction.

"(2) The reference in paragraph (1) (b) to an amount that is included in the assessable income of the taxpayer includes a reference to an amount that is deemed by sub-section 60 (1A) to be so included for the purposes of sub-section 60 (1).

Return of capital on shares

"160ZL. (1) Where a company pays an amount that is not a dividend to a taxpayer in respect of shares in the company (not being a payment in respect of the disposal of the shares), the following provisions of this section have effect for the purposes of this Part.

"(2) Subject to sub-section (4), where, if the taxpayer had disposed of the shares at the time of the payment, the indexed cost base to the taxpayer in respect of the shares would have exceeded the amount of the payment, the taxpayer shall be deemed to have disposed of the shares at that time for a consideration equal to the amount of that indexed cost base and to have immediately re-acquired the shares—

(a) for the purpose of ascertaining whether a capital gain accrued to the taxpayer in the event of a subsequent disposal of the shares by the taxpayer—for a consideration equal to the amount by which that indexed cost base exceeded the amount of the payment; or

(b) for the purpose of ascertaining whether the taxpayer incurred a capital loss in the event of a subsequent disposal of the shares by the taxpayer—

(i) if, had the taxpayer disposed of the shares at the time of the payment, the reduced cost base to the taxpayer in respect of the shares would have exceeded the amount of the payment—for a consideration equal to the excess; or

(ii) if, had the taxpayer disposed of the shares at the time of the payment, the reduced cost base to the taxpayer in respect of the shares would not have exceeded the amount of the payment—without having paid or given any consideration in respect of the re-acquisition.

"(3) Where, if the taxpayer had disposed of the shares at the time of the payment, the indexed cost base to the taxpayer in respect of the shares would not have exceeded the amount of the payment—

(a) the taxpayer shall be deemed—

(i) to have disposed of the shares at that time for a consideration equal to the amount of that indexed cost base; and

(ii) to have immediately re-acquired the shares without having paid or given any consideration for the re-acquisition; and

(b) if the amount of the payment would have exceeded that indexed cost base—a capital gain equal to the excess shall be deemed to have accrued to the taxpayer at the time of the payment.

"(4) If the payment to the taxpayer by the company was made within 12 months after the taxpayer acquired the shares, sub-sections (2) and (3) have effect as if the references in those sub-sections to the indexed cost base to the taxpayer in respect of the shares were a reference to the cost base to the taxpayer in respect of the shares.

Return of capital on investment in trust

"160ZM. (1) Where the trustee of a trust pays an amount to a taxpayer that is not assessable income of the taxpayer in respect of an interest or units in the trust (not being a payment in respect of the disposal of the interest or units), the following provisions of this section have effect for the purposes of this Part.

"(2) Subject to sub-section (4), where, if the taxpayer had disposed of the interest or units at the time of the payment, the indexed cost base to the taxpayer in respect of the interest or units would have exceeded the amount of the payment, the taxpayer shall be deemed to have disposed of the interest or units at that time for a consideration equal to the amount of that indexed cost base and to have immediately re-acquired the interest or units—

(a) for the purpose of ascertaining whether a capital gain accrued to the taxpayer in the event of a subsequent disposal of the interest or units by the taxpayer—for a consideration equal to the amount by which that indexed cost base exceeded the amount of the payment; or

(b) for the purpose of ascertaining whether the taxpayer incurred a capital loss in the event of a subsequent disposal of the interest or units by the taxpayer—

(i) if, had the taxpayer disposed of the interest or units at the time of the payment, the reduced cost base to the taxpayer in respect of the interest or units would have exceeded the amount of the payment—for a consideration equal to the excess; or

(ii) if, had the taxpayer disposed of the interest or units at the time of the payment, the reduced cost base to the taxpayer in respect of the interest or units would not have exceeded the amount of the payment—without having paid or given any consideration in respect of the re-acquisition.

"(3) Where, if the taxpayer had disposed of the interest or units at the time of the payment, the indexed cost base to the taxpayer in respect of the interest or units would not have exceeded the amount of the payment—

(a) the taxpayer shall be deemed—

(i) to have disposed of the interest or units at that time for a consideration equal to the amount of that indexed cost base; and

(ii) to have immediately re-acquired the interest or units without having paid or given any consideration for the re-acquisition; and

(b) if the amount of the payment would have exceeded that indexed cost base—a capital gain equal to the excess shall be deemed to have accrued to the taxpayer at the time of the payment.

"(4) If the payment to the taxpayer by the trustee of the trust was made within 12 months after the taxpayer acquired the interest or units, sub-sections (2) and (3) have effect as if the references in those sub-sections to the indexed cost base to the taxpayer in respect of the interest or units were a reference to the cost base to the taxpayer in respect of the interest or units.

Application to joint owners

"160ZN. (1) Subject to sub-section (2), where an asset is owned by persons as joint tenants—

(a) this Part applies as if those persons owned the asset as tenants in common in equal shares;

(b) if one of the joint tenants dies, the interest of the deceased person in the asset shall be deemed for the purposes of this Part to have been acquired by the survivor, or, if there are two or more survivors, by those survivors in equal shares, on the date of the person's death;

(c) the interest so acquired by a surviving joint tenant shall be deemed to have been acquired—

(i) for the purpose of ascertaining whether a capital gain accrued to the survivor in the event of a subsequent disposal of the interest by the survivor—for a consideration equal to the amount that would have been the indexed cost base to the deceased person of the interest for the purposes of this Part if the deceased person had disposed of the interest immediately before his or her death; or

(ii) for the purpose of ascertaining whether the survivor incurred a capital loss in the event of a subsequent disposal of the interest by the survivor—for a consideration equal to the amount that would have been the reduced cost base to the deceased person of the interest for the purposes of this Part if the deceased person had disposed of the interest immediately before his or her death; and

(d) if, in the case of an interest to which sub-paragraph (1) (c) (i) applies, the interest was disposed of by the survivor within 12 months after the day on which the interest was acquired by the deceased person, the reference in that sub-paragraph to the indexed cost base to the deceased person of the interest shall be construed as a reference to the cost base to the deceased person of the interest.

"(2) Except where the contrary intention appears, this Part applies in relation to two or more persons who own an asset in the capacity of trustees of the one trust estate as if those persons were a single person.

"Division 4—Treatment of Gains and Losses

Treatment of net capital gains and net capital losses

"160ZO. (1) Where a net capital gain accrued to a taxpayer in respect of the year of income, the assessable income of the taxpayer of the year of income includes that net capital gain.

"(2) A net capital loss that was incurred by a taxpayer in respect of a year of income shall be taken into account in accordance with section 160ZC but is not otherwise allowable to the taxpayer as a deduction under this Act in respect of any year of income.

Transfer of net capital loss within company group

"160ZP. (1) For the purposes of this section, a company shall be taken to be a group company in relation to another company in relation to a year of income if—

(a) one of the companies was a subsidiary of the other company; or

(b) each of the companies was a subsidiary of the same company,

during the whole of that year of income or, if either or both of those companies was not or were not in existence during part of that year of income, during that part of that year of income during which both companies were in existence.

"(2) For the purposes of this section, a company (in this sub-section referred to as the 'subsidiary company') shall be taken to be the subsidiary of another company (in this sub-section referred to as the 'holding company') during a period (in this sub-section referred to as the 'relevant period'), being the whole or a part of a year of income, if—

(a) at all times during the relevant period, all the shares in the subsidiary company were beneficially owned by—

(i) the holding company;

(ii) a company that is, or two or more companies each of which is, a subsidiary of the holding company; or

(iii) the holding company and a company that is, or two or more companies each of which is, a subsidiary of the holding company; and

(b) no person was in a position during any part of the relevant period, or would become in a position after the relevant period, to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

"(3) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this sub-section), every company that is a subsidiary of the first-mentioned company shall be taken to be a subsidiary of that other company.

"(4) For the purposes of sub-section (2), a person shall be taken to be in a position during a year of income, or a part of a year of income, to affect any rights of a company in relation to another company if, during the year of income, or that part of the year of income, that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies, by virtue of any agreement or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

"(5) In sub-section (4), 'agreement' means an 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.

"(6) For the purposes of this section, a company shall be taken to be in existence if it has been incorporated and has not been dissolved.

"(7) Subject to this section, where—

(a) a company that is a resident (in this section referred to as the 'loss company') incurred in respect of a year of income (in this section referred to as the 'loss year') a net capital loss that, but for this section, would be taken into account in ascertaining whether a net capital gain accrued to the company, or the company incurred a net capital loss, in respect of the next succeeding year of income;

(b) a net capital gain accrued, or would but for the operation of this section have accrued, to a company that is a resident (in this section referred to as the 'gain company') in respect of a year of income (in this section referred to as the 'gain year');

(c) the loss company and the gain company give to the Commissioner, on or before the date of lodgment of the return of income of the gain company for the gain year or within such further time as the Commissioner allows, a notice in writing signed by the public officer of each of those companies stating—

(i) that so much of the whole or of a specified part of the net capital loss as has not been taken into account in determining whether a net capital gain accrued to the loss company, or the loss company incurred a net capital loss, in respect of the year of income next following the loss year should be treated as a capital loss incurred by the gain company during the gain year; and

(ii) the year of income in respect of which the net capital loss was incurred by the loss company;

(d) in a case where the loss year is the same year of income as the gain year—the loss company is a group company in relation to the gain company in relation to the loss year; and

(e) in a case where the gain year is a year of income after the loss year—the loss company is a group company in relation to the gain company in relation to the loss year and the gain year and in relation to any year of income commencing after the end of the loss year and ending before the commencement of the gain year,

the amount of the net capital loss or of that part of the net capital loss, as the case may be, shall, for the purposes of the application of this Part other than this section, be deemed to be a capital loss incurred by the gain company during the gain year, and the net capital loss incurred by the loss company in respect of the loss year shall be deemed to be reduced by that amount.

"(8) A notice under paragraph (7) (c) stating that the whole or a part of a net capital loss should be treated as a capital loss incurred by the gain

company during the gain year has no effect to the extent (if any) that the sum of the amount specified in the notice and any amounts specified in notices previously given under that paragraph by any company stating that the whole or a part of a net capital loss should be treated as a capital loss incurred by the gain company during the gain year exceeds the net capital gain that accrued, or would but for the operation of this section have accrued, to the gain company in respect of the gain year.

"(9) Where Subdivision B of Division 2A of Part III applies in relation to the loss company in relation to the loss year, no part of a net capital loss incurred by that company in respect of that year is capable of being specified in a notice under paragraph (7) (c).

"(10) Where the loss company gives to the Commissioner a notice or notices in accordance with paragraph (7) (c) in relation to a part or parts of a net capital loss incurred by the loss company, that company shall not give a further notice in accordance with that paragraph in relation to that net capital loss that purports to specify in relation to a company another part of that net capital loss that exceeds the amount obtained by deducting from the amount of that net capital loss the amount of that part of that net capital loss, or the sum of the amounts of those parts of that net capital loss, specified in the first-mentioned notice or notices.

"(11) Where the loss company is a shareholder in the gain company and receives a payment from the gain company as consideration for the whole or a part of a net capital loss incurred by the loss company being treated under sub-section (7) as a capital loss incurred by the gain company, then, for the purposes of this Act, the payment shall not be taken to be income derived by the loss company.

"(12) Where the gain company makes a payment to the loss company as consideration for the whole or a part of a net capital loss incurred by the loss company being treated under sub-section (7) as a capital loss incurred by the gain company, a deduction is not allowable under this Act in respect of the payment.

Treatment of gains and losses in respect of listed personal-use assets

"160ZQ. (1) Subject to sub-section (2), where a listed personal-use asset has been disposed of during the year of income—

(a) if the consideration in respect of the disposal exceeds the indexed cost base to the taxpayer in respect of the asset—a listed personal-use asset gain equal to the excess shall be deemed for the purposes of this section to have accrued to the taxpayer during the year of income; or

(b) if the reduced cost base to the taxpayer in respect of the asset exceed the consideration in respect of the disposal—a listed personal-use asset loss equal to the excess shall be deemed for the purposes of this section to have been incurred by the taxpayer during the year of income.

"(2) If the disposal occurred within 12 months after the day on which the asset was acquired by the taxpayer, the reference in sub-section (1) to the indexed cost base to the taxpayer in respect of the asset shall be construed as a reference to the cost base to the taxpayer in respect of the asset.

"(3) The reference in sub-section (2) to the day on which an asset was acquired by a taxpayer shall, if the asset formed part of the estate of a deceased person and passed to the taxpayer as the legal personal representative of the deceased person or as a beneficiary in the estate of the deceased person, be construed as a reference to the day on which the asset was acquired by the deceased person.

"(4) Where—

(a) the amount that is deemed for the purposes of this Part to be the consideration in respect of a disposal of an asset is increased because of the operation of sub-section 160ZD (5);

(b) the amount of the increase (in this sub-section referred to as the 'relevant increase') was attributable in whole or in part to a decrease in the market value of a listed personal-use asset; and

(c) as a result of the relevant increase—

(i) a capital gain that would not otherwise have accrued to a taxpayer accrued to the taxpayer during a year of income;

(ii) the amount of a capital gain that accrued to a taxpayer during a year of income is greater than it would otherwise have been;

(iii) a taxpayer has not incurred during a year of income a capital loss that the taxpayer would otherwise have incurred; or

(iv) the amount of a capital loss that a taxpayer incurred during a year of income is less than it would otherwise have been,

the taxpayer shall be deemed to have incurred, during the year of income referred to in whichever of the sub-paragraphs of paragraph (c) is applicable, a listed personal-use asset loss equal to so much of the relevant increase as was attributable to the decrease in the market value of the listed personal-use asset.

"(5) For the purposes of this section, a net listed personal-use asset loss shall be taken to have been incurred by a taxpayer in respect of the year of income if—

(a) where no listed personal-use asset gain accrued to the taxpayer during the year of income—the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income or incurred a net listed personal-use asset loss in respect of the immediately preceding year of income; or

(b) where a listed personal-use asset gain or listed personal-use asset gains accrued to the taxpayer during the year of income—

(i) if the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income but did not incur a net listed personal-use asset loss in respect of the immediately preceding year of income—that listed personal-use asset loss or the sum of those listed personal-use asset losses;

(ii) if the taxpayer did not incur a listed personal-use asset loss during the year of income but incurred a net listed personal-use asset loss in respect of the immediately preceding year of income—that net listed personal-use asset loss; or

(iii) if the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income and incurred a net listed personal-use asset loss in respect of the immediately preceding year of income—the sum of that listed personal-use asset loss or those listed personal-use asset losses and that net listed personal-use asset loss,

exceeded the listed personal-use asset gain or the sum of the listed personal-use asset gains that accrued to the taxpayer during the year of income.

"(6) The amount of the net listed personal-use asset loss that, by virtue of sub-section (5), is to be taken for the purposes of this section to have been incurred by a taxpayer in respect of the year of income is an amount equal to—

(a) in a case to which paragraph (5) (a) applies—

(i) if the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income and did not incur a net listed personal-use asset loss in respect of the immediately preceding year of income—that listed personal-use asset loss or the sum of those listed personal-use asset losses;

(ii) if the taxpayer did not incur a listed personal-use asset loss during the year of income but incurred a net listed personal-use asset loss in respect of the immediately preceding year of income—that net listed personal-use asset loss; or

(iii) if the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income and incurred a net listed personal-use asset loss in respect of the immediately preceding year of income—the sum of that listed personal-use asset loss or those listed personal-use asset losses and that net listed personal-use asset loss; or

(b) in a case to which paragraph (5) (b) applies—the excess referred to in that paragraph.

"(7) For the purposes of this Part, where—

(a) a listed personal-use asset gain or listed personal-use asset gains accrued to the taxpayer during the year of income; and

(b) the taxpayer did not incur a listed personal-use asset loss during the year of income and did not incur a net listed personal-use asset loss in respect of the immediately preceding year of income,

a capital gain equal to the amount of the listed personal-use asset gain or the sum of the listed personal-use asset gains shall be taken for the purposes of this Part to have accrued to the taxpayer during the year of income.

"(8) For the purposes of this Part, where—

(a) a listed personal-use asset gain or listed personal-use asset gains accrued to the taxpayer during the year of income;

(b) the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income or incurred a net listed personal-use asset loss in respect of the immediately preceding year of income; and

(c) that listed personal-use asset gain or the sum of those listed personal-use asset gains exceeded—

(i) where the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income but did not incur a net listed personal-use asset loss in respect of the immediately preceding year of income—that listed personal-use asset loss or the sum of those listed personal-use asset losses;

(ii) where the taxpayer did not incur a listed personal-use asset loss during the year of income but incurred a net listed personal-use asset loss in respect of the immediately preceding year of income—that net listed personal-use asset loss; or

(iii) where the taxpayer incurred a listed personal-use asset loss or listed personal-use asset losses during the year of income and incurred a net listed personal-use asset loss in respect of the immediately preceding year of income—the sum of that listed personal-use asset loss or those listed personal-use asset losses and that net listed personal-use asset loss,

a capital gain equal to the excess referred to in paragraph (c) shall be taken for the purposes of this Part to have accrued to the taxpayer during the year of income.

"*Division 5—Leases*

Interpretation

"160ZR. In this Division, 'lease' includes a sub-lease.

Grant of lease to constitute disposal

"160ZS. (1) For the purposes of this Part, the grant of a lease of property shall not be taken to constitute the disposal of part of the property but shall be deemed to constitute the disposal by the lessor to the lessee of an asset (that is to say, the lease) created by the lessor for a consideration equal to the premium paid or payable for the grant of the lease.

"(2) Notwithstanding section 160ZH, the cost base to a taxpayer of a lease of property granted by the taxpayer comprises the amounts of expenditure incurred by the taxpayer in respect of the grant of the lease and does not include any other amounts, and the indexed cost base and the reduced cost base shall be ascertained accordingly.

Payments for variation of lease

"160ZT. (1) For the purposes of this Part, if the lessor under a lease of property incurs expenditure in obtaining the consent of the lessee to the variation or waiver of any of the terms of the lease—

(a) the lessor shall be deemed to have incurred a capital loss equal to the amount of that expenditure; and

(b) the amount of the consideration paid or given by the lessee in respect of the grant of the lease shall be deemed to be reduced by any amount received by the lessee from the lessor in respect of the giving by the lessee of consent to the variation or waiver.

"(2) For the purposes of this Part, if the lessee under a lease of property incurs expenditure in obtaining the consent of the lessor to the variation or waiver of any of the terms of the lease—

(a) that expenditure shall be deemed to be expenditure of a capital nature incurred for the purpose of enhancing the value of the lease; and

(b) any amount received by the lessor in respect of the giving by the lessor of consent to the variation or waiver shall be deemed to be consideration received in respect of the disposal by the lessor of the right to consent to the variation or waiver.

Renewal or extension of lease

"160ZU. Where a lease has been renewed or extended, the renewal or extension shall be deemed for the purposes of this Part to have constituted the grant by the lessor of a fresh lease that took effect at the time immediately after the time when the first-mentioned lease would, but for the renewal or extension, have expired.

Consideration for disposal

"160ZV. (1) For the purposes of this Part, the consideration for the disposal of an asset constituted by a lease, being a disposal by way of the expiry, forfeiture or surrender of the lease, includes any amount paid or payable by the lessor to the lessee upon the disposal in respect of expenditure of a capital nature incurred by the lessee in making improvements to the property that was the subject of the lease.

"(2) If an asset, being property that was the subject of a lease in respect of the expiry, forfeiture or surrender of which an amount was paid or payable by the lessor to the lessee as mentioned in sub-section (1), is subsequently disposed of in whole or in part by the owner, the amount so paid or payable shall be deemed, for the purpose of ascertaining the cost

base, the indexed cost base or the reduced cost base to the owner of the asset or part of the asset so disposed of, be deemed to be expenditure to which paragraph 160ZH (1) (c), (2) (c) or (3) (c), as the case may be, applies.

Acquisition by lessee of reversionary interest of lessor

"160ZW. (1) Where the lessee under a lease of land acquires the reversionary interest of the lessor in the land, the following provisions of this section have effect for the purposes of this Part.

"(2) If the lease was granted in perpetuity or for a term of not less than 99 years, the former lessee shall be deemed to have acquired the asset constituted by the merger of the lease and the reversionary interest at the time when the lease was granted, or assigned, to the former lessee and to have paid as consideration for the acquisition of that asset the sum of any premium paid by the former lessee for the grant or assignment of the lease and any amount paid for the acquisition of the reversionary interest.

"(3) In the case of a lease to which sub-section (2) does not apply—

(a) where the former lessee acquired the lease, whether by grant or assignment, before 20 September 1985, the former lessee shall be deemed to have acquired the asset constituted by the merger of the lease and the reversionary interest at the time when the merger took place and to have paid as consideration for the acquisition an amount equal to the market value of that asset at that time; or

(b) where the former lessee acquired the lease, whether by grant or assignment, on or after 20 September 1985, the former lessee shall be deemed to have acquired the asset constituted by the merger of the lease and the reversionary interest at the time when the merger took place and to have paid as consideration for the acquisition the sum of any premium paid by the former lessee for the grant or assignment of the lease and any amount paid for the acquisition of the reversionary interest.

"***Division 6—Trusts other than Unit Trusts***

Person becoming entitled to beneficial ownership of trust asset

"160ZX. (1) Where—

(a) an asset is held by a person as trustee otherwise than as trustee of a unit trust or of the estate of a deceased person; and

(b) a beneficiary under the trust becomes absolutely entitled to the asset as against the trustee,

the trustee shall be deemed, for the purposes of this Part, to have disposed of the asset to the beneficiary at the time when the beneficiary became so entitled.

"(2) Where—

(a) a trustee of a trust estate is deemed by sub-section (1) to have disposed of an asset to a beneficiary; or

(b) a trustee of a trust estate other than the estate of a unit trust or of a trust that arose upon or resulted from the death of a person disposes of an asset of the trust estate to a beneficiary in satisfaction of the interest or part of the interest of the beneficiary in the corpus of the trust estate,

the following provisions of this section have effect.

"(3) The trustee shall be deemed for the purposes of this Part to have disposed of the asset to the beneficiary for a consideration equal to the market value of the asset at the time of the disposal.

"(4) The beneficiary shall be deemed to have, at the time when the asset was disposed of, disposed of—

(a) in a case to which paragraph (2) (a) applies—the interest of the beneficiary in the corpus of the trust estate to the extent to which the interest was constituted by the asset; or

(b) in a case to which paragraph (2) (b) applies—the interest or part of the interest of the beneficiary in the corpus of the trust estate that is referred to in that paragraph,

for a consideration equal to the market value of the asset at the time of the disposal of the asset.

"(5) If the beneficiary did not pay or give any consideration in respect of the acquisition of the interest or part of the interest referred to in sub-section (4) and did not acquire the interest or part of the interest by way of assignment from another person, the indexed cost base to the beneficiary in respect of the acquisition of the interest or part of the interest shall be deemed to be an amount equal to the market value of the asset at the time of the disposal of the asset.

Dealing with right to receive income from trust

"160ZY. Where—

(a) a person acquired a right to receive income from a trust estate other than the estate of a unit trust or of a trust that arose upon or resulted from the death of another person; and

(b) the person did not, apart from any operation of sub-section 160ZH (9), pay or give any consideration in respect of the acquisition of the right and did not acquire the right by way of assignment from another person,

sub-section 160ZH (9) does not apply in relation to the right.

Transfer of asset in satisfaction of right to receive income from trust

"160ZYA. Where a person (in this section referred to as the 'beneficiary') has a right to receive income from a trust estate other than the estate of a unit trust or of a trust that arose upon or resulted from the death of another person and the trustee disposes of an asset of the trust estate to the beneficiary in satisfaction of the right or a part of the right—

(a) the asset shall be deemed for the purposes of this Part to have been so disposed of for a consideration equal to its market value; and

(b) the beneficiary shall be deemed to have, at the time when the asset was so disposed of, disposed of the right or part of the right, as the case may be, for a consideration equal to the market value of the asset at that time.

Dealing with interest in corpus of trust estate

"160ZYB. (1) Where—

(a) a person (in this section referred to as the 'beneficiary') acquires an interest in the corpus of a trust estate, other than the estate of a unit trust or of a trust that arose upon or resulted from the death of another person;

(b) the beneficiary did not, apart from any operation of sub-section 160ZH (9), pay or give any consideration in respect of the acquisition of the interest and did not acquire the interest by way of assignment from another person; and

(c) the interest is disposed of in whole or in part during the year of income by the beneficiary,

the following provisions of this section have effect in relation to the disposal.

"(2) Subject to sub-section (3), where the consideration in respect of the disposal exceeds—

(a) if the beneficiary is the only person having an interest in the corpus of the trust estate and the disposal relates to the whole of that interest—the amount (if any) remaining after deducting the total amount of the liabilities of the trust from the amount ascertained in accordance with the formula **A+B**, where—

A is the sum of—

(a) the market values at the time of the disposal of such of the assets (other than money) included in that corpus as were acquired by the trust estate before 20 September 1985; and

(b) the amounts that, if the trustee disposed of the remaining assets (other than money) included in that corpus at that time, would be the indexed cost bases to the trustee of those remaining assets; and

B is the sum of the amounts of any money included in that corpus;

(b) if there are two or more persons having an interest in the corpus of the trust estate and the disposal relates to the whole of the beneficiary's interest—so much of the amount (if any) that would be ascertained in accordance with paragraph (a) if that paragraph were applicable as bears to that amount the same proportion as the interest of the beneficiary in that corpus bears to the total of all the interests in that corpus; or

(c) if the disposal relates to part only of the beneficiary's interest in the corpus of the trust estate—so much of the amount (if any) that would be ascertained in accordance with paragraph (a) or (b), whichever paragraph would be applicable if the disposal related to the whole of that interest, as bears to that amount the same proportion as that part of that interest bears to the whole of that interest,

a capital gain equal to the excess shall be deemed for the purposes of this Part to have accrued to the beneficiary during the year of income.

"(3) If the disposal of the interest or part of the interest occurred within 12 months after the day on which the interest was acquired by the beneficiary, a reference in paragraph (2) (a) to the indexed cost base to the trustee of an asset shall be construed as a reference to the cost base to the trustee of the asset.

"(4) Where the consideration in respect of the disposal is less than—

(a) if the beneficiary is the only person having an interest in the corpus of the trust estate and the disposal relates to the whole of that interest—the amount (if any) remaining after deducting the total amount of the liabilities of the trust from the amount ascertained in accordance with the formula **A+B**, where—

A is the sum of—

(a) the market values at the time of the disposal of such of the assets (other than money) included in that corpus as were acquired by the trust estate before 20 September 1985; and

(b) the amounts that, if the trustee disposed of the remaining assets (other than money) included in that corpus at that time, would be the reduced cost bases to the trustee of those remaining assets; and

B is the sum of the amounts of any money included in that corpus;

(b) if there are two or more persons having an interest in the corpus of the trust estate and the disposal relates to the whole of the beneficiary's interest—so much of the amount (if any) that would be ascertained in accordance with paragraph (a) if that paragraph were applicable as bears to that amount the same proportion as the interest of the beneficiary in that corpus bears to the total of all the interests in that corpus; or

(c) if the disposal relates to part only of the beneficiary's interest in the corpus of the trust estate—so much of the amount (if any) that would be ascertained in accordance with paragraph (a) or (b), whichever paragraph would be applicable if the disposal related to the whole of that interest, as bears to that amount the same proportion as that part of that interest bears to the whole of that interest,

the beneficiary shall be deemed for the purposes of this Part to have incurred during the year of income a capital loss equal to the difference between the consideration in respect of the disposal and the amount ascertained in accordance with paragraph (a), (b) or (c), whichever paragraph is applicable.

"(5) This section does not apply where the beneficiary is deemed to have disposed of the interest or part of the interest by virtue of sub-section 160ZX (4).

"*Division 7—Bonus Units in Unit Trusts*

Application

"160ZYC. Where—

(a) a taxpayer holds units in a unit trust (in this Division referred to as the 'original units');

(b) an amount (in this Division referred to as the 'relevant amount') is payable to the taxpayer by the trustee of the unit trust in respect of the original units;

(c) other units in the unit trust (in this Division referred to as the 'bonus units') are issued to the taxpayer;

(d) the unit trust is not a corporate unit trust within the meaning of sub-section 102J (1), or a public trading trust within the meaning of section 102R, in relation to the year of income in which the bonus units are issued; and

(e) the relevant amount is applied by the trustee of the unit trust, in whole or in part, in payment or part payment of the money payable by the taxpayer in respect of the bonus units or the liability of the trustee of the unit trust to pay the relevant amount to the taxpayer is otherwise satisfied, in whole or in part, by the issue of the bonus units,

the following provisions of this Division have effect.

Time of acquisition of certain bonus units

"160ZYD. Where no part of the relevant amount was included in the assessable income of the taxpayer of any year of income under a provision of this Act other than this Part, the bonus units shall be deemed, for the purposes of this Part, to have been acquired by the taxpayer at the time when the taxpayer acquired the original units.

Consideration in respect of acquisition

"160ZYE. (1) In respect of bonus units to which section 160ZYD applies, the amount paid by the taxpayer in respect of the original units or, if more than one amount was paid by the taxpayer in respect of the original units, each amount shall be deemed for the purposes of this Part to have been paid by the taxpayer as consideration in respect of the acquisition of the original units and the bonus units in such proportions as is reasonable in the circumstances.

"(2) Where the relevant amount was included in the assessable income of the taxpayer of any year of income under a provision of this Act other than this Part, the taxpayer shall be deemed, for the purposes of this Part, to have paid in respect of the acquisition of the bonus units, a consideration equal to the amount so included in the assessable income of the taxpayer and to have so paid that consideration at the time when the bonus units were issued to the taxpayer.

"***Division 8—Bonus Shares***

Application

"160ZYF. Where—

(a) a person (in this Division referred to as the 'shareholder') holds shares in a company (in this Division referred to as the 'original shares'); and

(b) the company issues other shares (in this Division referred to as the 'bonus shares') to the shareholder in circumstances mentioned in sub-section 6BA (1),

the following provisions of this Division have effect.

Time of acquisition of bonus shares

"160ZYG. The bonus shares shall be deemed, for the purposes of this Part, to have been acquired by the shareholder at the time when the shareholder acquired the original shares.

Consideration in respect of acquisition

"160ZYH. (1) The shareholder shall be deemed, for the purposes of this Part, to have paid in respect of the acquisition of the original shares or of the bonus shares a consideration equal to the amount, or the sum of the amounts, that would be deemed to be payable in respect of the original shares or the bonus shares, as the case may be, if it were necessary for the purposes of a provision of this Act (other than this Part) to determine the amount of any profit or loss arising on the sale or disposal of the original shares or the bonus shares, as the case may be.

"(2) If the whole or a part of a relevant amount (as defined in section 6BA)—

(a) which is applied by the company in payment or part payment of the moneys payable by the shareholder in respect of the bonus shares; or

(b) the liability of the company to pay which is otherwise satisfied by the issue of the bonus shares,

is not excluded by section 6BA from being treated as being an amount paid or payable by the shareholder in respect of the bonus shares or as in any other way constituting any part of the cost to the shareholder of the bonus shares (which relevant amount or part of a relevant amount is referred to in this sub-section as the 'non-excluded amount'), so much of the

consideration that, by virtue of sub-section (1), the shareholder is deemed for the purposes of this Part to have paid in respect of the acquisition of the bonus shares as consists of the non-excluded amount shall be deemed for the purposes of this Part to have been paid at the time when the bonus shares were issued to the shareholder.

"(3) If an amount (in this sub-section referred to as the 'original amount') paid or payable by the shareholder in respect of the original shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) is deemed by sub-section 6BA (3) to have been paid or to be payable by the shareholder in respect of the bonus shares, so much of the consideration that, by virtue of sub-section (1), the shareholder is deemed for the purposes of this Part to have paid in respect of the acquisition of the bonus shares as consists of the original amount shall be deemed for the purposes of this Part to have been paid at the time when the original amount was paid by the shareholder in respect of the original shares or, if the original amount formed part of a larger amount, at the time when the larger amount was paid by the shareholder in respect of the original shares.

"(4) If the consideration that, by virtue of sub-section (1), the shareholder is deemed for the purposes of this Part to have paid in respect of the acquisition of the bonus shares includes an amount to which neither sub-section (2) nor (3) applies, so much of that consideration as consists of that amount shall be deemed for the purposes of this Part to have been paid at the time when that amount was paid.

"***Division 9—Employees' Shares***

Consideration for acquisition of shares by employees

"160ZYI. If an amount is included in the assessable income of a taxpayer under section 26AAC as a result of the acquisition by the taxpayer of shares in a company, the taxpayer shall be deemed for the purposes of this Part to have paid—

(a) subject to paragraph (b), at the time when the shares were acquired by the taxpayer; or

(b) in a case to which sub-section 26AAC (15) applies—at the time when the shares are deemed for the purposes of section 26AAC to have been acquired by the taxpayer,

as consideration in respect of the acquisition of the shares, an amount equal to the market value of the shares at that time.

Consideration for acquisition of share rights by employees

"160ZYJ. If, by virtue of sub-section 26AAC (8C), an amount is included in the assessable income of a taxpayer as a result of the acquisition by the taxpayer of a right to acquire shares in a company, the taxpayer shall be deemed, for the purposes of this Part to have paid, at the time when the

taxpayer acquired the right, in respect of the acquisition of the right, an amount equal to the market value of the right at that time.

"***Division 10—Rights to Acquire Shares***

Application

"160ZYK. Where—

(a) a person (in this Division referred to as the 'shareholder') holds shares in a company (in this Division referred to as the 'original shares');

(b) the company issues to the shareholder rights (in this Division referred to as the 'rights') to acquire shares (in this Division referred to as the 'new shares') in the company or to acquire an option (in this Division referred to as the 'option') to acquire shares in the company; and

(c) the shareholder did not, apart from any operation of sub-section 160ZH (9), pay or give any consideration in respect of the acquisition of the rights,

sections 160ZYL to 160ZYO (inclusive) have effect.

Exercise of rights not to constitute disposal

"160ZYL. The rights shall not be taken to have been disposed of by the exercise of the rights.

Time of acquisition of rights

"160ZYM. The rights shall be deemed, for the purposes of this Part, to have been acquired by the shareholder at the time when the shareholder acquired the original shares.

Shareholder not to be deemed to have paid or given consideration for rights

"160ZYN. The shareholder shall not be deemed to have paid or given any consideration in respect of the acquisition of the rights.

Exercise of rights

"160ZYO. (1) When the rights are exercised, whether by the shareholder or by a person who acquired the rights directly of indirectly as a result of the disposal of the rights by the shareholder, the person who exercised the rights shall be deemed, for the purposes of this Part, to have acquired the new shares or the option, as the case may be, at the time when the rights were exercised.

"(2) Subject to sub-section (4), if the rights are exercised by the shareholder, the shareholder shall be deemed, for the purposes of this Part, to have paid or given as consideration in respect of the acquisition of the new shares or the option, as the case may be, an amount equal to the amount paid in respect of the exercise of the rights.

"(3) Subject to sub-section (4), if the rights are exercised by a person who acquired the rights directly or indirectly as a result of the disposal of the rights by the shareholder, that person shall be deemed, for the purposes of this Part, to have paid or given as consideration in respect of the acquisition of the new shares or the option, as the case may be, an amount equal to the sum of the consideration paid or given by that person for the acquisition of the rights and the amount paid in respect of the exercise of the rights.

"(4) When the rights are exercised and—

(a) in the case of rights exercised by the shareholder—the rights are deemed, by virtue of section 160ZYM, to have been acquired by the shareholder before 20 September 1985; or

(b) in the case of rights exercised by a person who acquired the rights directly or indirectly as a result of the disposal of the rights by the shareholder—that person acquired the rights before 20 September 1985,

the shareholder or other person who exercised the rights shall be deemed, for the purposes of this Part, to have paid or given as consideration in respect of the acquisition of the new shares or the option, as the case may be, an amount equal to the sum of the market value of the rights at the time when the rights were exercised and the amount paid in respect of the exercise of the rights.

Division to be subject to Division 9

"160ZYP. This Division is subject to Division 9.

Application of Division to holders of convertible notes

"160ZYQ. In addition to the effect that it has apart from this section, the Division also has the effect it would have if—

(a) the reference in paragraph 160ZYK (a) to a person who holds shares in a company were a reference to a person who holds convertible notes within the meaning of Division 3A of Part III issued by the company;

(b) references to the shareholder were references to the person who holds the convertible notes; and

(c) references to the original shares were references to the convertible notes held by that person.

"Division 11—Company-issued Options to Shareholders to Acquire Unissued Shares

Application

"160ZYR. Where—

(a) a person (in this Division referred to as the 'shareholder') holds shares in a company (in this Division referred to as the 'original shares');

(b) the company issues to the shareholder an option (in this Division referred to as the 'option') to acquire other shares (in this Division referred to as the 'new shares') in the company; and

(c) the shareholder did not, apart from any operation of sub-section 160ZH (9), pay or give any consideration in respect of the acquisition of the option,

sections 160ZYS to 160ZYV (inclusive) have effect.

Exercise of option not to constitute disposal

"160ZYS. The option shall not be taken to have been disposed of by the exercise of the option.

Time of acquisition of option

"160ZYT. The option shall be deemed, for the purposes of this Part, to have been acquired by the shareholder at the time when the shareholder acquired the original shares.

Shareholder not to be deemed to have paid or given consideration for option

"160ZYU. The shareholder shall not be deemed to have paid or given any consideration in respect of the acquisition of the option.

Exercise of option

"160ZYV. (1) When the option is exercised, whether by the shareholder or by a person who acquired the option directly or indirectly as a result of the disposal of the option by the shareholder, the person who exercised the option shall be deemed, for the purposes of this Part, to have acquired the new shares at the time when the option was exercised.

"(2) Subject to sub-section (4), if the option is exercised by the shareholder, the shareholder shall be deemed, for the purposes of this Part, to have paid or given as consideration in respect of the acquisition of the new shares an amount equal to the amount paid in respect of the exercise of the option.

"(3) Subject to sub-section (4), if the option is exercised by a person who acquired the option directly or indirectly as a result of the disposal of the option by the shareholder, that person shall be deemed, for the purposes of this Part, to have paid or given as consideration in respect of the acquisition of the new shares an amount equal to the sum of the consideration paid or given by that person for the acquisition of the option and the amount paid in respect of the exercise of the option.

"(4) When the option is exercised and—

(a) in the case of an option exercised by the shareholder—the option is deemed, by virtue of section 160ZYT, to have been acquired by the shareholder before 20 September 1985; or

(b) in the case of an option exercised by a person who acquired the option directly or indirectly as a result of the disposal of the option

by the shareholder—that person acquired the option before 20 September 1985,

the shareholder or other person who exercised the option shall be deemed, for the purposes of this Part, to have paid or given as consideration in respect of the acquisition of the new shares an amount equal to the sum of the market value of the option at the time when the option is exercised and the amount paid in respect of the exercise of the option.

Division to be subject to Division 9

"160ZYW. This Division is subject to Division 9.

Application of Division to holders of convertible notes

"160ZYX. In addition to the effect that it has apart from this section, the Division also has the effect it would have if—

(a) the reference in paragraph 160ZYR (a) to a person who holds shares in a company were a reference to a person who holds convertible notes within the meaning of Division 3A of Part III issued by the company;

(b) references to the shareholder were references to the person who holds the convertible notes; and

(c) references to the original shares were references to the convertible notes held by that person.

"Division 12—Convertible Notes

Definition

"160ZYY. In this Division, 'convertible note' has the same meaning as in Division 3A of Part III.

Conversion of note not to constitute disposal

"160ZYZ. A convertible note shall not be taken to have been disposed of by the conversion of the note into shares.

Time of acquisition of shares

"160ZZ. Where shares are acquired by a taxpayer by the conversion of a convertible note, the shares shall be deemed, for the purposes of this Part, to have been acquired by the taxpayer—

(a) if the convertible note was acquired by the taxpayer before 20 September 1985 and the taxpayer did not pay or give any consideration in respect of the conversion—at the time when the convertible note was acquired; or

(b) if—

(i) the convertible note was acquired before 20 September 1985 and the taxpayer paid or gave any consideration in respect of the conversion; or

(ii) the convertible note was acquired on or after 20 September 1985,

at the time when the conversion took place.

Consideration in respect of acquisition

"160ZZA. A taxpayer who acquired shares by the conversion of a convertible note shall be deemed, for the purposes of this Part, to have paid as consideration in respect of the acquisition of the shares an amount equal to—

(a) if the convertible note was acquired before 20 September 1985 and the taxpayer paid or gave any consideration in respect of the conversion—the sum of the market value of the note at the time when the conversion took place and the amount or value of the consideration paid or given in respect of the conversion; or

(b) if the convertible note was acquired on or after 20 September 1985—

(i) if no consideration was paid or given by the taxpayer in respect of the conversion—the amount or value of the consideration paid or given by the taxpayer in respect of the acquisition of the convertible note; or

(ii) if the taxpayer paid or gave any consideration in respect of the conversion—the sum of the amount or value of that consideration and the amount or value of the consideration paid or given by the taxpayer in respect of the acquisition of the convertible note.

Division to be subject to Division 9

"160ZZB. This Division is subject to Division 9.

"Division 13—Options Generally

Options

"160ZZC. (1) This section does not apply in relation to an option if Division 10 or 11 applies in relation to that option.

"(2) This section has effect for the purposes of this Part subject to the provisions of this Part relating to options that are personal-use assets.

"(3) Subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction, where an option has been granted—

(a) the grant of the option shall be deemed to have constituted a disposal of the option at the time when the grant took effect; and

(b) the option shall be deemed to have been owned by the grantor immediately before the disposal took place.

"(4) Sub-section (3) extends to—

(a) the case where the grantor of an option is bound by the option to dispose of what the grantor does not own and, because the option expires or is cancelled, released or abandoned, never has occasion to own; and

(b) the case where the grantor is bound by the option to acquire what, because the option expires or is cancelled, released or abandoned, the grantor does not acquire.

"(5) Where an option has been renewed or extended, the renewal or extension shall be deemed to have constituted the grant by the person who renewed or extended the option of a fresh option that took effect at the time immediately after the time when the first-mentioned option would, but for the renewal or extension, have expired.

"(6) Notwithstanding section 160ZH, the cost base to a taxpayer of an option granted by the taxpayer comprises the amounts of expenditure incurred by the taxpayer in respect of the grant of the option and does not include any other amounts, and the indexed cost base and the reduced cost base shall be ascertained accordingly.

"(7) If an option is exercised, the grant of the option and the transaction entered into by the grantor in fulfilment of the grantor's obligations under the option shall be treated as a single transaction and accordingly, for the purposes of the application of this Part in relation to the grantor—

(a) if the option binds the grantor to dispose of an asset, the consideration for the option forms part of the consideration received by the grantor in respect of the disposal; and

(b) if the option binds the grantor to acquire an asset, the consideration for the option shall be deducted from the consideration paid or given by the grantor in respect of the acquisition pursuant to the grantor's obligations under the option.

"(8) An option shall not be taken to have been disposed of by the exercise of the option but, if an option is exercised, the acquisition of the option (whether directly from the grantor or not) and the transaction entered into by the person exercising the option in the exercise of that person's rights under the option shall be treated as a single transaction and accordingly, for the purposes of the application of this Part in relation to the person who exercised the option—

(a) if the option binds the grantor to dispose of an asset, the consideration for the option forms part of the consideration paid or given by the person who exercised the option in respect of the acquisition of the asset; and

(b) if the option binds the grantor to acquire an asset, the consideration for the option forms part of the incidental costs to the person who exercised the option of the disposal of the asset acquired by the grantor of the option.

"(9) If an option that binds the grantor to dispose of an asset was granted before 20 September 1985 and exercised by the grantee on or after that date, paragraph (8) (a) does not apply but the market value of the option at the time when it was exercised forms part of the consideration paid or given by the person who exercised the option in respect of the acquisition of the asset.

"(10) Nothing in section 170 prevents the amendment of an assessment for the purpose of giving effect to sub-section (7) or (8).

"(11) This section applies in relation to an option that binds the grantor both to acquire and to dispose of an asset as if the option were two separate options and one-half of the consideration in respect of the grant of the option were attributed to each of the separate options.

"(12) Where a deposit of money or other consideration, being a deposit that was made in respect of a prospective purchase or other transaction that is cancelled or otherwise abandoned, is forfeited—

(a) the deposit shall be deemed to have been paid or given as consideration in respect of the grant by the person who received the benefit of the forfeiture of an option that bound the grantor to dispose of an asset and was not exercised; and

(b) any costs that the person who received the benefit of the forfeiture incurred in connection with the prospective purchase or other transaction shall be deemed to be amounts of expenditure incurred by that person in respect of the grant of the option.

"Division 14—Industrial Property

Industrial property

"160ZZD. (1) In this section, 'asset to which this section applies' means an asset that is a unit of industrial property within the meaning of Division 10B of Part III.

"(2) Where the grant of a licence in respect of an asset to which this section applies constitutes a disposal of part of the asset for the purposes of Division 10B, then, for the purposes of this Part, the grant of the licence constitutes a disposal by the grantor of that part of the asset and constitutes an acquisition of an asset (that is to say, the licence) by the grantee.

"(3) Where, during the year of income, a taxpayer disposes of part of an asset to which this section applies, the following provisions of this section have effect for the purposes of this Part.

"(4) Where the disposal takes place more than 12 months after the day on which the asset was acquired by the taxpayer—

(a) in a case to which paragraph (b) does not apply—

(i) if the consideration in respect of the disposal is less than the indexed cost base to the taxpayer in respect of the asset, this Part (other than this Division) does not apply in relation to

the disposal but the taxpayer shall be deemed also to have disposed of, and to have immediately re-acquired, at the same time as the first-mentioned disposal, so much of the asset as was not disposed of by the first-mentioned disposal for a consideration equal to the amount by which that indexed cost base exceeded the consideration in respect of the first-mentioned disposal; or

(ii) if the consideration in respect of the disposal is not less than the indexed cost base to the taxpayer in respect of the asset—

(A) the amount of that indexed cost base shall be deemed to be nil; and

(B) if the consideration in respect of the disposal exceeds that indexed cost base—a capital gain equal to the excess shall be deemed to have accrued to the taxpayer during the year of income; or

(b) if, as a result of a previous application or applications of this section, the amount of the indexed cost base to the taxpayer in respect of the asset is nil—a capital gain equal to the consideration in respect of the disposal shall be deemed to have accrued to the taxpayer during the year of income.

"(5) Where the disposal took place within 12 months after the day on which the asset was acquired by the taxpayer—

(a) in a case to which paragraph (b) does not apply—

(i) if the consideration in respect of the disposal is less than the cost base to the taxpayer in respect of the asset, this Part (other than this Division) does not apply in relation to the disposal but the taxpayer shall be deemed also to have disposed of, and to have immediately re-acquired, at the same time as the first-mentioned disposal, so much of the asset as was not disposed of by the first-mentioned disposal for a consideration equal to the amount by which that cost base exceeded the consideration in respect of the first-mentioned disposal; or

(ii) if the consideration in respect of the disposal is not less than the cost base to the taxpayer in respect of the asset—

(A) the amount of that cost base shall be deemed to be nil; and

(B) if the consideration in respect of the disposal exceeds that cost base—a capital gain equal to the excess shall be deemed to have accrued to the taxpayer during the year of income; or

(b) if, as a result of a previous application or applications of this section, the amount of the cost base to the taxpayer in respect of the asset is nil—a capital gain equal to the consideration in respect

of the disposal shall be deemed to have accrued to the taxpayer during the year of income.

"(6) Sub-sections (3), (4) and (5) apply in relation to an asset, being a licence in respect of an asset to which this section applies, in the same manner as those sub-sections apply in relation to an asset to which this section applies.

"Division 15—Prospecting and Mining Rights

Disposal of prospecting or mining right

"160ZZE. Where—

(a) a taxpayer who carries on or has carried on prescribed mining operations within the meaning of Division 10 of Part III or prescribed petroleum operations within the meaning of Division 10AA of that Part or has incurred expenditure to which Division 10AAA of that Part applies disposes of an asset in respect of which, or in respect of the acquisition of which, the taxpayer incurred expenditure of a capital nature to which any of those Divisions applies; and

(b) the disposal has effect for the purposes of a provision of this Act other than this Part as the disposal of several separate assets,

the disposal shall be deemed for the purposes of this Part to constitute the disposal of those separate assets and the consideration in respect of the disposal shall be apportioned in the same manner as it is apportioned for the purposes of this Act other than this Part.

Conversion of prospecting right to mining right

"160ZZF. (1) In this section—

'mining right' means—

(a) an authority, licence, permit or right under a law of the Commonwealth, of a State or of a Territory to mine minerals in a particular area; or

(b) a lease of land under such a law by virtue of which the lessee is entitled to mine minerals on the land,

and includes an interest in such an authority, licence, permit, right or lease;

'prospecting right' means—

(a) an authority, licence, permit or right under a law of the Commonwealth, of a State or of a Territory to prospect or explore for minerals in a particular area; or

(b) a lease of land under such a law by virtue of which the lessee is entitled to prospect or explore for minerals on the land,

and includes an interest in such an authority, licence, permit, right or lease.

"(2) Where a taxpayer has acquired a mining right that was granted to the taxpayer by reason of the taxpayer having discovered minerals as a result of prospecting or exploration carried on by the taxpayer under a prospecting right, the prospecting right shall be deemed to have merged with the mining right and the taxpayer shall be deemed to have acquired the asset constituted by the merger of the prospecting right and the mining right at the time when the prospecting right was acquired by the taxpayer and to have paid as consideration for the acquisition of that asset the sum of any amount paid by the taxpayer for the acquisition of the prospecting right and any amount paid by the taxpayer for the acquisition of the mining right.

Disposal of right to receive income from mining operations

"160ZZG. Where a person who owns a mining or prospecting right or an interest in such a right grants to another person a right to receive income from operations carried on pursuant to the mining or prospecting right, the grant of the right to receive the income—

(a) does not constitute a disposal of part of the mining or prospecting right; but

(b) constitutes the disposal by the first-mentioned person of a right (that is to say, the right to receive the income)—

(i) which was created by that person immediately before it was granted; and

(ii) which was acquired by that person without that person having paid or given any consideration in respect of the acquisition.

"***Division 16—Insurance and Superannuation***

Policies of insurance

"160ZZH. (1) In this section, 'policy of insurance' does not include a policy of assurance within the meaning of section 160ZZI.

"(2) This Part does not apply in respect of the disposal of, or of an interest in, the rights of the insurer under a policy of insurance, whether the risks insured relate to an asset or not.

"(3) This Part applies in respect of the disposal of, or of an interest in, the rights of the insured under a policy of insurance against the risk of the loss or destruction of, or damage to, property only to the extent that those rights relate to an asset in respect of the disposal of which this Part would apply or would have applied.

Policies of life assurance

"160ZZI. (1) In this section, 'policy of life assurance' means a policy of assurance on the life of a person and includes an instrument securing the grant of an annuity, whether or not for a term dependent on the life of a person.

"(2) Subject to sub-section (3), this Part does not apply in respect of the disposal of, or of an interest in, any rights under a policy of life assurance.

"(3) Sub-section (2) does not apply where the person making the disposal is not the original beneficial owner and acquired the rights or interest for an amount of money or other consideration.

"(4) For the purposes of this section but without limiting the generality of section 160M, an act, transaction or event that results in—

(a) the payment of the sum or sums assured by a policy of life assurance;

(b) the transfer of investments or other assets to the owner of a policy of life assurance in accordance with the policy; or

(c) the payment of the surrender value of a policy of life assurance,

constitutes the disposal of the right under the policy to the payment of the sum or sums referred to in paragraph (a), to the transfer of the investments or other assets referred to in paragraph (b) or to the payment of the surrender value referred to in paragraph (c), as the case may be.

Superannuation and approved deposit funds

"160ZZJ. (1) This Part does not apply in respect of—

(a) the disposal of a right to, or to any part of, an allowance, annuity or capital amount payable out of a superannuation fund or an approved deposit fund; or

(b) the disposal of a right to, or to any part of, an asset of a superannuation fund or of an approved deposit fund, not being a disposal by the trustee of the fund.

"(2) For the purposes of sub-section (1) but without limiting the generality of section 160M, an act, transaction or event that results in the payment of an amount to a person out of a superannuation fund or an approved deposit fund or the transfer to a person of property being an asset of a superannuation fund or approved deposit fund constitutes the disposal of the right of the person to the amount or property.

"(3) Sub-section (1) does not apply where the person who disposed of the right received the payment or property otherwise than by virtue of being a member of the superannuation fund or approved deposit fund and that person acquired the right for an amount of money or other consideration.

"(4) For the purposes of this section—

'approved deposit fund' has the same meaning as in Subdivision AA of Division 2 of Part III;

'superannuation fund' means—

(a) a superannuation fund within the meaning of Division 9B of Part III; or

(b) a scheme for the payment of benefits upon retirement or death, being a scheme constituted by or under a law of the Commonwealth or of a State or Territory.

"***Division 17—Miscellaneous Roll-over Relief***

Involuntary disposal

"160ZZK. (1) Where—

(a) a taxpayer is to be taken to have disposed of, or to have disposed of part of, an asset (in this section referred to as the 'original asset') by reason of an act, transaction or event as a result of which the taxpayer has received an amount of money (in this section referred to as the 'relevant amount')—

(i) by way of compensation for the compulsory acquisition of the asset or for loss or destruction of, or damage to, the asset; or

(ii) under a policy of insurance against the risk of loss or destruction of, or damage to, the asset;

(b) not earlier than one year before the disposal took place and not later than one year (or such further period as the Commissioner in special circumstances allows) after the end of the year of income in which the disposal took place the taxpayer incurred expenditure in acquiring an asset (in this section referred to as the 'replacement asset') in place of the original asset or incurred expenditure of a capital nature in repairing or restoring the original asset;

(c) if, immediately before the disposal took place, the original asset was owned by—

(i) a person (not being a person in the capacity of a trustee) who was not a resident of Australia; or

(ii) a person in the capacity of a trustee of a trust estate that was not a resident trust estate or in the capacity of a trustee of a unit trust that was not a resident unit trust,

and the taxpayer incurred expenditure as mentioned in paragraph (b) in acquiring an asset in place of the original asset—the original asset was a taxable Australian asset and the replacement asset is a taxable Australian asset; and

(d) the taxpayer has, by notice in writing given to the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the disposal took place, or within such further period as the Commissioner allows, elected that this section is to apply in respect of the disposal,

the following provisions of this section have effect.

"(2) The reference in sub-paragraph (1) (a) (i) to the compulsory acquisition of an asset is a reference to a compulsory acquisition of an asset

by the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.

"(3) The application of the provisions of this Part, other than this section, in respect of the disposal is subject to this section.

"(4) If the original asset was acquired before 20 September 1985, the replacement asset, or the original asset as repaired or restored, as the case may be, shall be deemed, for the purposes of this Part, to have been acquired before that date.

"(5) Sub-section (4) does not apply in relation to the replacement asset if the consideration in respect of the acquisition of that asset exceeded the market value of the original asset immediately before the disposal of the original asset and the amount of the excess was more than 20% of that market value.

"(6) Where, if this Part other than this section had applied in respect of the disposal, a capital gain (in this sub-section referred to as the 'notional capital gain') would have accrued to the taxpayer in respect of the disposal—

(a) if the relevant amount does not exceed the consideration that was paid or given by the taxpayer in respect of the acquisition of the replacement asset or the expenditure that was incurred in respect of the repair or restoration of the original asset, as the case may be—that consideration or expenditure shall, for the purposes of this Part, be deemed to be reduced by the amount of the notional capital gain; or

(b) if the relevant amount exceeds that consideration or expenditure—

(i) in the case where the notional capital gain is greater than the excess—

(A) a capital gain equal to the excess shall, for the purposes of this Part, be deemed to have accrued to the taxpayer in the year of income in which the disposal took place; and

(B) the consideration that was paid or given by the taxpayer in respect of the acquisition of the replacement asset or the expenditure that was incurred by the taxpayer in respect of the repair or restoration of the original asset, as the case may be, shall, for the purposes of this Part, be deemed to be reduced by the amount by which the notional capital gain is greater than the excess; or

(ii) in the case where the excess is greater than or equal to the notional capital gain—a capital gain equal to the notional capital gain shall be deemed to have accrued to the taxpayer in the year of income in which the disposal took place.

"(7) For the purposes of this section—

(a) an asset shall be deemed to have been acquired by a taxpayer in replacement of an asset disposed of by the taxpayer if—

(i) the asset disposed of was, immediately before the disposal took place, used in a business carried on by the taxpayer and the asset acquired is, for a reasonable time after its acquisition, used by the taxpayer in that business; or

(ii) the asset acquired is, for a reasonable time after its acquisition, used by the taxpayer for the same purpose as, or for a similar purpose to, the purpose for which the asset disposed of was used by the taxpayer immediately before the disposal took place; and

(b) an asset shall be deemed to have been used in a particular business or for a particular purpose immediately before its disposal if, immediately before its disposal, it was being installed for use, or was installed ready for use, in that business or for that purpose, as the case may be.

Asset received as a result of involuntary disposal

"160ZZL. (1) Where—

(a) a taxpayer would, but for this section, be taken to have disposed of, or to have disposed of part of, an asset (in this section referred to as the 'original asset') by reason of an act, transaction or event as a result of which the taxpayer has received an asset (in this section referred to as the 'replacement asset')—

(i) by way of compensation for the compulsory acquisition, or for loss or destruction, of the original asset; or

(ii) under a policy of insurance against the risk of loss or destruction of the original asset;

(b) if, immediately before the act, transaction or event took place, the original asset was owned by—

(i) a person (not being a person in the capacity of a trustee) who was not a resident of Australia; or

(ii) a person in the capacity of a trustee of a trust estate that was not a resident trust estate or in the capacity of a trustee of a unit trust that was not a resident unit trust,

the replacement asset is a taxable Australian asset;

(c) if the original asset was acquired by the taxpayer on or after 20 September 1985, the market value of the replacement asset at the time when it was acquired by the taxpayer exceeded the amount that would have been the indexed cost base to the taxpayer of the original asset; and

(d) the taxpayer has, by notice in writing given to the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the disposal took place, or within such further period as the Commissioner allows, elected that this section is to apply in respect of the disposal,

the following provisions of this section have effect.

"(2) The application of the provisions of this Part, other than this section, in respect of the disposal is subject to this section.

"(3) If the original asset was acquired before 20 September 1985, the replacement asset shall be deemed, for the purposes of this Part, to have been acquired before that date.

"(4) The taxpayer shall not be taken for the purposes of this Part to have disposed of the original asset but shall be deemed to have paid as consideration in respect of the acquisition of the replacement asset an amount equal to the indexed cost base to the taxpayer of the original asset.

"(5) The reference in sub-paragraph (1) (a) (i) to the compulsory acquisition of an asset is a reference to a compulsory acquisition of an asset by the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.

"(6) If the replacement asset is disposed of by the taxpayer within 12 months after the original asset was acquired by the taxpayer, the references in paragraph (1) (c) and sub-section (4) to the indexed cost base to the taxpayer of the original asset shall be construed as references to the cost base to the taxpayer of the original asset.

Transfer of asset between spouses upon breakdown of marriage

"160ZZM. (1) Where a taxpayer disposes of an asset to his or her spouse pursuant to—

(a) an order of a court under the *Family Law Act 1975* or under a corresponding law of a foreign country; or

(b) a maintenance agreement approved by a court under section 87 of the *Family Law Act 1975* or a corresponding agreement approved by, or otherwise sanctioned by, a court under a corresponding law of a foreign country,

this Part other than this section does not apply in respect of the disposal and—

(c) if the asset was acquired by the taxpayer before 20 September 1985—the spouse shall be deemed to have acquired the asset before that date; or

(d) if the asset was acquired by the taxpayer on or after 20 September 1985—

(i) the spouse shall be deemed to have paid as consideration in respect of the acquisition of the asset an amount equal to—

(A) for the purpose of ascertaining whether a capital gain accrued to the spouse in the event of a subsequent disposal of the asset by the spouse—the amount that would have been the indexed cost base to the taxpayer of the asset for the purposes of this Part if this Part

had applied in respect of the disposal of the asset by the taxpayer to the spouse; or

(B) for the purpose of ascertaining whether the spouse incurred a capital loss in the event of a subsequent disposal of the asset by the spouse—the amount that would have been the reduced cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the spouse; and

(ii) in the case of an asset that was a personal-use asset of the taxpayer—the asset shall be taken for the purposes of this Part to be a personal-use asset of the spouse.

"(2) If in the case of an asset to which paragraph (1) (d) applies, the asset was disposed of by the spouse within 12 months after the day on which the asset was acquired by the taxpayer, the reference in that paragraph to the indexed cost base to the taxpayer of the asset shall be construed as a reference to the cost base to the taxpayer of the asset.

"(3) In this section, 'spouse', in relation to a taxpayer, includes a former spouse of the taxpayer.

Transfer of asset to wholly-owned company

"160ZZN. (1) In this section, 'asset' does not include a personal-use asset.

"(2) Where—

(a) one of the following sub-paragraphs applies:

(i) a taxpayer (other than a company or a taxpayer in the capacity of a trustee) who is a resident of Australia disposes of an asset to a company that is a resident of Australia;

(ii) a taxpayer (other than a company or a taxpayer in the capacity of a trustee) who is not a resident of Australia disposes of a taxable Australian asset to a company that is a resident of Australia; or

(iii) a taxpayer (other than a company or a taxpayer in the capacity of a trustee) disposes of a taxable Australian asset to a company that is not a resident of Australia;

(b) the consideration in respect of the disposal consists only of shares in or securities of the company;

(c) immediately after the disposal the taxpayer is the beneficial owner of all the shares in the company; and

(d) the taxpayer has, by notice in writing given to the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the disposal took place, or within such further period as the Commissioner allows, elected that this sub-section is to apply in respect of the disposal,

this Part (other than this section) does not apply in respect of the disposal and—

(e) if the asset was acquired by the taxpayer before 20 September 1985—the company shall be deemed, for the purposes of this Part, to have acquired the asset before that date; and

(f) if the asset was acquired by the taxpayer on or after 20 September 1985, the company shall be deemed to have paid or given as consideration in respect of the acquisition of the asset an amount equal to—

(i) for the purpose of ascertaining whether a capital gain accrued to the company in the event of a subsequent disposal of the asset by the company—the amount that would have been the indexed cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the company; or

(ii) for the purpose of ascertaining whether the company incurred a capital loss in the event of a subsequent disposal of the asset by the company—the amount that would have been the reduced cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the company.

"(3) If, in the case of an asset to which paragraph (2) (f) applies, the asset was disposed of by the company within 12 months after the day on which the asset was acquired by the taxpayer, the reference in that paragraph to the indexed cost base to the taxpayer of the asset shall be construed as a reference to the cost base to the taxpayer of the asset.

"(4) Where—

(a) one of the following sub-paragraphs applies:

(i) a taxpayer in the capacity of a trustee of a trust estate that is a resident trust estate or of a unit trust that is a resident unit trust disposes of an asset of the trust estate or of the unit trust to a company that is a resident of Australia;

(ii) a taxpayer in the capacity of a trustee of a trust estate that is not a resident trust estate or of a unit trust that is not a resident unit trust disposes of a taxable Australian asset of the trust estate or of the unit trust to a company that is a resident of Australia; or

(iii) a taxpayer in the capacity of a trustee of a trust estate or of a unit trust disposes of a taxable Australian asset of the trust estate or of the unit trust to a company that is not a resident of Australia;

(b) the consideration in respect of the disposal consists only of shares in or securities of the company;

(c) immediately after the disposal the taxpayer owns all the shares in the company and holds those shares upon the same trust as the taxpayer held the asset that was disposed of to the company; and

(d) the taxpayer has, by notice in writing given to the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the disposal took place, or within such further period as the Commissioner allows, elected that this sub-section is to apply in respect of the disposal,

this Part (other than this section) does not apply in respect of the disposal and—

(e) if the asset was acquired by the taxpayer in the capacity of a trustee of the trust concerned before 20 September 1985—the company shall be deemed, for the purposes of this Part, to have acquired the asset before that date; or

(f) if the asset was acquired by the taxpayer in the capacity of trustee of the trust concerned on or after 20 September 1985, the company shall be deemed to have paid or given as consideration in respect of the acquisition of the asset an amount equal to—

(i) for the purpose of ascertaining whether a capital gain accrued to the company in the event of a subsequent disposal of the asset by the company—the amount that would have been the indexed cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the company; or

(ii) for the purpose of ascertaining whether the company incurred a capital loss in the event of a subsequent disposal of the asset by the company—the amount that would have been the reduced cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the company.

"(5) If, in the case of an asset to which paragraph (4) (f) applies, the asset was disposed of by the company within 12 months after the day on which the asset was acquired by the taxpayer, the reference in that paragraph to the indexed cost base to the taxpayer of the asset shall be construed as a reference to the cost base to the taxpayer of the asset.

"(6) Sub-section (2) applies to a taxpayer being a partnership notwithstanding that one or more of the partners is a company provided that—

(a) at least one of the partners is a natural person; and

(b) immediately after the disposal the persons who were the partners in the partnership beneficially owned the shares in the company in the same proportions as they held their interests in the partnership immediately before the disposal.

"(7) The shares or securities that constituted the consideration for a disposal by a taxpayer to a company of an asset to which sub-section (2) or (4) applies—

(a) shall, if the asset was acquired by the taxpayer before 20 September 1985—be deemed for the purposes of this Part to have been acquired before that date; or

(b) shall, if the asset was acquired by the taxpayer on or after 20 September 1985, be deemed for the purposes of this Part to have been acquired by the taxpayer for a consideration equal to—

(i) for the purpose of ascertaining whether a capital gain accrued to the taxpayer in the event of a subsequent disposal of the shares or securities by the taxpayer—the amount that would have been indexed cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the company; or

(ii) for the purpose of ascertaining whether the taxpayer incurred a capital loss in the event of a subsequent disposal of the asset by the taxpayer—the amount that would have been the reduced cost base to the taxpayer of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the taxpayer to the company.

"(8) If, in the case of shares or securities to which paragraph (7) (b) applies, the shares or securities were disposed of by the taxpayer within 12 months after the day on which the asset was acquired by the taxpayer, the reference in that paragraph to the indexed cost base to the taxpayer of the asset shall be construed as a reference to the cost base to the taxpayer of the asset.

"(9) This section does not apply to the disposal of an asset to a company whose income of the year of income in which the asset was disposed of is exempt from tax by virtue of a relevant exempting provision.

Transfer of asset between companies in the same group

"160ZZO. (1) Where—

(a) one of the following sub-paragraphs applies:

(i) a company (in this section referred to as the 'transferor') that is a resident of Australia disposes of an asset to another company (in this section referred to as the 'transferee') that is a resident of Australia;

(ii) a company (in this section also referred to as the 'transferor') that is not a resident of Australia disposes of a taxable Australian asset to another company (in this section also referred to as the 'transferee') that is a resident of Australia; or

(iii) a company (in this section also referred to as the 'transferor') disposes of a taxable Australian asset to another company (in this section also referred to as the 'transferee') that is not a resident of Australia;

(b) the transferee is a group company in relation to the transferor in relation to the year of income in which the disposal took place;

(c) the transferee is not a person whose income of the year of income in which the disposal took place is exempt from tax by virtue of a relevant exempting provision; and

(d) the transferor and the transferee have, by notice in writing given to the Commissioner on or before the date of lodgment of the return of income of the transferor for the year of income in which the disposal took place, or within such further period as the Commissioner allows, elected that this section is to apply in respect of the disposal,

this Part (other than this section) does not apply in respect of the disposal and—

(e) if the asset was acquired by the transferor before 20 September 1985—the transferee shall be deemed to have acquired the asset before that date; or

(f) if the asset was acquired by the transferor on or after 20 September 1985, the transferee shall be deemed to have paid as consideration in respect of the acquisition of the asset an amount equal to—

(i) for the purpose of ascertaining whether a capital gain accrued to the transferee in the event of a subsequent disposal of the asset by the transferee—the amount that would have been the indexed cost base to the transferor of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the transferor to the transferee; or

(ii) for the purpose of ascertaining whether the transferee incurred a capital loss in the event of a subsequent disposal of the asset by the transferee—the amount that would have been the reduced cost base to the transferor of the asset for the purposes of this Part if this Part had applied in respect of the disposal of the asset by the transferor to the transferee.

"(2) If, in the case of an asset to which paragraph (1) (f) applies, the asset was disposed of by the transferee within 12 months after the day on which the asset was acquired by the transferor, the reference in that paragraph to the indexed cost base to the transferor of the asset shall be construed as a reference to the cost base to the transferor of the asset.

"(3) For the purposes of this section, a company shall be taken to be a group company in relation to another company in relation to a year of income if—

(a) one of the companies was a subsidiary of the other company; or

(b) each of the companies was a subsidiary of the same company,

during the whole of the year of income or, if either or both of those companies was not or were not in existence during part of the year of income, during that part of the year of income during which both companies were in existence.

"(4) For the purposes of this section, a company (in this sub-section referred to as the 'subsidiary company') shall be taken to be the subsidiary of another company (in this sub-section referred to as the 'holding company') during a period (in this sub-section referred to as the 'relevant period'), being the whole or a part of a year of income, if—

(a) at all times during the relevant period, all the shares in the subsidiary company were beneficially owned by—

(i) the holding company;

(ii) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or

(iii) the holding company and a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; and

(b) no person was in a position during any part of the relevant period, or would become in a position after the relevant period, to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

"(5) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this sub-section), every company that is a subsidiary of the first-mentioned company shall be taken to be a subsidiary of that other company.

"(6) For the purposes of sub-section (4), a person shall be taken to be in a position during a year of income, or a part of a year of income, to affect any rights of a company in relation to another company if, during the year of income, or that part of the year of income, that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies, by virtue of any agreement or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

"(7) In sub-section (6), 'agreement' means an 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.

"(8) For the purposes of this section, a company shall be taken to be in existence if it has been incorporated and has not been dissolved.

"(9) Where this section applies to the disposal of an asset that was a personal-use asset of the transferor, the asset shall be taken for the purposes of this Part to be a personal-use asset of the transferee.

Exchange of shares in the same company

"160ZZP. (1) Where—

(a) a company redeems or cancels all the shares of a particular class in the company;

(b) a taxpayer holds shares of that class in the company (in this section referred to as the 'original shares');

(c) the taxpayer is a resident of Australia or the redemption or cancellation constitutes a disposal of a taxable Australian asset;

(d) the company issues to the taxpayer other shares in the company (in this section referred to as the 'new shares') in substitution for the original shares;

(e) the market value of the new shares immediately after they were issued is not less than the market value of the original shares immediately before the redemption or cancellation;

(f) the taxpayer did not receive any consideration other than the new shares by reason of the redemption or cancellation; and

(g) the taxpayer has, by notice in writing given to the Commissioner on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the disposal took place, or within such further period as the Commissioner allows, elected that this section is to apply in respect of the redemption or cancellation,

this Part (other than this section) does not apply in respect of the redemption or cancellation and—

(h) if the original shares were acquired by the taxpayer before 20 September 1985—the taxpayer shall be deemed to have acquired the new shares before that date; or

(j) if the original shares were acquired by the taxpayer on or after 20 September 1985, the taxpayer shall be deemed to have paid as consideration in respect of the acquisition of the new shares an amount equal to—

(i) for the purpose of ascertaining whether a capital gain accrued to the taxpayer in the event of a subsequent disposal of the new shares by the taxpayer—the amount that would have been the indexed cost base to the taxpayer of the original shares for the purposes of this Part if this Part had applied in respect of the disposal of the original shares by the taxpayer; or

(ii) for the purpose of ascertaining whether the taxpayer incurred a capital loss in the event of a subsequent disposal of the new shares by the taxpayer—the amount that would have been the reduced cost base to the taxpayer of the original

shares for the purposes of this Part if this Part had applied in respect of the disposal of the original shares by the taxpayer.

"(2) If, in a case to which paragraph (1) (j) applies, the new shares were disposed of by the taxpayer within 12 months after the day on which the original shares were acquired by the taxpayer, the reference in that paragraph to the indexed cost base to the taxpayer of the original shares shall be construed as a reference to the cost base to the taxpayer of the original shares.

"Division 18—Principal Residence

Exemption of principal residence

"160ZZQ. (1) In this section—

'dependent child', in relation to a taxpayer, means a child of the taxpayer who is under the age of 18 years and is dependent on the taxpayer for economic support;

'dwelling' includes—

(a) a unit of accommodation constituted by, or contained in, a building, being a unit that consists, in whole or in substantial part, of residential accommodation; and

(b) a caravan, houseboat or other mobile home;

'relevant period', in relation to the disposal of a dwelling by a taxpayer other than a taxpayer in the capacity of a trustee, means the period after 19 September 1985 during which the dwelling was owned by the taxpayer and includes any period after that date during which the land on which the dwelling is erected was owned by the taxpayer before the erection of the dwelling.

"(2) For the purposes of this section, a person shall be taken to own, or to have acquired, a dwelling constituted by or contained in a building if the person owns or has acquired, as the case may be—

(a) in the case of a dwelling other than a flat or home unit—an estate in fee simple, or a lease in perpetuity or that was granted for a term of not less than 99 years, in the land on which the dwelling is erected; or

(b) in the case of a flat or home unit—

(i) an estate in fee simple, or a lease in perpetuity or that was granted for a term of not less than 99 years, in a stratum unit in relation to the flat or home unit; or

(ii) a share in a company that owns an estate in fee simple, or a lease in perpetuity or that was granted for a term of not less than 99 years, in the land on which the building containing the flat or home unit is erected, being a share that entitles the holder of the share to exclusive occupancy of the flat or home unit.

"(3) For the purposes of this section, a dwelling owned by a person shall be deemed to include—

(a) any land owned by the person that is adjacent to the dwelling to the extent that—

(i) that land is used by the person primarily for private or domestic purposes in association with the dwelling; and

(ii) the sum of the area of that land and the area of the land on which the dwelling is situated does not exceed 2 hectares; and

(b) in the case of a dwelling being a flat or home unit—a garage, storeroom or other structure owned by the person that forms part of or is attached to or otherwise associated with the building containing the flat or home unit and is used by the person primarily for private or domestic purposes.

"(4) If—

(a) land that by virtue of paragraph (3) (a) forms part of a dwelling owned by a person is disposed of by the person separately from the rest of the dwelling; or

(b) a garage, storeroom or other structure that forms part of a dwelling owned by a person is disposed of by the person separately from the rest of the dwelling,

this section does not apply in respect of the disposal.

"(5) Where—

(a) after 19 September 1985 a taxpayer acquired a legal or equitable interest (other than a life interest) in land;

(b) no dwelling was erected on the land at the time when the taxpayer acquired that interest;

(c) a dwelling was erected on the land by the taxpayer after that time; and

(d) the dwelling became the sole or principal residence of the taxpayer for the purposes of this Part as soon as practicable after the dwelling was erected and continued to be the sole or principal residence of the taxpayer for those purposes for not less than 12 months,

the period during which the dwelling was the sole or principal residence of the taxpayer for the purposes of this Part includes that part (if any) of—

(e) the period on and from the date on which the taxpayer acquired the interest to and including the date on which the dwelling was erected (other than any part of that period during which the taxpayer was the dependent child of another taxpayer); or

(f) the period of 4 years immediately before the dwelling became the sole or principal residence of the taxpayer (other than any part of that period during which the taxpayer was the dependent child of another taxpayer),

whichever is the shorter period, during which neither the taxpayer nor the spouse of the taxpayer owned another dwelling that was the sole or principal residence of the taxpayer or of the spouse.

"(6) A reference in this section to a taxpayer having acquired a dwelling as a beneficiary in the estate of a deceased person is a reference to a taxpayer having acquired a dwelling—

(a) under the will of a deceased person, or under such a will as varied by an order of a court; or

(b) by operation of a law as a result of the intestacy of a deceased person, or by operation of law as a result of such an intestacy as the operation of the law is varied by an order of a court,

whether the dwelling was transmitted directly to the taxpayer or was transferred to the taxpayer by the executor of the will, or by the administrator of the estate, of the deceased person.

"(7) A reference in this section to the acquisition or disposal by a person of a dwelling or to the transmission or transfer of a dwelling to a person includes a reference to the acquisition or disposal by a person or to the transmission or transfer to a person, as the case may be, of the asset the ownership of which, by virtue of sub-section (2), constitutes ownership of the dwelling.

"(8) For the purposes of this section—

(a) a dwelling shall be deemed to be the sole or principal residence of a person at a particular time notwithstanding that it is used at that time both for that purpose and another purpose or other purposes; and

(b) where—

(i) a taxpayer disposes of a dwelling that—

(A) was the sole or principal residence of the taxpayer for a continuous period of not less than 3 months included in the period of 12 months ending at the time of disposal; and

(B) the dwelling was not used for gaining or producing assessable income in any part of that period of 12 months other than the part of that period in which the dwelling was also the sole or principal residence of the taxpayer; and

(ii) before disposing of the dwelling, the taxpayer acquired another dwelling and that other dwelling became the next sole or principal residence of the taxpayer,

each of those dwellings shall be deemed to be the sole or principal residence of the taxpayer during—

(iii) in a case where the taxpayer acquired that other dwelling more than 3 months before the time of disposal—the period of 3 months ending at the time of disposal; or

(iv) in any other case—the period commencing on the day on which the taxpayer acquired that other dwelling and ending at the time of disposal.

"(9) Where—

(a) a dwelling is the sole or principal residence of a taxpayer at a particular time; and

(b) at that time, another dwelling is the sole or principal residence of the taxpayer's spouse or of a dependent child of the taxpayer,

whichever of those dwellings is nominated by the taxpayer and the taxpayer's spouse, or by the taxpayer, as the case may be, shall, for the purposes of this section, be deemed to be the sole or principal residence of the taxpayer and the taxpayer's spouse, or the taxpayer and the dependent child of the taxpayer, as the case may be, at that time.

"(10) Where, under sub-section (9), a taxpayer nominates a dwelling, and the taxpayer's spouse nominates a different dwelling, in relation to the same period—

(a) in the case of the dwelling nominated by the taxpayer—

(i) if the interest of the taxpayer in the dwelling throughout that period did not exceed one-half of the total of all the interests in the dwelling—the dwelling shall, for the purposes of this section, be deemed to have been the sole or principal residence of the taxpayer during that period; or

(ii) in any other case—the dwelling shall, for the purposes of this section, be deemed to have been the sole or principal residence of the taxpayer during one-half of that period; or

(b) in the case of the dwelling nominated by the taxpayer's spouse—

(i) if the interest of the spouse in the dwelling throughout that period did not exceed one-half of the total of all the interests in the dwelling—the dwelling shall, for the purposes of this section, be deemed to have been the sole or principal residence of the spouse during that period; or

(ii) in any other case—the dwelling shall, for the purposes of this section, be deemed to have been the sole or principal residence of the spouse during one-half of that period.

"(11) Where—

(a) a dwelling owned by a taxpayer temporarily ceases to be the sole or principal residence of the taxpayer;

(b) the dwelling again becomes the sole or principal residence of the taxpayer within the period of 4 years after that cessation; and

(c) the taxpayer notifies the Commissioner in writing, not later than the date of lodgment of the taxpayer's return of income for the year of income in which the dwelling again became the sole or principal residence of the taxpayer, that the taxpayer elects that this sub-section is to apply in relation to the dwelling,

then, for the purposes of this section, during the period from the time when the dwelling temporarily ceased to be the sole or principal residence of the taxpayer until the time when it again became the sole or principal residence of the taxpayer—

(d) the dwelling shall be deemed to have been the sole or principal residence of the taxpayer;

(e) no other dwelling shall be deemed to have been the sole or principal residence of the taxpayer; and

(f) any use for the purpose of gaining or producing assessable income of the part of the dwelling that was the sole or principal residence of the taxpayer before it temporarily ceased to be his or her sole or principal residence shall be disregarded.

"(12) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer, being a natural person other than—

(i) a person who acquired the dwelling as a beneficiary in the estate of a deceased person; or

(ii) a person in the capacity of a trustee,

is disposed of; and

(b) the dwelling was, throughout the relevant period, the sole or principal residence of the taxpayer,

a capital gain shall not be deemed to have accrued to the taxpayer, and a capital loss shall not be deemed to have been incurred by the taxpayer, as the case requires, in respect of the disposal of the dwelling.

"(13) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer, being a natural person who acquired the dwelling as a beneficiary in the estate of a deceased person, is disposed of;

(b) the dwelling was the sole or principal residence of the taxpayer throughout that part of the relevant period during which the taxpayer was (disregarding section 160X) the owner of the dwelling;

(c) if the dwelling was acquired by the deceased person after 19 September 1985—the dwelling was, throughout the period during which the dwelling was owned by the deceased person, the sole or principal residence of the deceased person; and

(d) the dwelling was, throughout the period from the death of the deceased person during which the dwelling was owned by the legal personal representative of the deceased person, the sole or principal residence of the person who was, immediately before the death of the deceased person, the spouse of the deceased person,

a capital gain shall not be deemed to have accrued to the taxpayer, and a capital loss shall not be deemed to have been incurred by the taxpayer, as the case requires, in respect of the disposal of the dwelling.

"(14) Subject to sub-section (21), where—

(a) a taxpayer, being a natural person, disposes of a dwelling that the taxpayer acquired as a beneficiary in the estate of a deceased person;

(b) the disposal took place within 12 months after the date of the death of the deceased person; and

(c) if the dwelling was acquired by the deceased person after 19 September 1985, the dwelling was, throughout the period during which the dwelling was owned by the deceased person, the sole or principal residence of the deceased person,

a capital gain shall not be deemed to have accrued to the taxpayer, and a capital loss shall not be deemed to have been incurred by the taxpayer, as the case requires, in respect of the disposal of the dwelling.

"(15) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer in the capacity of the trustee of the estate of a deceased person is disposed of;

(b) either of the following sub-paragraphs is applicable:

(i) the disposal took place within 12 months after the date of the death of the deceased person; or

(ii) the dwelling was, throughout the period from the death of the deceased person to the time of disposal of the dwelling by the taxpayer, the sole or principal residence of the person who was, immediately before the death of the deceased person, the spouse of the deceased person; and

(c) if the dwelling was acquired by the deceased person after 19 September 1985, the dwelling was, throughout the period during which the dwelling was owned by the deceased person, the sole or principal residence of the deceased person,

a capital gain shall not be deemed to have accrued to the taxpayer, and a capital loss shall not be deemed to have been incurred by the taxpayer, as the case requires, in respect of the disposal of the dwelling.

"(16) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer referred to in paragraph (12) (a) is disposed of;

(b) the dwelling was the sole or principal residence of the taxpayer during part only of the relevant period; and

(c) but for this section and sub-section 160ZA (1), a capital gain would have accrued to the taxpayer, or the taxpayer would have incurred a capital loss, in respect of the disposal,

a capital gain shall be deemed to have accrued to the taxpayer, or the taxpayer shall be deemed to have incurred a capital loss, as the case may be, in respect of the disposal of the dwelling, of an amount calculated in accordance with the formula $\frac{\mathbf{AB}}{\mathbf{C}}$, where—

A is the amount of the capital gain or of the capital loss, as the case may be, referred to in paragraph (c);

B is the number of days in the part of the relevant period during which the dwelling was not the sole or principal residence of the taxpayer; and

C is the number of days in the relevant period.

"(17) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer referred to in paragraph (13) (a) is disposed of after 12 months after the date of the death of the deceased person;

(b) any one or more of the following sub-paragraphs is or are applicable:

(i) the dwelling was the sole or principal residence of the taxpayer during portion only of the part of the relevant period referred to in paragraph (13) (b);

(ii) in a case to which paragraph (13) (c) applies—the dwelling was the sole or principal residence of the deceased person referred to in that paragraph during part only of the period referred to in that paragraph;

(iii) in a case to which paragraph (13) (d) applies—the dwelling was the sole or principal residence of the spouse of the deceased person referred to in that paragraph during part only of the period referred to in that paragraph; and

(c) but for this section and sub-section 160ZA (1), a capital gain would have accrued to the taxpayer, or the taxpayer would have incurred a capital loss, in respect of the disposal,

a capital gain shall be deemed to have accrued to the taxpayer, or the taxpayer shall be deemed to have incurred a capital loss, as the case may be, in respect of the disposal of the dwelling, of an amount calculated in accordance with the formula $\frac{\mathbf{AB}}{\mathbf{C}}$, where—

A is the amount of the capital gain or of the capital loss, as the case may be, referred to in paragraph (c);

B is—

(d) in a case to which sub-paragraph (b) (i) applies—the number of days in the portion of the part of the relevant period referred to in paragraph (13) (b) during which the dwelling was not the sole or principal residence of the taxpayer;

(e) in a case to which sub-paragraph (b) (ii) applies—the number of days in the part of the period referred to in that sub-paragraph during which the dwelling was not the sole or principal residence of the deceased person;

(f) in a case to which sub-paragraph (b) (iii) applies—the number of days in the part of the period referred to in that sub-paragraph

during which the dwelling was not the sole or principal residence of the spouse of the deceased person; or

(g) in a case to which two or more of sub-paragraphs (b) (i), (ii) and (iii) apply—the sum of the numbers of days referred to in whichever of paragraphs (d), (e) and (f) relate to those sub-paragraphs; and

C is—

(h) in a case where the dwelling was acquired by the deceased person before 20 September 1985—the number of days in the period from and including the date of the death of the deceased person to and including the day immediately before the date of the disposal; or

(j) in a case where the dwelling was acquired by the deceased person on or after 20 September 1985—the number of days in the period from and including the date on which the dwelling was acquired by the deceased person to and including the day immediately before the date of disposal.

"(18) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer referred to in paragraph (14) (a) is disposed of;

(b) the disposal took place within 12 months after the date of death of the deceased person;

(c) the dwelling was the sole or principal residence of the deceased person referred to in paragraph (14) (a) during part only of the period referred to in paragraph (14) (c); and

(d) but for this section and sub-section 160ZA (1) a capital gain would have accrued to the taxpayer, or the taxpayer would have incurred a capital loss, in respect of the disposal,

a capital gain shall be deemed to have accrued to the taxpayer, or the taxpayer shall be deemed to have incurred a capital loss, as the case may be, in respect of the disposal of the dwelling, of an amount calculated in accordance with the formula $\frac{\mathbf{AB}}{\mathbf{C}}$, where—

A is the amount of the capital gain or of the capital loss, as the case may be, referred to in paragraph (d);

B is the number of days in the part of the period referred to in paragraph (14) (c) during which the dwelling was not the sole or principal residence of the deceased person; and

C is the number of days in the period referred to in paragraph (14) (c).

"(19) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer in the capacity of the trustee of the estate of a deceased person is disposed of after 12 months after the date of the death of the deceased person;

(b) either or both of the following sub-paragraphs is or are applicable:

(i) the dwelling was the sole or principal residence of the spouse of the deceased person during part only of the period referred to in sub-paragraph (15) (b) (ii);

(ii) in a case to which paragraph (15) (c) applies—the dwelling was the sole or principal residence of the deceased person during part only of the period referred to in that paragraph; and

(c) but for this section and sub-section 160ZA (1), a capital gain would have accrued to the taxpayer, or the taxpayer would have incurred a capital loss, as the case may be, in respect of the disposal,

a capital gain shall be deemed to have accrued to the taxpayer, or the taxpayer shall be deemed to have incurred a capital loss, as the case may be, in respect of the disposal of the dwelling, of an amount calculated in accordance with the formula $\frac{AB}{C}$, where—

A is the amount of the capital gain or of the capital loss, as the case may be, referred to in paragraph (c);

B is—

(d) in a case to which sub-paragraph (b) (i) applies—the number of days in the part of the period referred to in that sub-paragraph during which the dwelling was not the sole or principal residence of the spouse of the deceased person;

(e) in a case to which sub-paragraph (b) (ii) applies—the number of days in the part of the period referred to in that sub-paragraph during which the dwelling was not the sole or principal residence of the deceased person; or

(f) in a case to which both sub-paragraphs (b) (i) and (ii) apply—the sum of the number of days referred to in paragraph (d) and the number of days referred to in paragraph (e); and

C is—

(g) in a case where the dwelling was acquired by the deceased person before 20 September 1985—the number of days in the period from and including the date of the death of the deceased person to and including the day immediately before the date of the disposal; or

(h) in a case where the dwelling was acquired by the deceased person on or after 20 September 1985—the number of days in the period from and including the date on which the dwelling was acquired by the deceased person to and including the day immediately before the date of disposal.

"(20) Subject to sub-section (21), where—

(a) a dwelling owned by a taxpayer referred to in paragraph (15) (a) is disposed of;

(b) the disposal took place within 12 months after the date of death of the deceased person;

(c) the dwelling was the sole or principal residence of the deceased person referred to in paragraph (15) (a) during part only of the period referred to in paragraph (15) (c); and

(d) but for this section and sub-section 160ZA (1) a capital gain would have accrued to the taxpayer, or the taxpayer would have incurred a capital loss, in respect of the disposal,

a capital gain shall be deemed to have accrued to the taxpayer, or the taxpayer shall be deemed to have incurred a capital loss, as the case may be, in respect of the disposal of the dwelling, of an amount calculated in accordance with the formula $\frac{AB}{C}$, where—

A is the amount of the capital gain or of the capital loss, as the case may be, referred to in paragraph (d);

B is the number of days in the part of the period referred to in paragraph (15) (c) during which the dwelling was not the sole or principal residence of the deceased person; and

C is the number of days in the period referred to in paragraph (15) (c).

"(21) Where—

(a) a dwelling owned by a taxpayer is disposed of;

(b) but for this sub-section, sub-section (12), (13), (14), (15), (16), (17), (18), (19) or (20) would apply in respect of the disposal because the dwelling was, during a particular period, the sole or principal residence of the taxpayer or of another person; and

(c) the dwelling was, during the whole or a part of that period, also used for the purpose of gaining or producing assessable income,

that sub-section does not apply in respect of the disposal of the dwelling but a capital gain shall be deemed to have accrued to the taxpayer, or the taxpayer shall be deemed to have incurred a capital loss, as the case may be, in respect of the disposal of the dwelling, of such amount as the Commissioner determines having regard to—

(d) if, apart from this sub-section and sub-section 160ZA (1), a capital gain would be deemed to have accrued to the taxpayer, or a capital loss would be deemed to have been incurred by the taxpayer, in respect of the disposal of the dwelling—the amount of that capital gain or capital loss; and

(e) the extent to which, and the period for which, the dwelling was used in the first-mentioned period for the purpose of gaining or producing assessable income.

"Division 19—Goodwill

Exemption of part of gain attributable to goodwill

"160ZZR. (1) Where—

(a) a taxpayer disposes of, or of an interest in, a business (in this section referred to as the 'relevant business'), being a disposal that includes, or includes an interest in, the goodwill of the business;

(b) in a case to which paragraph (c) does not apply—the net value of the relevant business, or the value of the taxpayer's interest in the

net value of the relevant business, as the case may be, is less than $1,000,000;

(c) if, at the time of the disposal, there is another business that is, or there are other businesses that are, associated with the relevant business—the sum of the net values of the relevant business and the associated business or associated businesses, or the sum of the values of the taxpayer's interests in the net values of the relevant business and the associated business or associated businesses, as the case may be, is less than $1,000,000; and

(d) a capital gain is deemed for the purposes of this Part to have accrued to the taxpayer in respect of the disposal of, or of the taxpayer's interest in, the goodwill,

the amount of the capital gain shall be deemed to be reduced by one-fifth.

"(2) For the purposes of sub-section (1)—

(a) a business (in this paragraph referred to as the 'associated business') shall be taken to be associated with the relevant business if—

(i) where the taxpayer is not a company and does not carry on the relevant business in the capacity of a trustee—the associated business is carried on by the taxpayer otherwise than in the capacity of a trustee;

(ii) where the taxpayer is a company (other than a company in the capacity of a trustee)—the associated business is carried on by the company, or by another company that is related to the company, otherwise than in the capacity of a trustee; or

(iii) where the taxpayer carries on the relevant business in the capacity of a trustee of a trust estate—the associated business is carried on by the taxpayer in the capacity of a trustee of that trust estate or of an associated trust estate; and

(b) a reference to the net value of a business is a reference to the amount by which the sum of the values of the assets (including goodwill) of the business exceeds the sum of the liabilities of the business.

"*Division 20—Transitional*

When asset acquired

"160ZZS. (1) For the purposes of the application of this Part in relation to a taxpayer, an asset acquired by the taxpayer on or before 19 September 1985 shall be deemed to have been acquired by the taxpayer after that date unless the Commissioner is satisfied, or considers it reasonable to assume, that, at all times after that date when the asset was held by the taxpayer, majority underlying interests in the asset were held by natural persons who, immediately before 20 September 1985, held majority underlying interests in the asset.

"(2) For the purposes of this section, where, by reason of the death of a person, a natural person acquires a percentage (in this sub-section referred to as the 'acquired percentage') of the underlying interests in an asset, the natural person shall be deemed to have held (in addition to any other part of the total underlying interests that the person held or is deemed to have held), at any time when the deceased person held a percentage (in this sub-section referred to as the 'deceased person's percentage') of the total underlying interests in the property, a percentage of the total underlying interests in the property equal to the acquired percentage, or the deceased person's percentage at that time, whichever is the less.

"(3) In this section, 'majority underlying interests' and 'underlying interest', in relation to an asset, have the same meanings as those expressions have in relation to property in Subdivision G of Division 3 of Part III.

Disposal of shares or interest in partnership or trust

"160ZZT. (1) Where—

(a) a taxpayer has, whether before or after the commencement of this Part, disposed of an asset being—
  (i) shares in a private company;
  (ii) an interest in a partnership; or
  (iii) an interest in a private trust estate;
(b) the taxpayer acquired the asset before 20 September 1985;
(c) immediately before the disposal of the asset by the taxpayer—
  (i) in a case where the asset disposed of by the taxpayer consisted of shares in a private company or an interest in a private trust estate, the property of the company or trust estate, as the case may be, included property (in this sub-section referred to as the 'underlying property') that—
    (A) was acquired by the company or trustee of the trust estate, as the case may be, on or after 20 September 1985; and
    (B) was not trading stock of the company or trust estate; or
  (ii) the company, partnership or trustee of the trust estate, as the case may be, held an interest, through one or more interposed companies, partnerships or trusts, in property (in this sub-section also referred to as the 'underlying property') that—
    (A) was acquired by another private company, partnership or trustee of a private trust estate on or after 20 September 1985; and
    (B) was not trading stock of the company, partnership or trust estate referred to in sub-sub-paragraph (A); and
(d) immediately before the disposal of the asset by the taxpayer, the value of—

(i) in a case to which sub-paragraph (c) (i) applies—the underlying property referred to in that sub-paragraph; or

(ii) in a case to which sub-paragraph (c) (ii) applies—the interest referred to in that sub-paragraph,

was not less than 75% of the net worth of the company, partnership or trust estate referred to in paragraph (a),

a capital gain shall be deemed to have accrued to the taxpayer during the year of income in which the taxpayer disposed of the asset equal to so much of the consideration received or receivable by the taxpayer in respect of the disposal as may reasonably be attributed to the amount (if any) by which the value of the underlying property immediately before the disposal exceeds the sum of the amounts that would be the indexed cost bases to the taxpayer of the underlying property if the underlying property had been disposed of immediately before the disposal of the asset.

"(2) Expressions used in sub-section (1) of this section to which meanings are given by section 26AAA for the purposes of that section also have those meanings for the purposes of sub-section (1) of this section.

"(3) In calculating the net worth of a company, partnership or trust estate for the purposes of this section, the Commissioner shall, if satisfied that liabilities were discharged or released or assets acquired for the purpose, or for purposes that included the purpose, of ensuring that this section would not apply in relation to a taxpayer, disregard the discharge or release of those liabilities or the values of those assets, as the case may be.

"*Division 21—Miscellaneous*

Keeping of records

"160ZZU. (1) A person who has at any time after 19 September 1985 owned an asset other than an excepted asset shall keep such records in the English language as are necessary to enable the ready ascertainment of—

(a) the date on which the person acquired the asset;

(b) if the asset has not been disposed of—any amount that would, if the asset were disposed of, form part of the cost base to the person in respect of the asset; and

(c) if the asset has been disposed of by the person—

(i) the date of disposal;

(ii) any amount that formed part of the cost base to the person in respect of the asset; and

(iii) the consideration in respect of the disposal.

Penalty: $2,000.

"(2) For the purpose of the application of sub-section (1) in relation to a person, an asset is an excepted asset if—

(a) where the asset has been disposed of by the person—this Part did not apply in respect of the disposal; or

(b) where the asset has not been disposed of by the person—this Part would not, in the event of the disposal of the asset, apply in respect of the disposal.

"(3) This section does not require the keeping of any records by a person if—

(a) a period of 7 years has elapsed since the asset to which the records relate was disposed of by the person;

(b) the Commissioner has notified the person that the keeping of those records is not required; or

(c) the records are records of a company that has been wound up and has been dissolved.".

Annual returns

20. Section 161 of the Principal Act is amended—

(a) by inserting ", and profits or gains of a capital nature," before "derived by him" in sub-section (1); and

(b) by inserting "or losses, being losses of a capital nature," after "deductions" in sub-section (1).

Further returns, &c.

21. Section 162 of the Principal Act is amended by adding at the end the following sub-section:

"(3) In this section, a reference to income derived by a person includes a reference to profits or gains of a capital nature derived by the person.".

Amendment of assessments

22. Section 170 of the Principal Act is amended by inserting ", or of profits or gains of a capital nature," after "estimated amount of income" in sub-section (9).

Where no notice of assessment served

23. Section 171 of the Principal Act is amended—

(a) by inserting "or of profits or gains of a capital nature," after "income," in sub-section (1); and

(b) by inserting ", or of those profits or gains," after "income" in sub-section (2).

When tax not paid during lifetime

24. Section 216 of the Principal Act is amended—

(a) by inserting ", and of the profits or gains of a capital nature," after "whole of the income" in sub-section (1); and

(b) by inserting ", or profits or gains of a capital nature," after "income" in paragraph (1) (aa).

Consolidation assessments

25. Section 219 of the Principal Act is amended by inserting ", or of profits or gains of a capital nature," after "in receipt of income".

Assessment where no administration

26. Section 220 of the Principal Act is amended by inserting ", and of the profits or gains of a capital nature," after "income" in paragraph (1) (a).

Interpretation

27. Section 221AA of the Principal Act is amended by adding at the end the following sub-section:

"(6) A reference in this Division to the amount of the taxable income of a company of a year shall, if by virtue of Part IIIA the assessable income of the company for that year included a net capital gain within the meaning of that Part, be construed as a reference to the amount that would have been that taxable income if that net capital gain had not been so included.".

Amount of notional tax

28. Section 221AD of the Principal Act is amended—

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

"(1A) The reference in sub-section (1) to the income tax assessed in respect of the taxable income of a company of the year next preceding the year of income shall, if by virtue of Part IIIA the assessable income of the company of that next preceding year included a net capital gain within the meaning of that Part, be construed as a reference to the income tax that would have been payable in respect of the taxable income of the company of that year if that net capital gain had not been so included."; and

(b) by inserting after sub-section (2A) the following sub-section:

"(2AA) Any estimate made for the purposes of this section of the amount of income tax that will be payable by a company in respect of its taxable income of the year of income shall be based on the assumption that the assessable income of the company of the year of income will not include any net capital gain within the meaning of Part IIIA.".

Estimated income tax

29. Section 221AG of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1A) Any estimate made for the purposes of this section of the amount of income tax that will be payable by a company in respect of its taxable income of a year of income shall be based on the assumption that the assessable income of the company of that year of income will not include any net capital gain within the meaning of Part IIIA.".

Interpretation

30. Section 221YA of the Principal Act is amended by inserting after sub-section (1A) the following sub-section:

"(1B) For the purposes of this Division, the taxable income of a taxpayer for a year shall, if by virtue of Part IIIA the assessable income of the taxpayer for that year included a net capital gain within the meaning of that Part, be taken to be the amount that would have been that taxable income if that net capital gain had not been so included.".

Amount of provisional tax

31. Section 221YC of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1AA) The reference in paragraph (1) (a) to the income tax assessed in respect of the taxable income of the year next preceding the year of income, or the reference in paragraph (1) (b) to the income tax which would have been payable in respect of the taxable income of the year next preceding the year of income, shall, if sub-section 221YA (1B) applies in relation to that taxable income, be construed as a reference to the income tax that would have been payable in respect of that taxable income if the net capital gain referred to in that sub-section had not been included in the assessable income of the taxpayer for that year.".

Provisional tax on estimated income

32. Section 221YDA is amended by inserting after sub-section (1) the following sub-section:

"(1AA) Any estimate made for the purposes of this section of the taxable income of a taxpayer for a year of income shall be based on the assumption that the assessable income of the taxpayer of that year of income will not include any net capital gain within the meaning of Part IIIA.".

Agents and trustees

33. Section 254 of the Principal Act is amended—

(a) by inserting ", or any profits or gains of a capital nature," after "income" in paragraph (1) (a);

(b) by inserting ", or those profits or gains," after "income" in paragraph (1) (b); and

(c) by inserting ", profits or gains" after "income" in paragraphs (1) (d) and (e).

Person in receipt or control of money from non-resident

34. Section 255 of the Principal Act is amended by inserting ", or profits or gains of a capital nature," after "income" in sub-section (1).

Payment of tax by banker

35. Section 257 of the Principal Act is amended by inserting ", or any proceeds of the disposal of an asset of any person out of Australia are paid," after "is paid".

NOTE

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

[*Minister's second reading speech made in—*
House of Representatives on 22 May 1986
Senate on 4 June 1986]