



# Taxation Laws Amendment Act (No. 4) 1986

No. 154 of 1986

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# Taxation Laws Amendment Act (No. 4) 1986

No. 154 of 1986

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## An Act to amend the law relating to taxation

[Assented to 18 December 1986]

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

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Taxation Laws Amendment Act (No. 4) 1986*.

#### Commencement

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

(2) Paragraph 8 (c) shall be deemed to have come into operation on 10 June 1986.

(3) Part II, paragraph 8 (a) and sections 9, 10, and 11 shall come into operation on the first day of the month next following the month in which this Act receives the Royal Assent.

(4) Paragraphs 26 (b) and (c), sections 28 and 40 and sub-sections 49 (3) and (7) shall come into operation on the day fixed by Proclamation for the purposes of section 2 of the *Student Assistance Amendment Act 1986*.

(5) Section 55 shall come into operation on a day to be fixed by Proclamation.

## **PART II—AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY STAMP DUTY REGULATIONS**

### **Australian Capital Territory Stamp Duty Regulations**

3. The Australian Capital Territory Stamp Duty Regulations are in this Part referred to as the Regulations.

### **Amendment of First Schedule**

4. The First Schedule to the Regulations is amended by inserting in Item 3 “(other than a Crown lease)” after “Conveyance”.

### **Application**

5. The amendment of the Regulations made by this Part applies to a Crown lease the date of commencement of which specified in the lease is on or after the date of commencement of this section.

### **Amendment or repeal of Regulations**

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

## **PART III—AMENDMENTS OF THE AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION) ACT 1969**

### **Principal Act**

7. The *Australian Capital Territory Taxation (Administration) Act 1969*<sup>1</sup> is in this Part referred to as the Principal Act.

### **Interpretation**

8. Section 4 of the Principal Act is amended—

- (a) by inserting after the definition of “negotiation” in sub-section (1) the following definition:

“‘non-commercial Commonwealth authority’ means a body corporate (not being an incorporated company, society or association) that—

- (a) is incorporated for a public purpose by or under a law of the Commonwealth or of the Territory; and
- (b) does not have as its sole or principal function the carrying on of an activity in the nature of a business, whether or not for profit;”;
- (b) by inserting “the *Australian Capital Territory Tax (Transfers of Marketable Securities) Act 1986*,” after “(*Purchases of Marketable Securities) Act 1969*,” in the definition of “tax” in sub-section (1); and
- (c) by adding at the end the following sub-section:

“(14) A reference in this Act to the registration of a transfer of a marketable security includes a reference to the recording or entry of the transfer.”.

**Instrument of conveyance to be stamped or lodged for assessment**

9. Section 47 of the Principal Act is amended by adding at the end the following sub-section:

“(8) Where an instrument is required pursuant to this section to be lodged with the Commissioner for assessment, the instrument shall not be taken to have been so lodged unless it is accompanied by such information or documents (if any) as the Commissioner requires in connection with the application of section 5A of the *Australian Capital Territory Stamp Duty Act 1969*.”.

**Refund of duty where agreement not completed**

10. Section 50A of the Principal Act is amended—

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

“(1A) Where—

- (a) section 5A of the *Australian Capital Territory Stamp Duty Act 1969* is applied, in relation to an agreement (in this sub-section referred to as the ‘chattels agreement’) for the transfer or hiring of, or the granting or assignment of rights to use, chattels, in calculating the amount of duty on an instrument;
- (b) an amount of the duty has been paid by a person and is not required to be refunded under sub-section (1) of this section;
- (c) the chattels agreement is void, is unenforceable (both at law and in equity), is rescinded or comes to an end; and
- (d) the Commissioner is satisfied that no transfer or hiring of, or granting or assignment of rights to use, chattels has been, or may reasonably be expected to be, made pursuant to the chattels agreement,

there shall, subject to this section, be refunded to the person by whom the amount of the duty was paid so much of that duty as, in the opinion of the Commissioner, is attributable to the

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application of section 5A of the *Australian Capital Territory Stamp Duty Act 1969.*”; and

- (b) by omitting from sub-sections (2) and (3) “sub-section (1)” and substituting “this section”.

11. After section 50A of the Principal Act the following section is inserted:

**Refund or remission of duty where Crown lease surrendered**

“50AA. (1) Where—

- (a) an amount of duty has been paid on an instrument, being a Crown lease;
- (b) the lease is surrendered or determined; and
- (c) the whole or a part (which whole or part is in this sub-section referred to as the ‘lease refund’) of the amount (in this sub-section referred to as the ‘lease consideration’) paid for or in respect of the grant of the lease is refunded under section 37A of the *City Area Leases Ordinance 1936* of the Australian Capital Territory,

the Commissioner shall refund to the person by whom the amount of duty was paid an amount calculated in accordance with the formula

$\frac{AB}{C}$ , where—

A is the amount of duty;

B is the amount that would have been the amount of the lease refund if no deduction had been made for administrative expenses; and

C is the amount of the lease consideration.

“(2) A person is not entitled to a refund under sub-section (1) unless the person gives to the Commissioner, within 12 months after the lease refund referred to in sub-section (1) is made, an application in accordance with an approved form, together with such information as the Commissioner requires to enable the Commissioner to determine the amount of the refund.

“(3) Duty that is payable by a person on an instrument but has not been paid shall be remitted in the same circumstances as those in which it would be refunded under this section if it had been paid.”.

12. After Division 9 of Part III of the Principal Act the following Division is inserted:

***“Division 9A—Transfers of Marketable Securities Registered in Registers Outside the Territory***

**Liability to pay tax**

“58AB. Tax imposed on the registration by a company of a transfer of a marketable security—

- (a) is payable by the company; and

- (b) is due and payable on the twenty-first day of the month next following the month in which the transfer is registered.

**Returns by companies**

“58AC. A company that is liable to pay tax on the registration, during a month, of the transfer of a marketable security, or on the registrations, during a month, of the transfers of 2 or more marketable securities, shall, on or before the day on which the tax becomes due and payable, furnish to the Commissioner a return in accordance with an approved form showing particulars of the transfer or of each of the transfers, as the case may be.

**Credits in respect of non-Territory stamp duty paid in respect of transfers**

“58AD. (1) Subject to this section, where tax is, or but for this subsection, would be, payable by a company on the registration of a transfer of a marketable security, the company is entitled to a credit of tax in respect of the tax payable on the registration of an amount equal to the amount of stamp duty or any similar tax paid or payable on, or in respect of, the transfer under a law of the place in which was kept the register in which the marketable security was registered immediately before the date on which the instrument of transfer was executed.

“(2) Where a credit of tax is allowable in respect of the tax payable on the registration of a transfer of a marketable security, that credit shall not exceed the amount of tax that, before the allowance of that credit, is payable on the registration.

“(3) A credit under this section is not allowable to a company in respect of the registration of a transfer of a marketable security unless the company gives to the Commissioner, within 12 months after the time when the tax in respect of which the credit is claimed became due and payable, an application in accordance with an approved form, together with such information as the Commissioner requires to enable the Commissioner to determine the amount of the credit.

“(4) Where a credit is allowable to a company under this section in respect of the registration of a transfer of a marketable security—

- (a) if the whole or any part of the tax payable on the registration is unpaid—the Commissioner shall apply the credit against that tax;
- (b) if the company is subject to any other liability to the Commonwealth, being a liability arising under, or by virtue of, an Act of which the Commissioner has the general administration—the Commissioner may apply so much of the credit as has not been applied under paragraph (a) against that liability; and
- (c) the Commissioner shall refund so much (if any) of the credit as has not been applied under paragraph (a) or (b).

**Company may recover tax from transferee**

“58AE. A company that pays or is liable to pay tax on the registration of a transfer of a marketable security may recover from the transferee an amount designated as the tax and equal to the amount of the tax payable less the amount of any credit of tax to which the company is entitled under section 58AD.

**Partition of marketable securities**

“58AF. In calculating the amount of tax (if any) payable on the registration of a transfer of a marketable security executed to give effect to a partition or division of a parcel of marketable securities, there shall be deducted from the unencumbered value of the marketable securities transferred to the transferee the unencumbered value of the beneficial interest held by the transferee before the transfer in the marketable securities included in that parcel.”.

13. (1) Section 58G of the Principal Act is repealed and the following section is substituted:

**Registration of transfers of marketable securities**

“58G. A transfer of a marketable security shall not be registered in the books of the company or unit trust to which the marketable security relates unless—

(a) the instrument of transfer—

- (i) bears a statement in respect of the sale or purchase to which the transaction relates, made in accordance with section 52 of this Act or in accordance with a provision of a law of a State or another Territory relating to stamp duty, to the effect that stamp duty, if payable, has been or will be paid;
- (ii) has been duly stamped for the purposes of this Act or of a law of a State or another Territory relating to stamp duty; or
- (iii) bears a stamp affixed or impressed under section 17 of this Act or under a provision of a law of a State or another Territory relating to stamp duty to the effect that no tax or stamp duty is payable;

(b) tax is imposed by the *Australian Capital Territory Tax (Transfers of Marketable Securities) Act 1986* on the registration of the transfer; or

(c) tax would, but for sub-section 6 (1) of that Act, be imposed by that Act on the registration of the transfer.”.

(2) Section 58G of the Principal Act as amended by this Act applies, and shall be deemed to have applied, in relation to a registration made after the commencement of the *Australian Capital Territory Tax (Transfers of Marketable Securities) Act 1986*.

**Transitional**

14. (1) Notwithstanding section 58AB of the Principal Act as amended by this Act, tax imposed on the registration, before the beginning of the month next following the month in which this Act receives the Royal Assent, of a transfer of a marketable security is due and payable on the twenty-first day of the month next following the month in which this Act receives the Royal Assent.

(2) Notwithstanding section 58AC of the Principal Act as amended by this Act, where a company is liable to pay tax on the registration, during the period commencing on the commencement of the *Australian Capital Territory Tax (Transfers of Marketable Securities) Act 1986* and ending immediately before the month next following the month in which this Act receives the Royal Assent, of the transfer of a marketable security or on the registrations, during that period, of the transfers of 2 or more marketable securities, the return required to be furnished by the company under that section in relation to the transfer or transfers shall relate to that period.

**PART IV—AMENDMENT OF THE BANKRUPTCY ACT 1966**

**Principal Act**

15. The *Bankruptcy Act 1966*<sup>2</sup> is in this Part referred to as the Principal Act.

**Priority payments**

16. Section 109 of the Principal Act is amended by inserting in sub-section (1) “, 221YH2D” after “221YHJ”.

**PART V—AMENDMENT OF THE CRIMES (TAXATION OFFENCES) ACT 1980**

**Principal Act**

17. The *Crimes (Taxation Offences) Act 1980*<sup>3</sup> is in this Part referred to as the Principal Act.

**Interpretation**

18. Section 3 of the Principal Act is amended by inserting “sub-section 221YH2C (3) or 221YH2D (1), sub-paragraph 221YH2D (2) (b) (ii),” after “221YHJ (1) (b) (ii),” in paragraph (g) of the definition of “income tax” in sub-section (1).

**PART VI—AMENDMENT OF THE CROWN DEBTS (PRIORITY) ACT 1981**

**Principal Act**

19. The *Crown Debts (Priority) Act 1981*<sup>4</sup> is in this Part referred to as the Principal Act.

**Certain rights of the Crown not affected**

20. Section 4 of the Principal Act is amended by inserting “, 221YHZD” after “221YHJ”.

**PART VII—AMENDMENT OF THE ESTATE DUTY ASSESSMENT ACT 1914**

**Principal Act**

21. The *Estate Duty Assessment Act 1914*<sup>5</sup> is in this Part referred to as the Principal Act.

**Duty first charge on estate**

22. Section 34 of the Principal Act is amended by omitting from sub-section (1) “the Second Commissioner” and substituting “a Second Commissioner”.

**PART VIII—AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936**

**Principal Act**

23. The *Income Tax Assessment Act 1936*<sup>6</sup> is in this Part referred to as the Principal Act.

**Interpretation**

24. Section 6 of the Principal Act is amended by inserting after the definition of “mortgage” in sub-section (1) the following definition:

“‘natural resource’ means minerals or any other non-living resource of the land, sea-bed or sea;”.

25. After section 6C of the Principal Act the following section is inserted:

**Source of natural resource income derived by a non-resident**

“6CA. (1) In this section—

‘double tax agreement’ means an agreement within the meaning of the *Income Tax (International Agreements) Act 1953*;

‘natural resource income’ means income that—

- (a) is derived by a non-resident; and
- (b) is calculated, in whole or in part, by reference to the value or quantity of natural resources produced, recovered or produced and recovered, in Australia after 7 April 1986,

but does not include—

- (c) income that consists of royalty; or
- (d) income where—
  - (i) on 7 April 1986, the non-resident had a continuing entitlement to receive the income;

- (ii) the income was derived by the non-resident pursuant to that continuing entitlement;
- (iii) the non-resident was, at 5 o'clock in the afternoon, by standard time in the Australian Capital Territory on 7 April 1986, a resident, within the meaning of a double tax agreement, of a foreign country in respect of which the double tax agreement was in force;
- (iv) before 8 April 1986, the Commissioner had given a statement in writing to the effect that income tax would be levied on 50% of income included in a specified class of income; and
- (v) the income is included in that class of income.

“(2) For the purposes of Divisions 5 and 6 of Part III, natural resource income shall be deemed to be attributable to sources in Australia.

“(3) For the purposes of paragraph 23 (r) and sections 25 and 255, natural resource income shall be deemed to have been derived from a source in Australia.”.

### **Exemptions**

**26.** Section 23 of the Principal Act is amended—

- (a) by inserting in paragraph (z) “provided by the Commonwealth” after “assistance” (second and third occurring);
- (b) by omitting sub-paragraphs (z) (v) and (vi) and substituting the following sub-paragraphs:
  - “(v) a benefit received as a grant of Education Assistance under Part III of the *Student Assistance Act 1973* that—
    - (A) is granted in respect of the undertaking of a course of study or instruction that is determined to be a tertiary course for the purposes of section 10 of that Act or in respect of the undertaking of a part of a course of study or instruction that is determined to be part of a tertiary course for the purposes of that section; and
    - (B) does not include a payment made in respect of a child or children wholly or substantially dependent on the person who received the benefit; or
  - (vi) if a benefit received as a grant of Education Assistance under Part III of the *Student Assistance Act 1973*, being a benefit that is granted in respect of the undertaking of a course of study or instruction that is determined to be a tertiary course for the purposes of section 10 of that Act or in respect of the undertaking of a part of a course of study or instruction that is determined to be part of a tertiary course for the purposes of that section, includes a payment made in respect of a child or children wholly or substantially dependent on the person who received the benefit—so much of the benefit

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as exceeds the amount paid in respect of the child or children;”; and

- (c) by omitting sub-paragraphs (zaa) (i) and (ii) and substituting the following sub-paragraphs:

“(i) a benefit received as a grant of Education Assistance under Part III of the *Student Assistance Act 1973* that—

(A) is granted in respect of the undertaking of a course of study or instruction that is determined to be a secondary course for the purposes of section 10 of that Act or in respect of the undertaking of a part of a course of study or instruction that is determined to be part of a secondary course for the purposes of that section; and

(B) does not include a payment made in respect of a child or children wholly or substantially dependent on the person who received the benefit; or

- (ii) if a benefit received as a grant of Education Assistance under Part III of the *Student Assistance Act 1973*, being a benefit that is granted in respect of the undertaking of a course of study or instruction that is determined to be a secondary course for the purposes of section 10 of that Act or in respect of the undertaking of a part of a course of study or instruction that is determined to be part of a secondary course for the purposes of that section, includes a payment made in respect of a child or children wholly or substantially dependent on the person who received the benefit—so much of the benefit as exceeds the amount paid in respect of the child or children; and”.

**Exemption of certain pensions**

**27.** Section 23AD of the Principal Act is amended—

- (a) by omitting from paragraph (a) of the definition of “wife’s pension” in sub-section (1) “Part III” and substituting “sub-section 6 (1)”; and

- (b) by omitting paragraph (c) of the definition of “wife’s pension” in sub-section (1) and substituting the following paragraph:

“(c) an allowance payable to or in respect of a woman under section 9 of the *Tuberculosis Act 1948* by reason that she is—

(i) the wife, as defined by Part III of the *Social Security Act 1947* as in force at any time before 21 September 1984; or

(ii) the wife, as defined by sub-section 6 (1) of the *Social Security Act 1947* as in force on or after 21 September 1984,

of a man who is a sufferer from tuberculosis, being a man who has attained the age of 65 years.”.

**Rebate in respect of certain pensions**

28. Section 160AAA of the Principal Act is amended by omitting paragraphs (2) (b) and (c) and substituting the following word and paragraph:

“or (b) a benefit received as a grant of Education Assistance under Part III of the *Student Assistance Act 1973*,”.

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

29. Section 160AAB of the Principal Act is amended—

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

“(d) Suncorp Insurance and Finance, being a body corporate established by a law of Queensland;”;

(b) by adding at the end of sub-section (1) the following word and paragraph:

“; or (f) the State Insurance Office established by a law of Victoria.”.

**What constitutes a disposal or acquisition**

30. Section 160M of the Principal Act is amended by inserting after paragraph (5) (a) the following paragraph:

“(aa) an issue of units in a unit trust by the trustee of the unit trust constitutes an acquisition of the units by the person to whom they were issued but does not constitute a disposal of the units by the trustee of the unit trust;”.

**Capital gains and capital losses**

31. Section 160Z of the Principal Act is amended—

(a) by inserting in sub-section (4) “or if the asset is an interest that was deemed to be acquired by a surviving joint tenant by virtue of section 160ZN,” before “be construed”;

(b) by inserting in sub-section (5) “sub-section 160ZL (2) or (3), sub-section 160ZM (2) or (3) or by virtue of” after “by virtue of” (first occurring); and

(c) by omitting from sub-section (5) “actually” and substituting “(apart from the sub-section or sub-paragraph concerned)”.

**Return of capital on shares**

32. Section 160ZL of the Principal Act is amended by inserting in sub-section (1) “acquired by the taxpayer after 19 September 1985” after “in the company”.

**Return of capital on investment in trust**

33. Section 160ZM of the Principal Act is amended by inserting in sub-section (1) “, being an interest or units acquired by the taxpayer after 19 September 1985,” after “interest or units in the trust”.

**Application to joint owners**

34. Section 160ZN of the Principal Act is amended—

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

“(b) if one of the joint tenants dies and the interest of the deceased person in the asset was acquired by the deceased person before 20 September 1985—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 2 or more survivors, by those survivors in equal shares, on the date of the deceased person’s death and to have been so acquired for a consideration equal to the market value of the interest at the date of the deceased person’s death;”; and

- (b) by inserting in paragraph (1) (c) “if one of the joint tenants dies and the interest of the deceased person in the asset was acquired by the deceased person on or after 20 September 1985—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 2 or more survivors, by those survivors in equal shares, on the date of the deceased person’s death and” before “the interest so acquired by a surviving joint tenant”.

**Options**

35. Section 160ZZC of the Principal Act is amended—

- (a) by inserting in sub-section (3) “sub-section (3A) and to” after “Subject to”; and

- (b) by inserting after sub-section (3) the following sub-sections:

“(3A) Where, on or after 20 September 1985—

- (a) a company grants an option to—

- (i) acquire shares in the company; or  
(ii) acquire debentures of the company; or

- (b) the trustee of a unit trust grants an option to—

- (i) acquire units in the unit trust; or  
(ii) acquire debentures of the unit trust,

the following provisions have effect:

- (c) the grant of the option shall not be taken to have constituted a disposal of the option at the time when the grant took effect;

- (d) if the option is exercised—the grant of the option shall not be taken to have constituted a disposal of the option at any time;
- (e) if the option expires without being exercised or is cancelled, released or abandoned—
  - (i) the grant of the option shall be taken to have constituted a disposal of the option at the time when the option expires or is cancelled, released or abandoned, as the case may be; and
  - (ii) the option shall be deemed to have been owned by the grantor immediately before the disposal took place.

“(3B) A reference in sub-section (3A) to a debenture of a unit trust is a reference to anything issued by the trustee of the unit trust that, if the unit trust were a company, would be a debenture of the company.”.

### **Involuntary disposal**

36. Section 160ZZK is amended by adding at the end the following sub-section:

“(8) Nothing in section 170 prevents the amendment of an assessment at any time for the purpose of giving effect to this section.”.

### **Exemption of principal residence**

37. Section 160ZZQ of the Principal Act is amended—

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

“(13A) 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, throughout the period from the death of the deceased person to the disposal of the dwelling, the sole or principal residence of the taxpayer; 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.”;

- (b) by inserting after sub-section (17) the following sub-section:

“(17A) Subject to sub-section (21), where—

- (a) a dwelling owned by a taxpayer referred to in paragraph (13A) (a) 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 taxpayer during part only of the period referred to in paragraph (13A) (b);
- (ii) in a case to which paragraph (13A) (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; 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  $\frac{AB}{C}$ , 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 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; or
- (f) in a case to which both of sub-paragraphs (b) (i) and (ii) apply—the sum of the numbers of days referred to in paragraphs (d) and (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.”;

- (c) by inserting in paragraph (21) (b) “(13A),” after “(13),”; and
- (d) by inserting in paragraph (21) (b) “(17A),” after “(17),”.

**Disposal of shares or interest in partnership or trust**

38. Section 160ZZT of the Principal Act is amended by omitting from sub-section (1) “the taxpayer” (last occurring) and substituting “the company or trustee referred to in sub-sub-paragraph (c) (i) (A) or to the company, partnership or trustee referred to in sub-sub-paragraph (c) (ii) (A), as the case requires,”.

39. (1) After section 221AA of the Principal Act the following section is inserted:

**Modified application of Division for early balancing companies**

“221AB. (1) This Division applies, in relation to instalments of tax payable by an early balancing company in respect of income of the year of income commencing on 1 July 1986 or a subsequent year of income, as if—

- (a) references in section 221AC (including that section as it applies in accordance with section 102L or 102T) and section 221AF to a year of tax were references to the period (in this sub-section referred to as the ‘substituted instalment period’) of one year commencing on—
  - (i) the first day of the month next following the month in which the year of income of the company ends; or
  - (ii) 1 January in the financial year next preceding the year of tax,

whichever is the later; and

- (b) references in sections 221AF and 221AG to a specified date in a year of tax were references to the date that precedes the specified date by the number of months in the period commencing on the first day of the substituted instalment period and ending immediately before the beginning of the year of tax.

“(2) In this section, ‘early balancing company’ means a company whose year of income ends more than 1 month before the beginning of the year of tax.”.

(2) Where, but for this sub-section, the earliest date that may be specified, in a notice (in this sub-section referred to as the “advanced instalment notice”) issued under sub-section 221AF (1) of the amended Act in respect of an instalment of tax (in this sub-section referred to as the “advanced instalment”) in respect of the income of a company of the transitional year, as the date on which the advanced instalment is due and payable would be a date before 1 July 1987, the following provisions apply:

- (a) 15 June 1987 is the earliest date that may be specified in the advanced instalment notice as the date on which the advanced instalment is due and payable;
- (b) sub-sections 221AE.(1) and 221AG (4), (5), (6) and (7) of the amended Act apply, for the purpose of determining the amount of

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the advanced instalment or an amount of additional tax in relation to the advanced instalment, as if a reference in those sub-sections to one-quarter were a reference to one-twelfth;

- (c) sub-section 221AE (1A) of the amended Act applies in relation to the advanced instalment as if the reference in that sub-section to \$250 were a reference to \$84;
- (d) sub-sections 221AE (5), (6) and (7) of the amended Act apply, in relation to the transitional year, as if references in those sub-sections to the income tax in respect of the income of the company of the year of income were references to the amount of that income tax less the original deferred amount;
- (e) section 204 of the amended Act does not apply to so much of the income tax payable by the company under the original assessment in respect of the taxable income of the company of the transitional year as is equal to the original deferred amount;
- (f) subject to section 206 of the amended Act—
  - (i) so much of the income tax payable by the company in respect of income of the transitional year as is equal to one-half of the original deferred amount is due and payable on the date specified in a notice issued to the company by the Commissioner for the purposes of this sub-paragraph, being a date not earlier than 15 June 1988; and
  - (ii) so much of the income tax payable by the company in respect of income of the transitional year as is equal to one-half of the original deferred amount is due and payable on the date specified in a notice issued to the company by the Commissioner for the purposes of this sub-paragraph, being a date not earlier than 15 June 1989;
- (g) if an amended assessment is made in respect of the taxable income of the company of the transitional year and the revised deferred amount in relation to the amended assessment exceeds the original deferred amount—
  - (i) where a notice has not been issued under sub-paragraph (f) (i)—
    - (A) section 204 does not apply in relation to so much of the tax payable by virtue of the amended assessment as is equal to the excess; and
    - (B) paragraph (f) has effect as if a reference in that paragraph to the original deferred amount were a reference to the revised deferred amount; and
  - (ii) where a notice has been issued under sub-paragraph (f) (i)—
    - (A) section 204 does not apply in relation to so much of the tax payable by virtue of the amended assessment as is equal to one-half of the excess; and

- (B) sub-paragraph (f) (ii) has effect as if a reference in that sub-paragraph to the original deferred amount were a reference to the revised deferred amount;
- (h) if an amended assessment is made in respect of the taxable income of the company of the transitional year and the original deferred amount exceeds the revised deferred amount—
  - (i) where a notice has not been issued under sub-paragraph (f) (i)—
    - (A) any refund or credit to which the taxpayer would be entitled by virtue of the amended assessment shall be reduced by the excess; and
    - (B) paragraph (f) has effect as if a reference in that paragraph to the original deferred amount were a reference to the revised deferred amount; and
  - (ii) where a notice has been issued under sub-paragraph (f) (i)—
    - (A) any refund or credit to which the taxpayer would be entitled by virtue of the amended assessment shall be reduced by one-half of the excess; and
    - (B) sub-paragraph (f) (ii) has effect as if a reference in that sub-paragraph to the original deferred amount were a reference to the revised deferred amount;
- (j) no credit or other amount under the amended Act or any other Act shall be applied in reduction of an amount payable in accordance with paragraph (f) before the amount so payable would, but for section 206 of the amended Act, be due and payable.

(3) In sub-section (2) and this sub-section—

“amended Act” means the Principal Act as amended by this Act;

“income tax payable” means income tax payable after deducting any credits under sub-section 98A (2), Division 18 of Part III or Division 3A of Part VI of the amended Act or under the *Income Tax (International Agreements) Act 1953*;

“original assessment” means an assessment other than an amended assessment;

“original deferred amount”, in relation to a company, means—

- (a) where the substituted instalment period applicable in relation to the company in relation to the transitional year under sub-section 221AB (1) of the amended Act commences not later than 1 February 1987—whichever of the following amounts is the least:
  - (i) one-third of the income tax payable under the original assessment in respect of the taxable income of the company of the transitional year;
  - (ii) one-third of the amount that, immediately before the issue of the notice of the original assessment in respect of the taxable income of the company of the

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transitional year, was the notional tax in relation to the transitional year for the purposes of Division 1A of Part VI of the amended Act;

(iii) the amount by which the income tax payable in respect of the taxable income of the company of the transitional year exceeds the amount, or the sum of the amounts, that, immediately before the issue of the notice of the original assessment in respect of the taxable income of the company of the transitional year, was or were payable as an instalment or instalments of tax in respect of the transitional year in accordance with Division 1A of Part VI of the amended Act; or

(b) in any other case—the amount that would be applicable under paragraph (a) of this definition if that paragraph were applicable and a reference in that paragraph to one-third were a reference to one-sixth;

“revised deferred amount”, in relation to an amended assessment (in this definition referred to as the “latest amended assessment”), means the amount that would be the original deferred amount if—

(a) the latest amended assessment and any previous amended assessment had formed part of the original assessment; and

(b) notice of the original assessment had been issued at the time when notice of the latest amended assessment was issued;

“transitional year” means the year of income commencing on 1 July 1986.

### **Interpretation**

**40.** Section 221A of the Principal Act is amended by omitting paragraphs (m) and (n) of the definition of “salary or wages” in sub-section (1) and substituting the following word and paragraph:

“or (m) by way of living allowance under a grant of Education Assistance under Part III of the *Student Assistance Act 1973*, being a living allowance paid under paragraph 11 (a) of that Act,”.

### **Employer not accounting for deductions**

**41.** Section 221P of the Principal Act is amended—

(a) by inserting in sub-section (2) “or 221YHSD (3)” after “sub-section 221YHJ (3)” (first and second occurring); and

(b) by inserting in sub-section (2) “or 221YHSD (3), as the case requires,” after “sub-section 221YHJ (3)” (last occurring).

**42.** Before section 221YA of the Principal Act the following heading is inserted:

***“Subdivision A—General Provisions”.***

**Provisional tax on estimated income**

**43.** Section 221YDA of the Principal Act is amended—

- (a) by inserting in sub-section (4) “amount that, but for section 221YHAAC or 221YHAAD, is the amount of the” after “greater than the”; and
- (b) by inserting in paragraph (4) (b) “and, if section 221YHAAC or 221YHAAD applies in relation to the taxpayer in relation to the year of income, the amount so estimated had been increased in accordance with whichever of those sections is applicable” after “sub-section (1)”.

**44.** After section 221YH of the Principal Act the following Subdivision is inserted in Division 3 of Part VI:

***“Subdivision B—Provisional Tax Avoidance Schemes***

**Interpretation**

“221YHAAA. (1) In this Subdivision—

‘arrangement’ means—

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

‘associate’, in relation to a person in this definition referred to as the ‘family member’), means—

- (a) a relative of the family member;
- (b) (except for the purposes of the definition of ‘family partnership’) a partner of the family member;
- (c) (except for the purposes of the definition of ‘family partnership’) if a person who is an associate of the family member by virtue of paragraph (b) is a natural person—the spouse or a child of that natural person;
- (d) a partnership in which the family member is a partner or in which another person who is an associate of the family member by virtue of another paragraph of this definition is a partner;
- (e) a trustee of a trust estate where the family member or another person who is an associate of the family member by virtue of another paragraph of this definition 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

(f) a company where—

- (i) 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 family member, of another person who is an associate of the family member by virtue of another paragraph of this definition, of a company that is an associate of the family member by virtue of another application of this sub-paragraph or of any 2 or more such persons; or
- (ii) the family member is, the persons who are associates of the family member by virtue of sub-paragraph (i) and the preceding paragraphs of this definition are, or the family member and the persons who are associates of the family member by virtue of that sub-paragraph and those 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;

‘family partnership’, in relation to a taxpayer, in relation to a year of income, means a partnership where the taxpayer and at least one associate of the taxpayer are partners in the partnership and the factor calculated in accordance with the formula  $\frac{A}{B}$ , where—

**A** is the sum of the individual interests of partners in the partnership, being—

- (a) the taxpayer; and
- (b) associates of the taxpayer,

in the net income, or the partnership loss, of the partnership of the year of income; and

**B** is the net income, or the partnership loss, as the case may be, of the partnership of the year of income,

exceeds 0.5;

‘family partnership income’, in relation to a family partnership of a taxpayer, in relation to a year of income, means the amount included in the assessable income of the taxpayer of the year of income under sub-section 92 (1) in respect of the net income of the partnership;

‘family partnership loss’, in relation to a family partnership of a taxpayer, in relation to a year of income, means the amount of the deduction allowable to the taxpayer under sub-section 92 (2) in the year of income in respect of the partnership loss of the partnership;

‘family trust’, in relation to a person (in this definition referred to as the ‘family member’), in relation to a year of income, means—

- (a) a trust estate where the family member and at least one associate of the family member benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, at any time during the year of income, under the trust and, in a case where there is a net income of the trust estate of the year of income, the factor calculated in accordance with the formula  $\frac{A}{B}$ , where—

**A** is the sum of the shares of the net income of the trust estate of the year of income—

- (i) included, under section 97, 98A or 100, in the assessable income of a beneficiary, or assessable incomes of beneficiaries, of the trust estate, being—

(A) the family member; or

(B) associates of the family member; or

- (ii) not being shares to which sub-paragraph (i) applies—in respect of which the trustee of the trust estate is liable to be assessed under section 98 in relation to beneficiaries of the trust estate, being—

(A) the family member; or

(B) associates of the family member; and

**B** is the net income of the trust estate of the year of income,

exceeds 0.5; or

- (b) a trust estate where—

- (i) the family member benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, at any time during the year of income, under the trust;

- (ii) if there is a net income of the trust estate of the year of income—the factor calculated in accordance with the formula  $\frac{A}{B}$ , where—

**A** is the share of the net income of the trust estate of the year of income included, under section 97, 98A or 100, in the assessable income of the family member or, not being such a share, in respect of which the trustee of the trust estate is liable to be assessed under section 98 in relation to the family member; and

**B** is the sum of the shares of the net income of the trust estate of the year of income—

- (A) included, under section 97, 98A or 100, in the assessable income of the beneficiary, or assessable incomes of beneficiaries, of the trust estate; or
- (B) not being shares to which sub-sub-paragraph (A) applies—in respect of which the trustee of the trust estate is liable to be assessed under section 98 in relation to the beneficiary, or the beneficiaries, of the trust estate,

exceeds 0.5; and

(iii) either of the following sub-sub-paragraphs apply:

- (A) the trustee of the trust estate is, or the trustees of the trust estate are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the family member, of an associate of the family member or of any 2 or more of such persons;
- (B) the family member, an associate of the family member, or any 2 or more such persons, may remove or appoint the trustee, or any of the trustees, of the trust estate;

'family trust income', in relation to a family trust of a taxpayer, in relation to a year of income, means the amount included in the assessable income of the taxpayer of the year of income under section 97, 98A or 100 in respect of the trust.

"(2) For the purpose only of determining whether a person is an associate of another person within the meaning of this Subdivision, the definition of 'relative' in sub-section 6 (1) and the definition of 'associate' in sub-section (1) of this section apply as if a reference in the definition concerned to the spouse of a person included a reference to another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person.

"(3) A reference in this Subdivision to the carrying out of an arrangement by a person includes a reference to the carrying out of an arrangement by a person together with another person or other persons.

"(4) A reference in this Subdivision to an arrangement or a part of an arrangement being entered into or carried out by a person for a particular purpose shall be read as including a reference to the arrangement or the part of the arrangement being entered into or carried out by the person for 2 or more purposes of which that particular purpose is the dominant purpose.

"(5) A reference in this Subdivision to the net income of a partnership or the net income of a trust estate of a year of income shall, if by virtue of

Part IIIA, the net income of the partnership or the trust estate of that year of income included a net capital gain within the meaning of that Part, be taken to be the amount that would have been that net income if that net capital gain had not been so included.

“(6) A reference in this Subdivision to the partnership loss of a partnership for a year of income shall, if by virtue of Part IIIA, a net capital gain within the meaning of that Part was taken into account in calculating that partnership loss, be taken to be the amount that would have been that partnership loss if that net capital gain had not been so taken into account.

**Additional estimates and information required to be set out in statement estimating taxable income**

“221YHAAB. Without limiting the generality of the information required to be set out in a statement furnished under sub-section 221YDA (1), where a taxpayer furnishes a statement under that sub-section setting out the estimated taxable income of the taxpayer for a year of income (in this section referred to as the ‘current year of income’), the statement shall also include—

(a) in a case where—

(i) the taxpayer is not a taxpayer in the capacity of a trustee;

(ii) either of the following sub-sub-paragraphs apply:

(A) the taxable income of the taxpayer of the last preceding year of income consisted of, or included, family partnership income in relation to a partnership that was a family partnership of the taxpayer in relation to the last preceding year of income or family trust income in relation to a trust estate that was a family trust of the taxpayer in relation to the last preceding year of income;

(B) there was a family partnership loss of the taxpayer in the last preceding year of income in relation to a partnership that was a family partnership of the taxpayer in relation to the last preceding year of income; and

(iii) the partnership or trust estate, as the case may be, is, or might reasonably be expected to be, a family partnership or family trust, as the case may be, of the taxpayer in relation to the current year of income,

an estimate, in respect of the partnership or trust estate, of the family partnership income or the family partnership loss, or the family trust income, as the case may be, of the taxpayer for the current year of income; and

(b) in any case—such other information, estimates and explanations in connection with the application of this Subdivision as is specified in the form in which the statement is required to be furnished.

**Provisional tax avoidance schemes relating to taxpayers other than taxpayers in the capacity of trustees**

“221YHAAC. (1) Subject to sub-section (3), where—

- (a) a taxpayer other than a taxpayer in the capacity of a trustee furnishes a statement under sub-section 221YDA (1) setting out the estimated taxable income of the taxpayer for a year of income (in this sub-section referred to as the ‘current year of income’);
- (b) the Commissioner is satisfied that there is, or might reasonably be expected to be, a family partnership or family trust of the taxpayer in relation to the current year of income; and
- (c) the Commissioner serves on the taxpayer a notice in writing stating that the Commissioner is of the opinion that—
  - (i) the taxpayer has obtained or, but for this sub-section, would obtain, a provisional tax benefit, of an amount specified in the notice, in connection with an arrangement in respect of the partnership or trust estate in relation to the current year of income, being an arrangement entered into or carried out before or after the commencement of this section; and
  - (ii) having regard to—
    - (A) the manner in which the arrangement was entered into or carried out;
    - (B) the form and substance of the arrangement;
    - (C) the time at which the arrangement was entered into and the length of the period during which the arrangement was carried out;
    - (D) the result in relation to the operation of this Division that, but for this sub-section, would be achieved by the arrangement;
    - (E) any change in the financial position of the taxpayer that has resulted, will result, or may reasonably be expected to result, from the arrangement;
    - (F) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the taxpayer, being a change that has resulted, will result, or might reasonably be expected to result, from the arrangement;
    - (G) any other consequence for the taxpayer, or for any person referred to in sub-sub-paragraph (F), of the arrangement having been entered into or carried out; and
    - (H) the nature of any connection (whether of a business, family or other nature) between the taxpayer and any person referred to in sub-sub-paragraph (F),

it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part

of the arrangement did so for the purpose of enabling the taxpayer to obtain a provisional tax benefit in connection with the arrangement or of enabling the taxpayer and another taxpayer or other taxpayers each to obtain a provisional tax benefit in connection with the arrangement (whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the taxpayer or is the other taxpayer or one of the other taxpayers),

the estimated taxable income of the taxpayer of the current year of income shall be deemed to have been increased by the amount of the provisional tax benefit specified in the notice.

“(2) A reference in sub-section (1) to the obtaining by a taxpayer of a provisional tax benefit in connection with an arrangement in respect of a partnership or trust estate (in this sub-section referred to as the ‘scheme partnership’ or the ‘scheme trust estate’, as the case requires) in relation to a year of income (in this sub-section referred to as the ‘current year of income’) is a reference to all of the following paragraphs being satisfied:

(a) either of the following sub-paragraphs applying:

- (i) an amount not being included under sub-section 92 (1) or under section 97, 98A or 100, as the case requires, in the assessable income of the taxpayer of the current year of income in respect of the net income of the scheme partnership or of the net income of the scheme trust estate, as the case may be, where that amount would have been so included or might reasonably be expected to have been so included, in the assessable income of the taxpayer of the current year of income if the arrangement had not been entered into or carried out;
- (ii) a deduction being allowable under sub-section 92 (2) to the taxpayer in relation to the current year of income in respect of the partnership loss of the scheme partnership where an amount, being the whole or a part of the deduction, would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to the current year of income if the arrangement had not been entered into or carried out;

(b) any one or more of the following sub-paragraphs applying:

- (i) another amount, or other amounts, being included, or being reasonably likely to be included, under sub-section 92 (1) or section 97, 98A or 100, in the assessable income of the taxpayer of any other year or years of income (including a year of income ending before the commencement of this section) in respect of the net income of a partnership or trust estate that is a family partnership or a family trust, as the case may be, of the taxpayer in relation to that other year or other years of income where that amount or those amounts

would not have been so included, or might reasonably be expected not to have been so included, in the assessable income of the taxpayer of that other year of income or those other years of income if the arrangement had not been entered into or carried out;

- (ii) another amount, or other amounts, being, or being reasonably likely to be, assessable under section 98 in any other year or years of income in respect of a share of the taxpayer of the net income of a trust estate that is a family trust of the taxpayer in relation to that other year or other years of income (including a year of income ending before the commencement of this section) where that amount or those amounts would not have been so assessable, or might reasonably be expected not to have been so assessable, in that other year of income or those other years of income if the arrangement had not been entered into or carried out;
  - (iii) another amount, or other amounts, not being allowable under sub-section 92 (2) to the taxpayer as a deduction or deductions in relation to any other year or years of income (including a year of income ending before the commencement of this section) in respect of the partnership loss of a partnership that is a family partnership of the taxpayer in relation to that other year or other years of income where that amount or those amounts would have been so allowable or might reasonably be expected to have been so allowable, to the taxpayer in that other year of income or those other years of income if the arrangement had not been entered into or carried out;
- (c) either of the following sub-paragraphs applying:
- (i) provisional tax not being payable by the taxpayer in respect of the current year of income where that provisional tax would have been, or might reasonably be expected to have been, payable by the taxpayer if the arrangement had not been entered into or carried out;
  - (ii) the amount of provisional tax payable by the taxpayer in respect of the current year of income being less than the amount that would have been, or might reasonably be expected to have been, payable by the taxpayer if the arrangement had not been entered into or carried out,

and, for the purposes of sub-section (1), the amount of the provisional tax benefit shall be taken to be—

- (d) in a case to which paragraph (c) does not apply—the amount referred to in whichever of sub-paragraphs (a) (i) and (ii) is applicable; or
- (e) where the scheme partnership or scheme trust estate was a family partnership, or a family trust, as the case may be, of the taxpayer in relation to the last preceding year of income—

- (i) where sub-paragraph (a) (i) applies in relation to the scheme partnership or scheme trust estate, the taxable income of the taxpayer of the last preceding year of income consisted of, or included, family partnership income in relation to the scheme partnership or family trust income in relation to the scheme trust estate and, in the case of a scheme partnership, the taxpayer furnished an estimate of the family partnership income of the taxpayer in relation to the scheme partnership for the current year of income—

- (A) the amount calculated in accordance with the formula  $1.11A - B$ , where—

- A** is the amount of the family partnership income of the taxpayer in relation to the scheme partnership, or the amount of the family trust income of the taxpayer in relation to the scheme trust estate, as the case may be, in relation to the last preceding year of income; and

- B** is the amount of the estimate furnished by the taxpayer of the family partnership income of the taxpayer in relation to the scheme partnership, or of the family trust income of the taxpayer in relation to the scheme trust estate, as the case may be, for the current year of income; or

- (B) the amount referred to in sub-paragraph (a) (i), whichever is the greater;

- (ii) where sub-paragraph (a) (ii) applies in relation to the scheme partnership, there was a family partnership loss of the taxpayer in relation to the scheme partnership for the last preceding year of income and the taxpayer furnished an estimate of the family partnership loss of the taxpayer in relation to the scheme partnership for the current year of income—

- (A) an amount calculated in accordance with the formula  $A - 1.11B$  where—

- A** is the amount of the estimate furnished by the taxpayer of the family partnership loss of the taxpayer in relation to the scheme partnership for the current year of income; and

- B** is the amount of the family partnership loss of the taxpayer in relation to the scheme partnership in relation to the last preceding year of income; or

- (B) the amount referred to in sub-paragraph (a) (ii), whichever is the greater; or

- (iii) where sub-paragraph (a) (ii) applies in relation to the scheme partnership, the taxable income of the taxpayer of the last

preceding year of income consisted of, or included, family partnership income in relation to the scheme partnership and the taxpayer furnished an estimate of the family partnership loss of the taxpayer in relation to the scheme partnership for the current year of income—

(A) the amount calculated in accordance with the formula  $1.11A + B$ , where—

**A** is the amount of the family partnership income of the taxpayer in relation to the scheme partnership in relation to the last preceding year of income; and

**B** is the amount of the estimate furnished by the taxpayer of the family partnership loss of the taxpayer in relation to the scheme partnership for the current year of income; or

(B) the amount referred to in sub-paragraph (a) (ii),  
whichever is the greater.

“(3) The amount of the estimated taxable income of a taxpayer of a year of income shall not be increased, by virtue of an application, or applications, of sub-section (1), to an amount that would, by virtue of sub-section 221YDA (2) or (4), result in the amount of provisional tax payable by the taxpayer in respect of the year of income exceeding the amount that would, but for section 221YDA, be the amount of provisional tax payable by the taxpayer in respect of the year of income.

“(4) For the purposes of this Division, the Commissioner may treat an amount by which the estimated taxable income of a taxpayer is increased by virtue of an application, or applications, of sub-section (1) as being attributable to income of a particular kind to such extent as the Commissioner considers reasonable.

**Provisional tax avoidance schemes relating to trustees liable to be assessed under section 98**

“221YHAAD. (1) Subject to sub-section (3), where—

- (a) a taxpayer in the capacity of a trustee of a trust estate who is liable to be assessed under section 98 in respect of a share of the net income of the trust estate of a year of income (in this sub-section referred to as the ‘current year of income’) to which a beneficiary is presently entitled furnishes a statement under sub-section 221YDA (1) setting out the estimated taxable income of the taxpayer;
- (b) the Commissioner is satisfied that the trust estate is, or might reasonably be expected to be, a family trust in relation to the beneficiary in relation to the current year of income; and
- (c) the Commissioner serves on the taxpayer a notice in writing stating that the Commissioner is of the opinion that—

- (i) the taxpayer has obtained or, but for this sub-section, would obtain, a provisional tax benefit, of an amount specified in the notice, in connection with an arrangement in respect of the trust estate in relation to the current year of income in relation to the beneficiary, being an arrangement entered into or carried out before or after the commencement of this section; and
- (ii) having regard to—
  - (A) the manner in which the arrangement was entered into or carried out;
  - (B) the form and substance of the arrangement;
  - (C) the time at which the arrangement was entered into and the length of the period during which the arrangement was carried out;
  - (D) the result in relation to the operation of this Division that, but for this sub-section, would be achieved by the arrangement;
  - (E) any change in the financial position of the taxpayer that has resulted, will result, or may reasonably be expected to result, from the arrangement;
  - (F) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the taxpayer, being a change that has resulted, will result, or may reasonably be expected to result, from the arrangement;
  - (G) any other consequence for the taxpayer, or for any person referred to in sub-sub-paragraph (F), of the arrangement having been entered into or carried out; and
  - (H) the nature of any connection (whether of a business, family or other nature) between the taxpayer and any person referred to in sub-sub-paragraph (F),

it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part of the arrangement did so for the purpose of enabling the taxpayer to obtain a provisional tax benefit in connection with the arrangement or of enabling the taxpayer and another taxpayer or other taxpayers each to obtain a provisional tax benefit in connection with the arrangement (whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the taxpayer or is the other taxpayer or one of the other taxpayers),

the estimated taxable income of the taxpayer of the current year of income shall be deemed to have been increased by the amount of the provisional tax benefit specified in the notice.

“(2) A reference in sub-section (1) to the obtaining by a taxpayer of a provisional tax benefit in connection with an arrangement in respect of a trust estate (in this sub-section referred to as the ‘scheme trust estate’) in relation to a year of income (in this sub-section referred to as the ‘current year of income’) in relation to a beneficiary is a reference to all of the following paragraphs being satisfied:

- (a) an amount not being assessable under section 98 to the taxpayer in the current year of income in respect of a share of the beneficiary of the net income of the scheme trust estate where that amount would have been so assessable or might reasonably be expected to have been so assessable to the taxpayer in the current year of income if the arrangement had not been entered into or carried out;
- (b) either or both of the following sub-paragraphs applying:
  - (i) another amount, or other amounts, being assessable, or being reasonably likely to be assessable, to the taxpayer or another taxpayer under section 98 in any other year or years of income (including a year of income ending before the commencement of this section) in respect of a share of the beneficiary of the net income of a trust estate that is a family trust of the beneficiary in relation to that other year or other years of income where that amount or those amounts would not have been so assessable, or might reasonably be expected not to have been so assessable, in that other year of income or those other years of income if the arrangement had not been entered into or carried out;
  - (ii) another amount, or other amounts, being included, or being reasonably likely to be included, under sub-section 92 (1) or section 97, 98A or 100, in the assessable income of the beneficiary of any other year or years of income (including a year of income ending before the commencement of this section) in respect of the net income of a partnership or trust estate that is a family partnership or family trust, as the case may be, of the beneficiary in relation to that other year or other years of income, where that amount or those amounts would not have been so included, or might reasonably be expected not to have been so included, in the assessable income of the beneficiary of that other year of income or those other years of income if the arrangement had not been entered into or carried out;
- (c) either of the following sub-paragraphs applying:
  - (i) provisional tax not being payable by the taxpayer in respect of the current year of income where that provisional tax would have been, or might reasonably be expected to have been, payable by the taxpayer if the arrangement had not been entered into or carried out;
  - (ii) the amount of provisional tax payable by the taxpayer in respect of the current year of income being less than the

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amount that would have been, or might reasonably be expected to have been, payable by the taxpayer if the arrangement had not been entered into or carried out,

and, for the purposes of sub-section (1), the amount of the provisional tax benefit shall be taken to be—

(d) in a case to which paragraph (e) does not apply—the amount referred to in paragraph (a); or

(e) where—

(i) the scheme trust estate was a family trust of the beneficiary in relation to the last preceding year of income; and

(ii) a taxpayer in the capacity of a trustee of the scheme trust estate was liable to be assessed under section 98 in respect of the beneficiary's share of the net income of the scheme trust estate of the last preceding year of income,

whichever of the following amounts is the greater:

(iii) the amount calculated in accordance with the formula  $1.11A - B$ , where—

**A** is the amount that was so assessable in respect of that share; and

**B** is the amount of the estimated taxable income of the taxpayer for the current year of income;

(iv) the amount referred to in paragraph (a).

“(3) The amount of the estimated taxable income of a taxpayer of a year of income shall not be increased, by virtue of an application, or applications, of sub-section (1), to an amount that would, by virtue of sub-section 221YDA (2) or (4), result in the amount of provisional tax payable by the taxpayer in respect of the year of income exceeding the amount that would, but for section 221YDA, be the amount of provisional tax payable by the taxpayer in respect of the year of income.

“(4) For the purposes of this Division, the Commissioner may treat an amount by which the estimated taxable income of a taxpayer is increased by virtue of an application, or applications, of sub-section (1) as being attributable to income of a particular kind to such extent as the Commissioner considers reasonable.

“(5) A reference in this section to the estimated taxable income of a taxpayer who is liable to be assessed under section 98 in respect of a share of the net income of a trust estate shall be read as a reference to that share.

**Review of decisions**

“221YHAAE. (1) A taxpayer dissatisfied with a notice served on the taxpayer under paragraph 221YHAAC (1) (c) or 221YHAAD (1) (c) may, within 60 days after service of the notice, lodge with the Commissioner an objection in writing against the notice stating fully and in detail the grounds on which the taxpayer relies.

“(2) The provisions of Division 2 of Part V (other than section 185) apply in relation to an objection made under sub-section (1) in the same manner as those provisions apply in relation to an objection against an assessment.

“(3) The fact that an appeal or review relating to an objection under sub-section (1) is pending does not affect the operation of a notice referred to in that sub-section, and provisional tax and additional tax under section 207 may be recovered as if no such review or appeal were pending.

“(4) Where, by reason of a decision of the Commissioner, of the Tribunal or of a court in relation to an objection made under sub-section (1), a person's liability to provisional tax is reduced—

- (a) the amount by which the provisional tax is so reduced shall be taken, for the purposes of section 207, never to have been payable; and
- (b) the Commissioner shall—
  - (i) refund the amount of any provisional tax overpaid; or
  - (ii) apply the amount of any provisional tax overpaid against any liability of the person to the Commonwealth, being a liability arising under, or by virtue of, an Act of which the Commissioner has the general administration, and refund any part of the amount not so applied.”.

#### **Failure to pay amounts deducted to Commissioner**

45. Section 221YHJ of the Principal Act is amended—

- (a) by inserting in sub-section (4) “or 221YHZD (3)” after “sub-section 221P (1)” (first and second occurring); and
- (b) by inserting in sub-section (4) “or 221YHZD (3), as the case requires,” after “sub-section 221P (1)” (last occurring).

46. After section 221YHZ of the Principal Act the following Division is inserted:

#### ***“Division 3B—Collection of Tax in Respect of Certain Natural Resource Payments and Royalty Payments***

##### **Interpretation**

“221YHZA. (1) In this Division—

‘government body’ means the Commonwealth, a State, a Territory or an authority of the Commonwealth or a State or Territory;

‘natural resource payment’ means a payment that is calculated, in whole or in part, by reference to the value or quantity of natural resources produced, recovered or produced and recovered, in Australia after 7 April 1986, but does not include a royalty payment;

‘royalty payment’ means a payment of, or by way of, royalty, but does not include a payment of income to which section 136A applies.

“(2) For the purposes of this Division, where money is not actually paid to a non-resident but is reinvested, accumulated, capitalised or otherwise dealt with on behalf of the non-resident, or as the non-resident directs, the money shall be deemed to have been paid to the non-resident.

“(3) For the purposes of this Division, where one or more of the partners in a partnership is a non-resident, the partnership shall be deemed to be a non-resident.

**Person making natural resource payment, or royalty payment, to non-resident to ascertain amount to be deducted in respect of tax**

“221YHZB. (1) Subject to sub-section (4), a person who is liable to make a natural resource payment, or a royalty payment, to a non-resident shall not make such a payment to the non-resident unless—

- (a) the person has given to the Commissioner a statement in writing setting out the amount of the natural resource payment, or royalty payment, as the case may be, due to the non-resident; and
- (b) the Commissioner has subsequently given to the person a notice in writing setting out the amount (if any) required to be deducted from the payment in respect of tax due, or which may become due, by the non-resident.

Penalty: \$2,000.

“(2) In a prosecution of a person for an offence against sub-section (1) in relation to a payment made to a non-resident, it is a defence if the person proves that, at the time of making the payment, the person—

- (a) did not know; and
  - (b) could not reasonably have been expected to have known,
- that the payment was a payment made to a non-resident.

“(3) Where a person (in this sub-section referred to as the ‘convicted person’) is convicted before a court of an offence against sub-section (1) in relation to a payment, the court may, in addition to imposing a penalty on the convicted person for the offence, order the convicted person to pay to the Commissioner an amount not exceeding the amount that, in the opinion of the court, might reasonably have been expected to be required to be deducted from that payment.

“(4) The Commissioner may issue to a person a certificate exempting the person from compliance with sub-section (1) in respect of a specified payment, or payments included in a specified class of payments, to a non-resident.

“(5) A certificate issued to a person under sub-section (4) exempting the person from compliance with sub-section (1) in respect of a specified payment, or payments included in a specified class of payments, to a non-resident is subject to the following conditions:

- (a) a condition that the person shall, before making such a payment, deduct from the payment an amount (if any) ascertained in

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accordance with the certificate, in respect of tax due, or which may become due, by the non-resident;

(b) such other conditions (if any) as are specified in the certificate, but a person is not guilty of an offence against sub-section (1) by reason of a contravention of such a condition.

“(6) The Commissioner may, by notice in writing served on the holder of a certificate issued under sub-section (4)—

- (a) revoke the certificate;
- (b) impose one or more further conditions to which the certificate is subject;
- (c) vary the condition referred to in paragraph (5) (a); or
- (d) vary or revoke a condition referred to in paragraph (5) (b).

“(7) Without limiting the generality of sub-section (6), where the holder of a certificate issued under sub-section (4) contravenes a condition of the certificate, the Commissioner may revoke the certificate under sub-section (6).

“(8) A contravention of sub-section (1) does not constitute an offence against section 8C of the *Taxation Administration Act 1953*.

**Duty of payer to deduct amount in respect of tax**

“221YHZC. (1) Where a person who is liable to make a natural resource payment, or a royalty payment, to a non-resident—

- (a) ascertains under sub-section 221YHZB (1) the amount required to be deducted from a payment to the non-resident; or
- (b) is required, as a condition of a certificate issued to the person under sub-section 221YHZB (4), to deduct an amount from a payment to the non-resident,

the person shall, at the time of making the payment, deduct from the payment the amount required to be deducted.

Penalty: \$1,000.

“(2) Where a person (in this sub-section referred to as the ‘convicted person’) is convicted before a court of an offence against sub-section (1) in relation to the refusal or failure of the convicted person or any other person to deduct an amount from a payment, the court may, in addition to imposing a penalty on the convicted person for the offence, order the convicted person to pay to the Commissioner an amount not exceeding the amount required to be deducted.

“(3) Where a person other than a government body refuses or fails, at the time of making a payment to a non-resident, to deduct from the payment the amount required to be deducted under sub-section (1), the person is liable to pay to the Commissioner, by way of penalty—

- (a) an amount (in this sub-section referred to as the 'undeducted amount') equal to the amount that the person refused or failed to deduct; and
- (b) an amount equal to 20% per annum of so much of the undeducted amount as remains unpaid, computed from the end of the period within which the person, had the person deducted the amount required to be deducted under sub-section (1), would have been required to pay the amount deducted to the Commissioner.

"(4) Where a person, being a government body other than the Commonwealth, refuses or fails, at the time of making a payment to a non-resident, to deduct from the payment the amount required to be deducted under sub-section (1), the person is liable to pay to the Commissioner, by way of penalty, an amount equal to 20% per annum of the amount that the person refused or failed to deduct in respect of the period commencing at the end of the period within which the person, had it deducted the amount required to be deducted under sub-section (1), would have been required to pay the amount deducted to the Commissioner and ending on the day on which the whole of the amount payable by the person under this sub-section in respect of the first-mentioned amount is paid.

**Duty of payer to pay deducted amount to Commissioner**

"221YHZD. (1) A person who deducts, or purports to deduct, under sub-section 221YHZA (1), an amount from a payment to a non-resident, shall—

- (a) pay the amount to the Commissioner; and
- (b) notify the Commissioner in writing of the date on which the amount was so deducted,

within 14 days after the end of the month in which the person makes the payment to the non-resident.

Penalty: \$5,000 or imprisonment for 12 months, or both.

"(2) Where an amount (in this sub-section referred to as the 'principal amount') payable to the Commissioner by a person other than the Commonwealth by virtue of sub-section (1) remains unpaid after the end of the period within which it is required to be paid—

- (a) the principal amount continues to be payable by the person to the Commissioner; and
- (b) the person is liable to pay to the Commissioner, by way of penalty—
  - (i) in a case where the person is a government body—an amount at the rate of 20% per annum on so much of the principal amount as remains unpaid, computed from the end of that period; and
  - (ii) in any other case—
    - (A) an amount (in this sub-paragraph referred to as the 'relevant penalty amount') equal to 20% of the principal amount; and

- (B) an amount at the rate of 20% per annum of the sum of so much of the principal amount as remains unpaid and so much of the relevant penalty amount as remains unpaid, computed from the end of that period.

“(3) Where—

- (a) an amount deducted from a payment is payable to the Commissioner under sub-section (1) by a person; and
- (b) the property of that person has become vested in, or the control of the property of that person has passed to, a trustee,  
the trustee is liable to pay the amount to the Commissioner.

“(4) Notwithstanding anything contained in any other law of the Commonwealth, or in any law of a State or of the Northern Territory—

- (a) an amount payable to the Commissioner by a trustee under sub-section (3) has priority over all other debts (other than amounts payable under sub-section 221P (1) or 221YHJ (3)), whether preferential, secured or unsecured; and
- (b) where an amount is payable by a trustee to the Commissioner under sub-section 221P (1) or 221YHJ (3), an amount payable by the trustee under sub-section (3) of this section ranks equally with the amount payable under sub-section 221P (1) or 221YHJ (3), as the case requires, in priority to all other debts, whether preferential, secured or unsecured.

“(5) Where a trustee, being a trustee of an estate of a bankrupt or the liquidator of a company that is being wound up, is liable to pay an amount to the Commissioner under this section, sub-section (4) does not have the effect that the amount is payable in priority to any costs, charges or expenses of the administration of the estate or of the winding up of the company (including costs of a creditor or other person upon whose petition the sequestration order or the winding up order (if any) was made and remuneration of the trustee) that are lawfully payable out of the assets of the estate or of the company except where, in the case of the winding up of a company, the Crown in right of a State or of the Northern Territory or any other creditor is entitled to the payment of a debt by the liquidator, in priority to all or any of those costs, charges and expenses and has not waived that priority.

#### **Remission of certain amounts**

“221YHZE. (1) Where an amount (in this section referred to as the ‘late payment penalty’) is payable by a person under paragraph 221YHZE (3) (b), sub-paragraph 221YHZE (2) (b) (i) or sub-sub-paragraph 221YHZE (2) (b) (ii) (B), in relation to another amount that has not been paid (in this section referred to as the ‘principal amount’) and—

- (a) the Commissioner is satisfied that—
    - (i) the circumstances that contributed to the delay in payment of the principal amount were not due to, or caused directly or indirectly by, an act or omission of the person; and
    - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances;
  - (b) the Commissioner is satisfied that—
    - (i) the circumstances that contributed to the delay in payment of the principal amount were due to, or caused directly or indirectly by, an act or omission of the person;
    - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
    - (iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the late payment penalty or part of the late payment penalty; or
  - (c) the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the late payment penalty or part of the late payment penalty,
- the Commissioner may remit the late payment penalty or part of the late payment penalty.

“(2) The Commissioner may, in any case, for reasons that the Commissioner thinks sufficient, remit the whole or any part of any amount payable by a person under paragraph 221YHZA (3) (a), sub-section 221YHZA (4) or sub-sub-paragraph 221YHZA (2) (b) (ii) (A).

“(3) Where the Commissioner makes a decision to remit part only of an amount payable as mentioned in sub-section (2), or not to remit any part of such an amount, the Commissioner shall give notice in writing of the decision to the person by whom the amount is, or but for the remission would be, payable:

**Reduction of late payment penalty where judgment debt carries interest**

“221YHZA. (1) Where judgment is given by, or entered in, a court for the payment of—

- (a) the whole or a part of a principal amount; or
- (b) an amount that includes the whole or a part of a principal amount, then—
  - (c) the principal amount or the part of the principal amount, as the case may be, shall not be taken, for the purposes of paragraph 221YHZA (3) (b), sub-paragraph 221YHZA (2) (b) (i) or sub-sub-paragraph 221YHZA (2) (b)(ii) (B), as the case requires, to have ceased to be due and payable by reason only of the giving or entering of the judgment; and
  - (d) if the judgment debt carries interest, the amount that would, but for this paragraph, be payable by virtue of paragraph 221YHZA (3) (b), sub-paragraph 221YHZA (2) (b) (i) or sub-sub-paragraph 221YHZA (2) (b) (ii) (B), as the case may be, in relation

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to the principal amount or the part of the principal amount, as the case may be, shall, by force of this paragraph, be reduced by—

- (i) in a case to which paragraph (a) applies—the amount of the interest; or
- (ii) in a case to which paragraph (b) applies—an amount calculated in accordance with the formula  $\frac{AB}{C}$ , where—

**A** is the amount of the interest;

**B** is the principal amount or the part of the principal amount, as the case may be; and

**C** is the amount of the judgment debt.

“(2) In sub-section (1), ‘principal amount’ means—

- (a) an amount of the kind referred to in sub-section 221YHZC (3) as the undeducted amount;
- (b) an amount of the kind referred to in sub-section 221YHZD (2) as the principal amount; or
- (c) an amount of the kind referred to in sub-paragraph 221YHZD (2) (b) (ii) as the relevant penalty amount.

**Penalties to be alternative to prosecution for certain offences**

“221YHZG. (1) Where—

- (a) but for this sub-section, an amount is payable, by way of penalty, by a person to the Commissioner under this Division by reason of an act or omission of the person; and
- (b) a prosecution is instituted against the person for an offence against this Division constituted by the act or omission,

the amount is not payable unless and until the prosecution is withdrawn.

“(2) Where—

- (a) a person is liable to pay, by way of penalty, an amount (in this sub-section referred to as the ‘penalty amount’) to the Commissioner under this Division by reason of an act or omission of the person;
- (b) an amount (in this sub-section referred to as the ‘applied amount’) is paid, or applied by the Commissioner, in total or partial discharge of the liability; and
- (c) a prosecution is instituted against the person for an offence against this Division constituted by the act or omission,

the applied amount shall be refunded to the person or applied by the Commissioner in total or partial discharge of a tax liability of the person, but, if the prosecution is withdrawn, the person shall again become liable to pay the penalty amount.

“(3) In sub-section (2), ‘tax liability’ means tax liability as defined in section 2 of the *Taxation Administration Act 1953*.

**Persons discharged from liability in respect of deducted amounts**

“221YHZH. Where a person has deducted an amount from a payment and that deduction was made, or purports to have been made, for the purposes of sub-section 221YHZC (1), the person is discharged from all liability to pay or to account for the deducted amount to a person other than the Commissioner.

**Recovery of amounts by Commissioner**

“221YHZJ. (1) An amount payable to the Commissioner under this Division by a person other than the Commonwealth is a debt due to the Commonwealth and payable to the Commissioner and—

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name; or
- (b) a court before which proceedings are taken against that person for an offence against a provision of this Division may order that person to pay that amount to the Commissioner.

“(2) The provisions of section 8ZL of the *Taxation Administration Act 1953* apply in proceedings for the recovery of an amount payable to the Commissioner under this Division in the same manner as those provisions apply in relation to a prosecution for a prescribed taxation offence within the meaning of Part III of that Act.

“(3) Where—

- (a) 2 or more amounts payable to the Commissioner by a person would, but for this sub-section, be debts due to the Commonwealth under sub-section (1);
- (b) an amount (in this sub-section referred to as the ‘debt payment’) is paid to the Commissioner in respect of one or more of those amounts; and
- (c) the sum of the amounts payable exceeds the debt payment,

the Commissioner may, notwithstanding any direction to the contrary by or on behalf of the person by whom the amounts are payable or the person making the debt payment, apply the debt payment in partial discharge of the sum of the amounts payable and recover as a debt due to the Commonwealth the amount by which the sum of the amounts payable exceeds the debt payment.

**Credits in respect of deducted amounts**

“221YHZK. (1) Where—

- (a) the Commissioner is satisfied that an amount or amounts (in this sub-section referred to as the ‘deducted amounts’) were deducted, or were purportedly deducted, during a year of income, under sub-section 221YHZC (1), from a payment or payments to a person, not being a partnership or the trustee of a trust estate; and

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- (b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the person in relation to the year of income,

the person is entitled to a credit of an amount equal to the deducted amounts.

“(2) Where—

- (a) the Commissioner is satisfied that an amount or amounts (in this sub-section referred to as the ‘deducted amounts’) were deducted, or were purportedly deducted, during a year of income, under sub-section 221YH2C (1), from a payment or payments to a person, being a partnership (in this sub-section referred to as the ‘partnership payments’); and
- (b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, in relation to the year of income by a partner in the partnership whose individual interest in the net income or partnership loss of the partnership is wholly or partly attributable to the partnership payments,

the partner is entitled to a credit of an amount equal to so much of the deducted amounts as the Commissioner is satisfied is attributable to that individual interest.

“(3) Where the Commissioner is satisfied that an amount or amounts (in this sub-section referred to as the ‘deducted amounts’) were deducted, or were purportedly deducted, during a year of income, under sub-section 221YH2C (1), from a payment or payments to a person, being a trustee of a trust estate (in this sub-section referred to as the ‘trust payments’), the following provisions have effect:

(a) where—

- (i) a share of the net income of the trust estate is included in the assessable income of a beneficiary of the trust estate under section 97, being a share that is wholly or partly attributable to the trust payments; and
- (ii) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the beneficiary in relation to the year of income,

the beneficiary is entitled to a credit of an amount equal to so much of the deducted amounts as the Commissioner is satisfied is attributable to that share of the net income of the trust estate;

(b) where—

- (i) the trustee is liable to be assessed under section 98 in respect of a share of the net income of the trust estate to which a beneficiary is presently entitled, being a share that is wholly or partly attributable to the trust payments; and
- (ii) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the trustee in respect of that share,

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the trustee is entitled to a credit of an amount equal to so much of the deducted amounts as the Commissioner is satisfied is attributable to that share of the net income of the trust estate;

(c) where—

(i) the trustee is liable to be assessed under section 99 or 99A in respect of the net income, or a part of the net income, of the trust estate and that net income or part is wholly or partly attributable to the trust payments; and

(ii) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the trustee under those sections in respect of that net income or part,

the trustee is entitled to a credit of an amount equal to so much of the deducted amounts as the Commissioner is satisfied is attributable to the net income or the part of the net income of the trust estate;

(d) where there is no net income of the trust estate of the year of income, the trustee is entitled to a credit of an amount equal to the deducted amounts.

**Application of credits**

“221YHZL. (1) Subject to this section, the amount of a credit to which a person is entitled by virtue of this Division is a debt due and payable to that person by the Commissioner on behalf of the Commonwealth.

“(2) Where, in a case to which none of sub-sections (3), (4) and (5) applies, a person is entitled to a credit under section 221YHZK, the Commissioner shall—

(a) if the amount of the credit does not exceed the tax payable by the person under an assessment in relation to the year of income in which the deductions to which the credit relates were made—apply the amount of the credit in payment or part payment of that tax; and

(b) if the amount of the credit exceeds the tax payable—apply—

(i) so much of the amount of the credit as does not exceed the tax in payment of the tax; and

(ii) so much of the excess as does not exceed the amount of any other tax payable by the person in payment or part payment of that other tax.

“(3) Where the trustee of a trust estate is entitled to a credit under paragraph 221YHZK (3) (b) in relation to a share of a beneficiary of the net income of the trust estate of a year of income, the Commissioner shall—

(a) if the amount of the credit does not exceed the tax payable in respect of that share—apply the amount of the credit in payment or part payment of that tax; and

(b) if the amount of the credit exceeds the tax payable in respect of that share—apply—

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- (i) so much of the amount of the credit as does not exceed the tax payable in respect of that share in payment of the tax; and
- (ii) so much of the excess as does not exceed the amount of any tax payable by the trustee under section 98 in respect of a share of the beneficiary of the net income of the trust estate of any other year of income in payment or part payment of that other tax.

“(4) Where the trustee of a trust estate is entitled to a credit under paragraph 221YHZK (3) (c) in relation to the net income or a part of the net income of the trust estate, the Commissioner shall—

- (a) if the amount of the credit does not exceed the tax payable under section 99 or 99A in respect of that net income or part—apply the amount of the credit in payment or part payment of that tax; and
- (b) if the amount of the credit exceeds the tax payable under section 99 or 99A in respect of that net income or part—apply—
  - (i) so much of the amount of the credit as does not exceed that tax in payment of that tax; and
  - (ii) so much of the excess as does not exceed the amount of any tax payable by the trustee under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of any other year of income in payment or part payment of that other tax.

“(5) Where the trustee of a trust estate is entitled to a credit under paragraph 221YHZK (3) (d) in relation to amounts deducted during a year of income out of payments made to the trustee, the Commissioner shall—

- (a) if the amount of the credit does not exceed the amount of any tax payable by the trustee under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of any other year of income—apply the amount of the credit in payment or part payment of that tax; and
- (b) if the amount of the credit exceeds the amount of any tax payable by the trustee under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of any other year of income—apply so much of the amount of the credit as does not exceed that tax in payment of that tax.

“(6) Where, under sub-section (2), (3), (4) or (5), the Commissioner has applied an amount of a credit in payment of an amount of tax payable by a person, the person shall be deemed to have paid the amount so applied in payment of the tax and at the time at which it was so applied or at such earlier time as the Commissioner determines.

“(7) Where the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit to which a person is entitled under this Division exceeds the amount of the credit to which the person is so entitled,

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the Commissioner may recover the amount of the excess as if it were income tax due and payable by that person.

“(8) In this section—

- (a) a reference to tax payable by a person other than a trustee is a reference to an amount payable by the person to the Commonwealth under, or by virtue of, this Act;
- (b) a reference to tax payable by the trustee of a trust estate in respect of a share of a beneficiary of the net income of the trust estate of a year of income is a reference to any amount payable by the trustee to the Commonwealth under, or by virtue of, this Act in relation to the beneficiary in relation to the year of income; and
- (c) a reference to tax payable by the trustee of a trust estate under section 99 or 99A in respect of the net income or a part of the net income of the trust estate of a year of income is a reference to any amount payable by the trustee to the Commonwealth under, or by virtue of, this Act in relation to the trust estate in relation to the year of income, not being an amount payable by the trustee in relation to a particular beneficiary.

**Review of decisions**

“221YHZM. (1) Where a person who has been notified of a decision of the Commissioner made under sub-section 221YHZE (2) (other than in relation to an amount payable under sub-section 221YHZC (4)) is dissatisfied with the decision, the person may, within 60 days after service on the person of notice of the decision of the Commissioner, lodge with the Commissioner an objection in writing against the decision stating fully and in detail the grounds on which the person relies.

“(2) The provisions of Division 2 of Part V (other than section 185) apply in relation to an objection made under sub-section (1) in the same manner as those provisions apply in relation to an objection against an assessment.

**Application of Division to partnerships**

“221YHZN. (1) Subject to this section, this Division applies to a partnership as if the partnership were a person.

“(2) Where, but for this sub-section, an obligation would be imposed on a partnership by virtue of the operation of sub-section (1), the obligation is imposed on each partner, but may be discharged by any of the partners.

“(3) Where, by virtue of the operation of sub-section (1), an amount is payable under this Division by a partnership, the partners are jointly and severally liable to pay that amount.

“(4) Where, by virtue of the operation of sub-section (1), an offence against this Division is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

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“(5) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person—

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.

“(6) A reference in this section to this Division includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Division.”.

**Person in receipt or control of money from non-resident**

47. Section 255 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “, subject to sub-section (2A),” before “all money”; and
- (b) by inserting after sub-section (2) the following sub-section:

“(2A) For the purposes of this section, money due by a person to a non-resident by way of a natural resource payment, or a royalty payment, within the meaning of Division 3B of Part VI, shall be deemed not to be money which comes to the person on behalf of the non-resident.”.

**Repeal of section 256**

48. Section 256 of the Principal Act is repealed.

**Application**

49. (1) In this section, “amended Act” means the Principal Act as amended by this Act.

(2) The amendment made by paragraph 26 (a) applies in relation to income received in respect of a period commencing on or after 1 January 1986.

(3) Notwithstanding the amendments of the Principal Act made by paragraphs 26 (b) and (c) and sections 28 and 40, the Principal Act continues to apply, after the commencement of this sub-section, in relation to—

- (a) benefits received as a grant of Tertiary Education Assistance under the *Student Assistance Act 1973*; and
- (b) payments received under the scheme known as the Adult Secondary Education Assistance Scheme,

before or after the commencement of this sub-section, as if those amendments had not been made.

(4) The amendment made by paragraph 27 (a) applies in relation to an instalment or payment of a pension or benefit, being an instalment or payment falling due on or after 21 March 1985.

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(5) The amendment made by paragraph 29 (a) applies in relation to an eligible 26AH amount, as defined in sub-section 160AAB (1) of the Principal Act, received, within the meaning of section 26AH of the Principal Act, on or after 1 January 1986.

(6) The amendment made by paragraph 29 (b) applies to assessments in respect of income of the year of income in which 18 September 1984 occurred and of all subsequent years of income.

(7) In the application of sub-section 160AAA (2) of the amended Act in relation to the year of income that commenced on 1 July 1986, where—

- (a) the assessable income of a taxpayer of that year of income would, but for this sub-section, include an amount paid by way of a benefit received as a grant of Education Assistance under Part III of the *Student Assistance Act 1973* that is granted in respect of the undertaking of a course of study or instruction that is determined to be a secondary course for the purposes of section 10 of that Act or in respect of the undertaking of a part of a course of study or instruction that is determined to be part of a secondary course for the purposes of that section; and
- (b) if the scheme known as the Adult Secondary Education Assistance Scheme had been in operation throughout that year of income, the taxpayer would not have been eligible to receive a payment under that scheme in respect of the undertaking of that course of study or instruction or in respect of the undertaking of that part of that course of study or instruction, as the case may be,

the assessable income of the taxpayer of that year of income shall not be taken to have included the amount referred to in paragraph (a) of this sub-section.

(8) The amendments made by sections 30 to 38 (inclusive) apply to assessments in respect of income of the year of income in which 20 September 1985 occurred and of all subsequent years of income.

(9) Subject to sub-section (10), the amendments made by sections 43 and 44 apply in relation to the ascertainment of provisional tax in respect of the year of income that commenced on 1 July 1986 and all subsequent years of income.

(10) Section 221YHAAB of the amended Act does not apply in relation to statements furnished under sub-section 221YDA (1) of the amended Act before the commencement of this sub-section.

(11) Section 221YHZB and sub-section 255 (2A) of the amended Act apply in relation to a payment made to a non-resident after the date of commencement of this sub-section.

**Amendment of assessments**

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

**PART IX—AMENDMENT OF THE PAY-ROLL TAX ASSESSMENT  
ACT 1941**

**Principal Act**

51. The *Pay-roll Tax Assessment Act 1941*<sup>7</sup> is in this Part referred to as the Principal Act.

**Provision for payment of tax by executors and administrators**

52. Section 33 of the Principal Act is amended by omitting from sub-section (6) “and” (third occurring).

**PART X—AMENDMENTS OF THE TAXATION  
ADMINISTRATION ACT 1953**

**Principal Act**

53. The *Taxation Administration Act 1953*<sup>8</sup> is in this Part referred to as the Principal Act.

**Commissioner and Second Commissioners of Taxation**

54. Section 4 of the Principal Act is amended by omitting “2” and substituting “3”.

55. (1) After Part IVA of the Principal Act the following Part is inserted:

**“PART IVAB—REQUESTS FOR REFERENCE**

**Interpretation**

“14ZAB. In this Part, unless the contrary intention appears—

‘objection decision’ means a decision of the Commissioner under a relevant enactment—

- (a) on an objection as defined by section 3 of the *Taxation (Interest on Overpayments) Act 1983*;
- (b) on an objection under sub-section 40 (2) or (4) of the *Sales Tax Assessment Act (No. 1) 1930* or either of those sub-sections as applied for the purposes of any other Act providing for the assessment of sales tax;
- (c) on an objection under the *Pay-roll Tax Assessment Act 1941*; or
- (d) on an objection under section 14G of this Act,  
being a decision that a person may request the Commissioner to refer to the Tribunal or a court;

‘relevant enactment’ means—

- (a) an Act referred to in the definition of ‘objection’ in section 3 of the *Taxation (Interest on Overpayments) Act 1983*;
- (b) the *Pay-roll Tax Assessment Act 1941*; or

(c) this Act;

'required fee', in relation to a request to refer an objection decision to the Tribunal or a court, means \$200 or, if another amount is, at the time when the request is lodged with, or sent to, the Commissioner, payable under the regulations made under the *Administrative Appeals Tribunal Act 1975* as the fee in respect of an application made to the Tribunal under sub-section 188A (3) of the *Income Tax Assessment Act 1936*, that other amount.

**Requests for reference to be accompanied by required fee**

"14ZAC. (1) Where a person who is dissatisfied with an objection decision lodges with, or sends to, the Commissioner (whether or not within 60 days after service on the person of notice of the decision) a request to refer the decision to the Tribunal or a court under a relevant enactment, the request shall be accompanied by the required fee.

"(2) If the request is not accompanied by the required fee, then, notwithstanding any provision to the contrary contained in the relevant enactment, the request shall be taken not to have been lodged with, or sent to, the Commissioner.

**Requests for reference may be withdrawn**

"14ZAD. Where a person has lodged with, or sent to, the Commissioner a request to refer an objection decision to the Tribunal or a court under a relevant enactment, the person may, at any time before the Commissioner has complied with the request, withdraw the request by notice in writing signed by the person and lodged with the Commissioner.

**Refunds of required fee**

"14ZAE. Where—

- (a) a person has lodged with, or sends to, the Commissioner a request to refer an objection decision to the Tribunal or a court under a relevant enactment; and
  - (b) the request was accompanied by the required fee,
- the Commissioner shall refund the fee to the person if—
- (c) the request is withdrawn under section 14ZAD;
  - (d) the decision is varied by the Commissioner in a manner favourable to the person; or
  - (e) proceedings in relation to the decision terminate in a manner favourable to the person."
- (2) Section 14ZAC of the Principal Act as amended by sub-section (1) applies to—
- (a) a request by a person to refer an objection decision to the Tribunal, being an objection decision that was served on the person on or after the day on which this section comes into operation; or

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- (b) a request by a person to refer an objection decision to a court, being an objection decision that was served on the person on or after the day fixed by Proclamation for the purposes of this paragraph, which may be the day referred to in paragraph (a).

**Interpretation**

**56.** Section 14ZB of the Principal Act is amended—

- (a) by omitting “or” (last occurring) from paragraph (b) of the definition of “objection decision”;
- (b) by inserting after paragraph (c) of the definition of “objection decision” the following word and paragraph:
  - “; or (d) on an objection under section 14G of this Act,”; and
- (c) by omitting the definition of “relevant enactment” and substituting the following definition:

“‘relevant enactment’ means—

- (a) an Act referred to in the definition of ‘objection’ in section 3 of the *Taxation (Interest on Overpayments) Act 1983*;
- (b) the *Pay-roll Tax Assessment Act 1941*; or
- (c) this Act.”.

**PART XI—AMENDMENT OF THE TAXATION (INTEREST ON OVERPAYMENTS) ACT 1983**

**Principal Act**

**57.** The *Taxation (Interest on Overpayments) Act 1983*<sup>9</sup> is in this Part referred to as the Principal Act.

**Interpretation**

**58.** Section 3 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of the definition of “objection” in sub-section (1) “or 221YHT (2)” and substituting “, 221YHAAE (1), 221YHT (2) or 221YHZM (1)”;
- (b) by inserting after paragraph (bb) of the definition of “relevant tax” in sub-section (1) the following paragraph:
  - “(bc) an amount payable to the Commissioner under paragraph 221YHZC (3) (a) or sub-sub-paragraph 221YHZD (2) (b) (ii) (A) of the *Income Tax Assessment Act 1936*.”.

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**NOTES**

- 1. No. 42, 1969, as amended. For previous amendments, see No. 216, 1973; Nos. 61, 92 and 127, 1981; No. 127, 1982; No. 39, 1983; No. 123, 1984; Nos. 123 and 168, 1985; and No. 48, 1986.

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**NOTES—continued**

2. No. 33, 1966, as amended. For previous amendments, see No. 121, 1968; No. 40, 1969; No. 122, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 56, 1975; Nos. 91 and 161, 1976; No. 111, 1977; No. 155, 1979; Nos. 12 and 70, 1980; Nos. 74 and 176, 1981; No. 18, 1983; Nos. 10 and 63, 1984; and Nos. 21 and 193, 1985.
3. No. 156, 1980, as amended. For previous amendments, see No. 123, 1984; No. 47, 1985; and Nos. 41, 48 and 76, 1986.
4. No. 93, 1981, as amended. For previous amendments, see No. 18, 1983.
5. No. 22, 1914, as amended. For previous amendments, see No. 29, 1916; No. 34, 1922; No. 47, 1928; No. 12, 1940; No. 18, 1942; No. 16, 1947; No. 80, 1950; Nos. 1 and 52, 1953; No. 94, 1956; No. 60, 1957; No. 97, 1962; No. 72, 1963; Nos. 32 and 138, 1965; Nos. 53 and 93, 1966; No. 40, 1967; No. 9, 1970; No. 95, 1972; No. 216, 1973; No. 130, 1974; No. 169, 1976; No. 22, 1978; Nos. 19 and 60, 1979; No. 92, 1981; No. 39, 1983; No. 123, 1984; No. 65, 1985; and No. 48, 1986.
6. 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, 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 and 168, 1985; No. 173, 1985 (as amended by No. 49, 1986); and Nos. 41, 46, 48, 49, 51, 52 and 90, 1986.
7. No. 2, 1941, as amended. For previous amendments, see No. 48, 1942; Nos. 1 and 40, 1953; No. 37, 1954; No. 68, 1957; No. 28, 1961; No. 41, 1962; No. 33, 1963; Nos. 114 and 148, 1965; Nos. 54 and 93, 1966; Nos. 20 and 88, 1967; No. 61, 1968; Nos. 19, 163 and 216, 1973; No. 91, 1976; No. 36, 1978; No. 63, 1979; and No. 48, 1986.
8. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; and Nos. 41, 46, 48 and 49, 1986.
9. No. 12, 1983, as amended. For previous amendments, see No. 123, 1984; Nos. 4, 47, 49 and 123, 1985; and Nos. 41, 46 and 48, 1986.

*[Minister's second reading speech made in—*

*House of Representatives on 15 October 1986*

*Senate on 13 November 1986]*