



# **Development Allowance Authority Act 1992**

**Act No. 99 of 1992 as amended**

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

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# An Act to establish the Development Allowance Authority, and for related purposes

## Chapter 1—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Development Allowance Authority Act 1992*.

### 2 Commencement [see Note 1]

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) If the day (**TLAA day**) on which the *Taxation Laws Amendment Act (No. 3) 1992* receives the Royal Assent is a later day than the day on which this Act receives the Royal Assent, Parts 2 to 10 (inclusive), 12, 13, 14 and 15 commence on the TLAA day.

### 2A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Chapter 2—Development allowance**

### **Part 1—Preliminary**

#### **3 Object**

The object of this Chapter and the development allowance provisions of the *Income Tax Assessment Act 1936* is to provide tax incentives for investment in large Australian projects which cost \$50 million or more and meet certain other criteria.

#### **4 Simplified outline of scheme of Act**

The following is a simplified outline of the scheme of this Chapter:

- (a) an entity may apply for registration of plant expenditure incurred, or proposed to be incurred, by the entity in carrying out a project in Australia;
- (b) the Development Allowance Authority (**DAA**) will register the expenditure if certain criteria are satisfied;
- (c) if the expenditure is in respect of the acquisition or construction of plant—the DAA will issue a certificate pre-qualifying the expenditure for the tax incentive known as development allowance if:
  - (i) the expenditure has been registered; and
  - (ii) a substantial commitment to the completion of the project has occurred before 1 July 1996; and
  - (iii) certain other criteria are satisfied.
- (d) if the expenditure is in respect of the lease of plant—the DAA will issue a certificate pre-qualifying the lessor's expenditure for the tax incentive known as development allowance if:
  - (i) the lessee's expenditure has been registered; and
  - (ii) a substantial commitment to the completion of the project has occurred before 1 July 1996; and
  - (iii) certain other criteria are satisfied.

## 5 Example of how this Chapter will work

*[Typical example—new factory]*

- (1) This section sets out an example of how this Chapter will work in a typical case involving the establishment of a new factory.

NEW FACTORY			
item of plant “A”	item of plant “B”	item of plant “C”	ancillary items of plant

*[Step 1—proposal to establish a new factory]*

- (2) During the 3rd quarter of 1992, a manufacturing company develops a serious, commercially viable proposal to carry out a project consisting of the establishment of a new factory in Australia. The project involves the company incurring expenditure in acquiring new plant for use in the factory. The elements of the plant expenditure are:
- major items of plant “A”, “B” and “C”, which are the main components of the production line; and
  - ancillary items of plant (such as light fittings, ventilation equipment and pollution control devices).

The factory will be used by the company to produce goods for sale. The company will derive assessable income from the sale of the manufactured goods. Both the effective and nominal rates of industry assistance are less than 10%. The total capital cost of the project (including the plant expenditure and the cost of constructing the factory building) is \$65 million. The projected timetable for the project is as follows:

- regulatory approvals obtained—March 1993
- first contracts entered into—April/May 1993
- construction of factory commences—June 1993

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- plant installed in factory—May 1994
- factory in operation—June 1994.

*[Step 2—application for registration of plant expenditure]*

- (3) On 20 November 1992, the company applies to the DAA for registration of the plant expenditure proposed to be incurred by the company in carrying out the project.

*[Step 3—grant of registration of plant expenditure]*

- (4) The DAA grants registration. The registration is subject to a condition requiring the company to give to the DAA, before 1 July 1995, certified copies of the relevant regulatory approvals.

*[Step 4—application for pre-qualifying certificate relating to plant expenditure]*

- (5) By October 1993, a substantial commitment to the completion of the project has occurred and the company has complied with the condition of the registration relating to the giving of certified copies of relevant regulatory approvals. It is reasonably likely that the competitiveness test set out in Division 4 of Part 2 will be passed. On 28 October 1993, the company applies to the DAA for a pre-qualifying certificate in relation to the registered plant expenditure.

*[Step 5—grant of pre-qualifying certificate relating to plant expenditure]*

- (6) The DAA grants a pre-qualifying certificate relating to the plant expenditure.

*[Step 6—tax effects of certificate]*

- (7) The pre-qualifying certificate pre-qualifies the plant expenditure for the tax incentive known as development allowance.

## 6 Interpretation

In this Chapter, unless the contrary intention appears:

**acquisition**, in relation to property, has the same meaning as in section 82AQ of the Tax Act.

**ancillary printing unit** means any of the following units, where the unit is ancillary to a printing unit:

- (a) a plate-making unit;
- (b) a bromide-making unit;
- (c) a paper handling or storage unit;
- (d) a unit for placing inserts in newspapers, magazines or periodicals;
- (e) a unit for packaging newspapers, magazines or periodicals;
- (f) a printing-waste handling or storage unit;
- (g) a printing-ink handling or storage unit.

**approved** means approved in writing by the DAA.

**Australia** has the same meaning as in Subdivision B of Division 3 of Part III of the Tax Act.

**Australian space object** has the same meaning as in the *Radiocommunications Act 1992*.

**basic eligibility test** has the meaning given by section 15.

**business services industry** means an industry of engaging in the provision of any of the following services to business on a contract basis:

- (a) architectural, surveying or similar technical services;
- (b) accountancy or legal services;
- (c) data processing or other office services;
- (d) advertising;
- (e) market research;
- (f) management consultancy services;
- (g) credit assessing or reporting services;
- (h) pest control of business premises;
- (i) cleaning of business premises;

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(j) caretaking or security services.

***carrying out a project*** has the meaning given by section 7.

***certificate*** means a pre-qualifying certificate in relation to expenditure granted under Part 4 or 6.

***certified copy***, in relation to a document, means a copy of the document which is accompanied by a statutory declaration that:

- (a) is in the approved form; and
- (b) relates to the accuracy of the copy; and
- (c) is made by the person designated by the form as the signatory.

***company*** has the same meaning as in section 6 of the Tax Act, but does not include a company in a capacity of trustee.

***company group project scheme*** has the meaning given by section 14.

***competitiveness test*** has the meaning given by section 17.

***component***, in relation to a motor vehicle, includes an assembly.

***construction*** has the same meaning as in section 82AQ of the Tax Act.

***DAA*** means the Development Allowance Authority appointed under this Act.

***discrete project test*** has the meaning given by section 9.

***eligible print media installation*** means so much of a print media installation as consists of:

- (a) a printing unit; or
- (b) an ancillary printing unit.

***entity*** means:

- (a) a company; or
- (b) a partnership; or
- (c) a person in a particular capacity of trustee; or
- (d) any other person.



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***facility*** includes:

- (a) a factory; or
- (b) a mine or quarry; or
- (c) a wharf or other port facility; or
- (d) an hotel; or
- (e) a passenger terminal; or
- (f) a freight distribution facility; or
- (g) an integrated transport fleet; or
- (h) a pipeline.

***financial services industry*** includes the insurance industry.

***goods*** has the same meaning as in section 317 of the Tax Act.

***gross capital expenditure*** has the meaning given by section 19.

***group company*** has the same meaning as in subsection 160ZZO(3A) of the Tax Act.

***individual project scheme*** has the meaning given by section 14A.

***industry or activity which benefits from a substantial level of industry assistance*** has the meaning given by section 16.

***ineligible print media installation*** means so much of a print media installation as does not consist of an eligible print media installation.

***joint venture*** means an enterprise carried on by 2 or more entities in common otherwise than in partnership.

***joint venture project*** has the meaning given by section 13.

***joint venture project scheme*** has the meaning given by section 13A.

***leasing company*** has the same meaning as in section 82AQ of the Tax Act.

***long-term lease agreement*** has the same meaning as in section 82AQ of the Tax Act.

***member of a company group*** has the meaning given by section 14.

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***motor vehicle*** means a vehicle that:

- (a) uses, or is designed to use, volatile spirit, gas, oil, electricity or any other power (not being human or animal power) as the principal means of propulsion; and
- (b) is designed solely or principally for the transport on public roads of people, animals or goods.

***motor vehicle component*** means a component to be used in the manufacture of a motor vehicle, and includes a component of such a component.

***motor vehicle industry*** means the industry of engaging in the manufacture of:

- (a) motor vehicles; or
- (b) motor vehicle components.

***motor vehicle industry activity*** means an activity which forms part of the motor vehicle industry.

***new*** has the same meaning as in section 82AQ of the Tax Act.

***partnership*** has the same meaning as in section 6 of the Tax Act.

***plant*** means eligible property within the meaning of section 82AQ of the Tax Act, but does not include property covered by section 82AE or 82AF of the Tax Act.

***plant expenditure*** means either or both of the following types of expenditure:

- (a) expenditure in respect of the acquisition or construction of a new unit of plant;
- (b) expenditure incurred by a lessee in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company.

***post-26 February 1992 project*** has the meaning given by section 21.

***print media installation*** means a productive facility, or a part of a productive facility, that is wholly or principally for use by the operator of the facility in or in connection with the operator's capacity as a participant in the print media industry.

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***production***, in relation to goods, includes extraction, processing or treatment.

***productive facility*** has the meaning given by section 8.

***prospective deduction test*** has the meaning given by section 22.

***registration*** means registration of plant expenditure under Part 3.

***\$50 million threshold test*** has the meaning given by section 18.

***services*** has the same meaning as in section 317 of the Tax Act.

***substantial commitment to the completion of a project*** has the meaning given by section 20.

***Tax Act*** means the *Income Tax Assessment Act 1936*.

***trustee*** has the same meaning as in section 6 of the Tax Act, and includes an entity that is taken to be a trustee because of section 268 of the Tax Act

***vehicle*** means any means of conveyance which runs on wheels, but does not include a vehicle used on a railway or tramway

***vertical integration test*** has the meaning given by section 10.

## **Part 2—Key concepts relating to projects**

### **Division 1—Carrying out a project**

#### **7 Meaning of *carrying out a project***

For the purposes of this Chapter, an entity carries out a project in Australia if, and only if, the entity:

- (a) establishes a new productive facility in Australia; or
- (b) establishes 2 or more new productive facilities in Australia where:
  - (i) the facilities pass the discrete project test; or
  - (ii) the facilities pass the vertical integration test; or
- (c) expands, improves or upgrades an existing productive facility in Australia where the expansion, improvement or upgrade is carried out:
  - (i) to improve substantially the productivity or capacity of the facility; or
  - (ii) to minimise the effect of the operation of the facility on the environment; or
- (d) expands, improves or upgrades 2 or more existing productive facilities in Australia where:
  - (i) the expansions, improvements or upgrades are carried out:
    - (A) to improve substantially the productivity or capacity of the facilities; or
    - (B) to minimise the effect of the operation of the facilities on the environment; and
  - (ii) either:
    - (A) the facilities pass the discrete project test; or
    - (B) the facilities pass the vertical integration test.

#### **8 Meaning of *productive facility***

For the purposes of the application of this Chapter to an entity, a facility is a productive facility if, and only if:

- (a) it is wholly or principally for use by the operator of the facility in carrying out one or more steps in:

- (i) the production or distribution, or both, of the same goods or related goods; or
- (ii) the provision of the same services or related services; and
- (b) either:
  - (i) the entity operates, or is to operate, the facility; or
  - (ii) both:
    - (A) the entity is a leasing company; and
    - (B) the facility is leased, or for lease, by the entity to another entity who operates, or is to operate, the facility.

## **9 When productive facilities pass the discrete project test**

For the purposes of this Chapter, 2 or more productive facilities pass the discrete project test if:

- (a) either:
  - (i) the facilities are located on the same premises; or
  - (ii) the facilities are located on contiguous premises; and
- (b) each facility is wholly or principally for use by the operator of the facility in carrying out the same step, or the same series of steps, in:
  - (i) the production or distribution, or both, of the same goods or related goods; or
  - (ii) the provision of the same services or related services.

## **10 When productive facilities pass the vertical integration test**

For the purposes of this Chapter, 2 or more productive facilities pass the vertical integration test if each facility is wholly or principally for use by the operator of the facility in carrying out a different step, or a series of different steps, in:

- (a) the vertically integrated production or distribution, or both, of the same goods or related goods; or
- (b) the vertically integrated provision of the same services or related services.

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### **11 DAA may direct that activities carried out by an entity are to be treated as the establishment of a new productive facility**

If:

- (a) one or more activities carried out by an entity do not consist of the establishment by the entity of a new productive facility in Australia; and
- (b) the activities are related directly or indirectly to a productive facility in Australia; and
- (c) the DAA is satisfied that, because of special circumstances, it would be unreasonable not to treat the whole or a part of the activities as the establishment by the entity of a new productive facility in Australia;

the DAA may give the entity a written direction that this Chapter has, and is taken to have had effect, as if the whole, or the part, as the case may be, of those activities were the establishment by the entity of a new productive facility in Australia.

### **12 Australian space objects deemed to be in Australia**

For the purposes of this Chapter, an Australian space object is taken to be in Australia.

## Division 2—Joint venture projects, joint venture project schemes, company group project schemes and individual project schemes

### 13 Joint venture projects

- (1) For the purposes of this Chapter, if, assuming that the parties to a joint venture were partners in a partnership, the partnership would be taken to carry out a project in Australia, the project is taken to be a joint venture project.
- (2) For the purposes of this Chapter, the part of a joint venture project carried out by an entity who is a party to the joint venture is taken to be a project carried out by the entity in Australia.

Example:

JOINT VENTURE PROJECT	
entity A's project = entity A's part of the joint venture project	entity B's project = entity B's part of the joint venture project

- (3) Subsection (2) has effect in spite of section 7.

### 13A Joint venture project schemes

*[Election to treat aggregate of joint venture projects as joint venture project scheme]*

- (1) For the purposes of this Chapter, the parties to a joint venture may elect that the aggregate of 2 or more specified joint venture projects carried out by the parties to the joint venture is to be treated as a joint venture project scheme.

Example:

joint venture project "A"	+	joint venture project "B"	=	joint venture project scheme
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*[Productive facilities must pass the vertical integration test]*

- (2) The election has no effect unless, assuming that the productive facilities included in the scheme were operated by the same entity, the productive facilities would be taken to pass the vertical integration test.

*[Form of election]*

- (3) The election:
- (a) is to be given to the DAA; and
  - (b) must be in writing in the approved form.

*[Election is irrevocable]*

- (4) The election is irrevocable, but this subsection does not prevent the DAA from granting an application under Part 5 for a variation of a scheme.

## 14 Company group project schemes

*[Election to treat aggregate of individual projects as company group project scheme]*

- (1) For the purposes of this Chapter, 2 or more companies who are members of a company group may elect that the aggregate of 2 or more specified projects carried out individually by the companies is to be treated as a company group project scheme.

Example:



*[Productive facilities must pass the vertical integration test]*

- (2) The election has no effect unless, assuming that the productive facilities included in the scheme were operated by the same company, the productive facilities would be taken to pass the vertical integration test.



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*[Membership of company group]*

- (3) For the purposes of this Chapter, 2 or more companies are members of a company group if, and only if, each of the companies is a group company in relation to each of the other companies.

*[Form of election]*

- (4) The election:
- (a) is to be given to the DAA; and
  - (b) must be in writing in the approved form.

*[Election is irrevocable]*

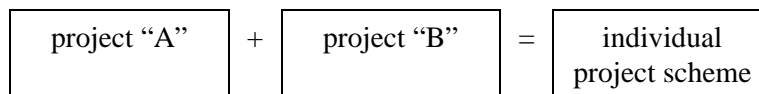
- (5) The election is irrevocable, but this subsection does not prevent the DAA from:
- (a) granting an application under Part 5 for a variation of a scheme; or
  - (b) granting an application under Division 1 of Part 6 for transfer of the benefits of a registration or certificate relating to a project which forms part of a scheme.

## 14A Individual project schemes

*[Election to treat aggregate of projects as individual project scheme]*

- (1) For the purposes of this Chapter, an entity may elect that the aggregate of 2 or more specified projects carried out by the entity is to be treated as an individual project scheme.

Example:



*[Productive facilities must pass the vertical integration test]*

- (2) The election has no effect unless the productive facilities included in the scheme pass the vertical integration test.

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*[Form of election]*

- (3) The election:
- (a) is to be given to the DAA; and
  - (b) must be in writing in the approved form.

*[Election is irrevocable]*

- (4) The election is irrevocable, but this subsection does not prevent the DAA from:
- (a) granting an application under Part 5 for a variation of a scheme; or
  - (b) granting an application under Division 1 of Part 6 for transfer of the benefits of a registration or certificate relating to a project which forms part of a scheme.

## **Division 3—Basic eligibility test**

### **15 Basic eligibility test for project expenditure**

For the purposes of this Chapter, if:

- (a) expenditure is incurred, or proposed to be incurred, in:
  - (i) establishing a new productive facility; or
  - (ii) expanding, improving or upgrading an existing productive facility; and
- (b) either:
  - (i) the whole of the productive facility; or
  - (ii) a part of the productive facility;  
is an ineligible print media installation or is wholly or principally for use by the operator of the facility:
  - (iii) as office accommodation; or
  - (iv) as residential accommodation for persons other than tourists or travellers; or
  - (v) in or in connection with the operator's capacity as a participant in any of the following industries:
    - (A) the financial services industry;
    - (B) the business services industry;
    - (D) the electronic media industry;
    - (E) the retail industry;
    - (F) the wholesale industry; or
  - (vi) in or in connection with the operator's capacity as a participant in an industry, or an activity, which benefits from a substantial level of industry assistance (other than the motor vehicle industry or a motor vehicle industry activity);

then:

- (c) if subparagraph (b)(i) applies—the whole of the expenditure fails the basic eligibility test; or
- (d) if subparagraph (b)(ii) applies—so much of the expenditure as is attributable to that part of the productive facility fails the basic eligibility test.

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**16 When industries or activities benefit from a substantial level of industry assistance**

- (1) For the purposes of this Chapter, an industry or activity is taken to benefit from a substantial level of industry assistance if, and only if, the DAA is satisfied that the lower of:
  - (a) the nominal rate of industry assistance from all levels of government; or
  - (b) the effective rate of industry assistance from all levels of government;is more than 10%.
- (2) For the purposes of this section, a rate is to be worked out:
  - (a) using the method used by the Productivity Commission; and
  - (b) on the assumption that levels of industry assistance are equal to the levels that the government concerned proposes to apply on 1 July 1996.

## **Division 4—Competitiveness test**

### **17 Competitiveness test for project expenditure**

For the purposes of this Chapter, expenditure incurred, or proposed to be incurred, by an entity in carrying out a project passes the competitiveness test if the DAA is satisfied that:

- (a) in any case:
  - (i) the labour relations aspects of the carrying out of the project substantially reflect world best practice; and
  - (ii) the labour relations aspects of the operation of the productive facility or facilities concerned substantially reflect world best practice; and
  - (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of the productive facility or facilities concerned are economic and efficient; and
- (b) if the project is part of a joint venture project:
  - (i) the labour relations aspects of the carrying out of the joint venture project substantially reflect world best practice; and
  - (ii) the labour relations aspects of the operation of the productive facility or facilities to which the joint venture project relates substantially reflect world best practice; and
  - (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of the productive facility or facilities to which the joint venture project relates are economic and efficient; and
- (ba) if the project is part of a joint venture project scheme:
  - (i) the labour relations aspects of the carrying out of each other joint venture project to which the scheme relates substantially reflect world best practice; and
  - (ii) the labour relations aspects of the operation of each other productive facility or facilities to which the scheme relates substantially reflect world best practice; and

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- (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of each other productive facility or facilities to which the scheme relates are economic and efficient; and
- (c) if the project is part of a company group project scheme:
  - (i) the labour relations aspects of the carrying out of each other project to which the scheme relates substantially reflect world best practice; and
  - (ii) the labour relations aspects of the operation of each other productive facility or facilities to which the scheme relates substantially reflect world best practice; and
  - (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of each other productive facility or facilities to which the scheme relates are economic and efficient; and
- (d) if the project is part of an individual project scheme:
  - (i) the labour relations aspects of the carrying out of each other project to which the scheme relates substantially reflect world best practice; and
  - (ii) the labour relations aspects of the operation of each other productive facility or facilities to which the scheme relates substantially reflect world best practice; and
  - (iii) the prices of significant inputs (other than labour and capital inputs) for use in the operation of each other productive facility or facilities to which the scheme relates are economic and efficient.

## **Division 5—\$50 million threshold test**

### **18 \$50 million threshold test for project expenditure**

For the purposes of this Chapter, expenditure incurred, or proposed to be incurred, by an entity in carrying out a project passes the \$50 million threshold test if:

- (a) if the project is part of a joint venture project but not part of a joint venture project scheme—the sum of:
  - (i) the gross capital expenditure incurred by the entity in respect of carrying out that part of the project; and
  - (ii) the gross capital expenditure incurred by each other party to the joint venture in respect of carrying out each other part of the joint venture project;is \$50 million or more; or
- (aa) if the project is both part of a joint venture project and part of a joint venture project scheme—the sum of:
  - (i) the gross capital expenditure incurred by the entity in respect of carrying out that part of the project; and
  - (ii) the gross capital expenditure incurred by the entity and by each other party to the joint venture in respect of carrying out each other part or parts of the joint venture project scheme;is \$50 million or more; or
- (b) if the project is part of a company group project scheme—the sum of:
  - (i) the gross capital expenditure incurred by the entity in respect of carrying out the project; and
  - (ii) the gross capital expenditure incurred by each other group company in respect of carrying out the other project or projects to which the scheme relates;is \$50 million or more; or
- (ba) if the project is part of an individual project scheme—the sum of:
  - (i) the gross capital expenditure incurred by the entity in respect of carrying out the project; and

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- (ii) the gross capital expenditure incurred by the entity in respect of carrying out the other project or projects to which the scheme relates;  
is \$50 million or more; or
- (c) in any other case—the gross capital expenditure incurred by the entity in respect of carrying out the project is \$50 million or more.

### 19 Gross capital expenditure

#### *[Gross capital expenditure]*

- (1) Subject to this section, for the purposes of this Chapter, the gross capital expenditure incurred by an entity in respect of carrying out a project is the sum of:
  - (a) in any case—the total expenditure of a capital nature incurred by the entity in respect of carrying out the project; and
  - (b) if:
    - (i) the entity has incurred other expenditure of a capital nature which is related directly or indirectly to the carrying out of the project; and
    - (ii) the DAA is satisfied that, because of special circumstances, it would be unreasonable not to treat the whole or a part of that other expenditure as gross capital expenditure incurred by the entity in respect of carrying out the project;the whole, or the part, as the case may be, of that other expenditure.

#### *[Leased plant—lessor's capital expenditure attributed to lessee]*

- (1A) If:
  - (a) an entity incurs plant expenditure in carrying out a project; and
  - (b) the expenditure is incurred in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company;the expenditure of a capital nature incurred by the lessor in respect of the acquisition or construction by the lessor of the unit of plant



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is taken, for the purposes of subsection (1), to be expenditure of a capital nature incurred by the entity in respect of carrying out the project.

*[Other leased property—lessor's capital expenditure attributed to lessee]*

(1B) If:

- (a) an entity incurs expenditure as a lessee in respect of the lease of property (other than plant) under a long-term lease agreement where the lessor is a leasing company; and
- (b) assuming that the expenditure had been incurred by the entity in respect of the acquisition of the property instead of in respect of the lease of the property, the expenditure would have been expenditure of a capital nature incurred by the entity in respect of carrying out a project;

the expenditure of a capital nature incurred by the lessor in respect of the acquisition or construction by the lessor of the property is taken, for the purposes of subsection (1), to be expenditure of a capital nature incurred by the entity in respect of carrying out the project.

*[Expenditure does not count if it fails the basic eligibility test]*

- (2) Subsection (1) does not apply to expenditure to the extent to which the expenditure fails the basic eligibility test. Subsections (1A) and (1B) do not apply to expenditure incurred by the lessor to the extent to which the expenditure would have failed the basic eligibility test if it had been incurred by the entity in carrying out the project.

*[Recouped expenditure does not count]*

- (3) Subsection (1) does not apply to expenditure if the entity is recouped, or becomes entitled to be recouped, in respect of the expenditure. Subsections (1A) and (1B) do not apply to expenditure if the lessor is recouped, or becomes entitled to be recouped, in respect of the expenditure.

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*[Dissection of recoupment]*

- (4) If an entity receives, or becomes entitled to receive, an amount that constitutes to an unspecified extent a recoupment of expenditure, the DAA may, for the purposes of subsection (3), determine the extent to which that amount constitutes a recoupment of that expenditure.

*[Non-arm's length transactions]*

- (5) If the DAA is satisfied that:
- (a) an entity has incurred expenditure in connection with a transaction where the parties to the transaction are not dealing with each other at arm's length in relation to the transaction; and
  - (b) the amount of the expenditure is greater or less than is reasonable;
- the amount of the expenditure is taken, for the purposes of this section, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.

## **Division 6—Substantial commitment to completion of a project**

### **20 Substantial commitment to completion of a project—relevant factors**

In determining whether a substantial commitment to the completion of a project has occurred, or is reasonably likely to occur, before a particular date, the DAA must have regard to:

- (a) in any case:
  - (i) the physical work that has been undertaken in carrying out the project before that date; and
  - (ii) the nature of the contracts that have been entered into before that date in relation to the project; and
  - (iii) in the case of a project consisting of the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facility or facilities; and
  - (iv) such other matters as the DAA considers relevant; and
- (b) if the project is part of a joint venture project:
  - (i) the physical work that has been undertaken in carrying out the joint venture project before that date; and
  - (ii) the nature of the contracts that have been entered into before that date in relation to the joint venture project; and
  - (iii) in the case of a joint venture project consisting of the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facility or facilities; and
  - (iv) such other matters as the DAA considers relevant; and
- (ba) if the project is part of a joint venture project scheme:

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- (i) the physical work that has been undertaken in carrying out each other joint venture project to which the scheme relates before that date; and
  - (ii) the nature of the contracts that have been entered into before that date in relation to each other joint venture project to which the scheme relates; and
  - (iii) in the case of a scheme which involves the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facilities; and
  - (iv) such other matters as the DAA considers relevant; and
- (c) if the project is part of a company group project scheme:
  - (i) the physical work that has been undertaken in carrying out each other project to which the scheme relates before that date; and
  - (ii) the nature of the contracts that have been entered into before that date in relation to each other project to which the scheme relates; and
  - (iii) in the case of a scheme which involves the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facilities; and
  - (iv) such other matters as the DAA considers relevant; and
- (d) if the project is part of an individual project scheme:
  - (i) the physical work that has been undertaken in carrying out each other project to which the scheme relates before that date; and
  - (ii) the nature of the contracts that have been entered into before that date in relation to each other project to which the scheme relates; and
  - (iii) in the case of a scheme which involves the expansion, improvement or upgrading of a productive facility or facilities—the physical progress made before that date in relation to the installation of new plant for use in the expanded, improved or upgraded facilities; and
  - (iv) such other matters as the DAA considers relevant.

## **Division 7—Post-26 February 1992 projects**

### **21 Post-26 February 1992 projects**

For the purposes of the application of this Chapter to expenditure incurred, or proposed to be incurred, in carrying out a project, the project is taken to be a post-26 February 1992 project unless:

- (a) in any case:
  - (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of the project—any such construction commenced before 27 February 1992; or
  - (ii) in all cases—a contract for the acquisition of any new plant which formed, or is to form, part of the project was entered into before 27 February 1992; and
- (b) if the project is part of a joint venture project:
  - (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of the joint venture project—any such construction commenced before 27 February 1992; or
  - (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of the joint venture project was entered into before 27 February 1992; and
- (ba) if the project is part of a joint venture project scheme:
  - (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of another joint venture project to which the scheme relates—any such construction commenced before 27 February 1992; or
  - (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of another joint venture project to which the scheme relates was entered into before 27 February 1992; and

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- (c) if the project is part of a company group project scheme:
  - (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of another project to which the scheme relates—any such construction commenced before 27 February 1992; or
  - (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of another project to which the scheme relates was entered into before 27 February 1992; and
- (d) if the project is part of an individual project scheme:
  - (i) in a case where the construction of a building or structure, or the construction of an alteration, improvement or extension to a building or structure, formed, or is to form, part of another project to which the scheme relates—any such construction commenced before 27 February 1992; or
  - (ii) in any case—a contract for the acquisition of any new plant which formed, or is to form, part of another project to which the scheme relates was entered into before 27 February 1992.

## **Division 8—Prospective deduction test**

### **22 Prospective deduction test**

For the purposes of the application of this Chapter to expenditure incurred, or proposed to be incurred, by an entity in carrying out a project, the expenditure passes the prospective deduction test if the DAA is satisfied that, assuming that:

- (a) the entity were to incur the expenditure and complete the carrying out of the project; and
- (b) the DAA were to issue a certificate in the name of the entity in relation to the expenditure; and
- (c) sections 82AC and 82AD of the *Income Tax Assessment Act 1936* and section 26-55 of the *Income Tax Assessment Act 1997* had not been enacted;

it is reasonably arguable that:

- (d) to the extent that the expenditure is incurred in respect of the acquisition or construction of a new unit of plant—a deduction will be allowable to the entity under section 82AB of the *Income Tax Assessment Act 1936* in respect of the expenditure; and
- (e) to the extent that the expenditure is incurred in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company—a deduction will be allowable to the leasing company under section 82AB of the *Income Tax Assessment Act 1936* in respect of the expenditure of a capital nature incurred by the leasing company in respect of the acquisition or construction by the leasing company of the unit of plant.

### **23 Application of Tax Act to prospective deduction test**

In applying the prospective deduction test, the DAA may make such assumptions as appear to the DAA to be reasonable about:

- (a) the exercise by the Commissioner of Taxation of any power conferred by:
  - (i) Part IVA of the Tax Act (which deals with tax avoidance schemes); and

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- (ii) any other provision of the Tax Act; and
- (b) the attainment by the Commissioner of Taxation of any state of mind relevant to the application of any provision of the Tax Act.



## **Division 9—Specification of project and specification of plant expenditure**

### **24 Specification of project and specification of plant expenditure**

*[Documents to which this section applies]*

- (1) This section applies to the following documents:
  - (a) an application made by an entity under this Chapter;
  - (b) a registration;
  - (c) a certificate.

*[Specification of project]*

- (2) The specification of a project in a document must be sufficiently detailed so as to enable the project, and the constituent elements of the project, to be clearly identified.

*[Specification of plant expenditure]*

- (3) The specification of plant expenditure in a document:
  - (a) must be made by reference to a description of the nature, use, proposed use or other attributes of the unit or units of plant concerned (whether that description relates to individual units of plant or to units of plant included in a particular class of units of plant); and
  - (b) must not be made by reference to a dollar amount.

*[Example of specification of plant expenditure]*

- (4) The following is an example of the specification of plant expenditure in a case involving a project consisting of the establishment of a combined office block/hotel where:
  - (a) some units of plant (such as hotel furniture and fittings) are exclusively for use in the hotel; and
  - (b) other units of plant (such as central air-conditioning plant) are for use in connection with both the office accommodation and the hotel.

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Example:

***Specification of plant expenditure covered by paragraph (a)***

“Expenditure proposed to be incurred in respect of the acquisition of the new units of plant described in Part A of the Schedule to this [document], where the expenditure is proposed to be incurred in carrying out the [specified] project”.

***Plant expenditure covered by paragraph (b)***

“So much of the expenditure proposed to be incurred in respect of the acquisition of the new units of plant described in Part B of the Schedule to this [document] as is attributable to the [specified hotel part], where the expenditure is proposed to be incurred in carrying out the [specified] project”.

**Division 10—Plant expenditure to be incurred wholly or  
principally in carrying out a project**

**25 Plant expenditure to be incurred wholly or principally in  
carrying out a project**

For the purposes of this Chapter, expenditure incurred in respect of the acquisition or construction of a particular unit of plant is incurred in carrying out a project if, and only if, it is incurred wholly or principally in carrying out the project.

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**Division 11—Plant expenditure incurred in respect of the lease of new units of plant**

**25A Plant expenditure incurred in respect of the lease of new units of plant**

*[Section applies to lease expenditure]*

- (1) This section applies if an entity incurs, or proposes to incur, plant expenditure in respect of the lease of a new unit of plant under a long-term lease agreement where the lessor is a leasing company.

*[When expenditure incurred in carrying out a project]*

- (2) For the purposes of this Chapter, in testing whether the expenditure is incurred, or proposed to be incurred, in carrying out a project, it is to be assumed that the entity had incurred, or proposed to incur, the expenditure in respect of the acquisition of the unit of plant instead of in respect of the lease of the unit of plant.

*[Periodic lease payments deemed to be incurred when earliest payment incurred]*

- (3) For the purposes of this Chapter, if, apart from this subsection, the expenditure is incurred on a periodic basis, all of the expenditure is taken to have been incurred at the earliest time at which any of the expenditure was incurred.

**Division 12—Proposal to incur plant expenditure in carrying out a project counts even if no decision made about whether to acquire, construct or lease the plant**

**25B Proposal to incur plant expenditure in carrying out a project counts even if no decision made about whether to acquire, construct or lease the plant**

- (1) For the purposes of this Chapter, a proposal to incur plant expenditure in carrying out a project counts even if the entity concerned has not decided whether to acquire, construct or lease the unit or units of plant.
- (2) The expression “as the case may be” may be used in a document under this Act to denote such a state of indecision. For example, “expenditure proposed to be incurred in respect of the acquisition, construction or lease, as the case may be, of the new units of plant described in Part A of the Schedule to this [document]”.

## **Part 3—Registration of plant expenditure**

### **26 Applications for registration of plant expenditure**

An entity may apply to the DAA for registration of the whole or a specified part of plant expenditure incurred, or proposed to be incurred, by the entity in carrying out a project in Australia.

### **27 Timing of application**

- (1) Subject to subsection (2), an application is to be given to the DAA before 1 January 1993.
- (2) If either of the following paragraphs applies to an application for registration of expenditure:
  - (a) the expenditure passes the basic eligibility test only because the motor vehicle industry and motor vehicle industry activities are excluded from subparagraph 15(b)(vi);
  - (b) the expenditure is attributable to an eligible print media installation;the application is to be given to the DAA before whichever is the later of:
  - (c) the 29th day after the day on which the *Development Allowance Authority Amendment Act 1993* received the Royal Assent; or
  - (d) 1 October 1993.

### **28 Form of application etc.**

- (1) The application must be in writing in the approved form.
- (2) The application must contain such information about the expenditure and the project as is required by the form to be given.
- (4) The application must be accompanied by a report.
- (5) The report must be in writing in the approved form.
- (6) The report is to be about:
  - (a) the expenditure and the project; and

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- (b) if the project is part of a joint venture project—the joint venture project; and
  - (ba) if the project is part of a joint venture project scheme—the scheme; and
  - (c) if the project is part of a company group project scheme—the scheme; and
  - (ca) if the project is part of an individual project scheme—the scheme; and
  - (d) such other matters as are specified in the form.
- (6A) The application and accompanying report must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:
- (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
  - (b) in any other case—the natural person designated by the form as the signatory.
- (7) Information relating to the likelihood of the expenditure passing the competitiveness test is taken to be relevant to the application.
- (8) All of the applications relating to a joint venture project must be set out in the same document.
- (8A) All of the applications relating to a joint venture project scheme must be set out in the same document.
- (9) All of the applications relating to a company group project scheme must be set out in the same document.
- (10) All of the applications relating to an individual project scheme must be set out in the same document.

**29 DAA may refuse to consider application unless applicant gives information etc. requested by DAA**

If the DAA gives a request to the applicant under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

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**30 DAA's decision on application**

- (1) After considering the application, the DAA must decide to:
  - (a) grant the application; or
  - (b) refuse the application.
- (2) The DAA must give written notice of the decision to the applicant.
- (3) A notice of a refusal must set out reasons for the refusal.

**31 Criteria for granting application**

The DAA must grant an application for registration of plant expenditure incurred, or proposed to be incurred, by the applicant in carrying out a project in Australia if the DAA is satisfied that:

- (a) in the case of plant expenditure which the applicant claims to have incurred in carrying out the project—the plant expenditure has been incurred by the applicant in carrying out the project; and
- (b) in the case of plant expenditure which the applicant claims to propose to incur in carrying out the project—the proposal is genuine; and
- (c) the project is a post-26 February 1992 project; and
- (d) no part of the plant expenditure fails the basic eligibility test; and
- (e) either:
  - (i) a substantial commitment to the completion of the project has occurred before 1 January 1993; or
  - (ii) it is reasonably likely that a substantial commitment to the completion of the project will occur before 1 July 1996; and
- (f) either:
  - (i) the plant expenditure has passed the \$50 million threshold test; or
  - (ii) it is reasonably likely that the plant expenditure will pass the \$50 million threshold test; and
- (g) either:
  - (i) the applicant has completed the carrying out of the project; or



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- (ii) having regard to:
  - (A) the financial capacity of the applicant; and
  - (B) such other matters as the DAA considers relevant;it is reasonably likely that the applicant will complete the carrying out of the project; and
- (h) if the project is part of a joint venture project—either:
  - (i) the parties to the joint venture have completed the carrying out of the joint venture project; or
  - (ii) having regard to:
    - (A) the financial capacity of the parties to the joint venture; and
    - (B) such other matters as the DAA considers relevant;it is reasonably likely that the parties to the joint venture will complete the carrying out of the joint venture project; and
- (ha) if the project is part of a joint venture project scheme—either:
  - (i) the parties to the joint venture have completed the carrying out of each other joint venture project or joint venture projects to which the scheme relates; or
  - (ii) having regard to:
    - (A) the financial capacity of the parties to the joint venture; and
    - (B) such other matters as the DAA considers relevant;it is reasonably likely that the parties to the joint venture will complete the carrying out of the other joint venture project or joint venture projects to which the scheme relates; and
- (i) if the project is part of a company group project scheme—either:
  - (i) the other member or members of the company group have completed the carrying out of the other project or projects to which the scheme relates; or
  - (ii) having regard to:

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- (A) the financial capacity of the other member or members of the company group; and
  - (B) such other matters as the DAA considers relevant;
- it is reasonably likely that the other member or members of the company group will complete the carrying out of the other project or projects to which the scheme relates; and
- (ia) if the project is part of an individual project scheme—either:
  - (i) the applicant has completed the carrying out of the other project or projects to which the scheme relates; or
  - (ii) having regard to:
    - (A) the financial capacity of the applicant; and
    - (B) such other matters as the DAA considers relevant;
- it is reasonably likely that the applicant will complete the carrying out of the other project or projects to which the scheme relates; and
- (j) the plant expenditure has passed the prospective deduction test.

### **32 Form of registration**

If an application for registration is granted, the registration must:

- (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the registration relates; and
- (d) specify the plant expenditure to which the registration relates; and
- (e) if the project is part of a joint venture project—specify the joint venture project to which the registration relates; and
- (ea) if the project is part of a joint venture project scheme—specify the scheme to which the registration relates; and
- (f) if the project is part of a company group project scheme—specify the scheme to which the registration relates; and
- (g) if the project is part of an individual project scheme—specify the scheme to which the registration relates.

### **33 Duration of registration**

A registration of plant expenditure in the name of an entity:

- (a) comes into force on the day on which the application for registration is granted; and
- (b) if the entity's application for a certificate relating to the expenditure is granted—ceases to be in force on the day on which that application is granted.

### **34 Conditions of registration**

*[Notice specifying conditions of registration]*

- (1) If the DAA registers plant expenditure in the name of an entity, the DAA may give the entity a written notice specifying conditions to which the registration is subject.

*[Kinds of conditions]*

- (2) Without limiting the kinds of conditions to which a registration may be subject, a registration may be subject to conditions requiring the entity in whose name the registration is held:
  - (a) to notify the DAA in writing of:
    - (i) the occurrence of such events; and
    - (ii) such changes in the entity's circumstances; as are specified in the condition; and
  - (b) to give to the DAA, before 1 July 1995, certified copies of such relevant authorisations, approvals, licences or permits issued under a law of the Commonwealth, a State or a Territory as are specified in the condition.

*[Further conditions; revocation or variation of conditions]*

- (3) The DAA may, by written notice given to an entity in whose name plant expenditure is registered:
  - (a) impose one or more further conditions to which the registration is subject; or
  - (b) revoke or vary a condition:
    - (i) imposed under paragraph (a); or
    - (ii) specified under subsection (1).

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*[Contravention of condition not an offence]*

- (4) It is not an offence to contravene a condition to which a registration is subject.

## **Part 4—Pre-qualifying certificates relating to plant expenditure**

### **35 Application for pre-qualifying certificate**

- (1) If plant expenditure is registered in the name of an entity, the entity may apply to the DAA for a pre-qualifying certificate in relation to the expenditure.
- (2) An entity is not entitled to apply for a pre-qualifying certificate unless the following conditions to which the registration was subject have been satisfied:
  - (a) a condition of a kind mentioned in paragraph 34(2)(b) (which deals with lodgment of final documentation);
  - (b) any other condition, to the extent to which the obligations imposed by the condition arose before the time the application was made.

### **36 Timing of application**

An application is to be given to the DAA before 1 August 1996.

### **37 Form of application**

- (1) The application must be in writing in the approved form.
- (2) The application must contain such information about the expenditure and the project as is required by the form to be given.
- (3) The application must be accompanied by a report.
- (4) The report must be in writing in the approved form.
- (5) The report is to be about:
  - (a) the expenditure and the project; and
  - (b) if the project is part of a joint venture project—the joint venture project; and
  - (ba) if the project is part of a joint venture project scheme—the scheme; and

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- (c) if the project is part of a company group project scheme—the scheme; and
  - (ca) if the project is part of an individual project scheme—the scheme; and
  - (d) such other matters as are specified in the form.
- (5A) The application and accompanying report must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:
  - (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
  - (b) in any other case—the natural person designated by the form as the signatory.
- (6) All of the applications relating to a joint venture project must be set out in the same document.
- (6A) All of the applications relating to a joint venture project scheme must be set out in the same document.
- (7) All of the applications relating to a company group project scheme must be set out in the same document.
- (8) All of the applications relating to an individual project scheme must be set out in the same document.

### **38 DAA may refuse to consider application unless applicant gives information etc. requested by DAA**

If the DAA gives a request to the applicant under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

### **39 DAA's decision on application**

- (1) After considering the application, the DAA must decide to:
    - (a) grant the application; or
    - (b) refuse the application.
  - (2) The DAA must give written notice of the decision to the applicant.
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- (3) A notice of a refusal of an application must set out reasons for the refusal.

#### **40 Criteria for granting application**

The DAA must grant the application if the DAA is satisfied that:

- (a) no part of the expenditure fails the basic eligibility test; and
- (b) a substantial commitment to the completion of the project has occurred before 1 July 1996; and
- (c) if:
  - (i) no substantial commitment to the completion of the project has occurred before 1 January 1993; or
  - (ii) the expenditure:
    - (A) passes the basic eligibility test only because the motor vehicle industry and motor vehicle industry activities are excluded from subparagraph 15(b)(vi); or
    - (B) is attributable to an eligible print media installation;it is reasonably likely that the expenditure will pass the competitiveness test; and
- (d) either:
  - (i) the expenditure has passed the \$50 million threshold test; or
  - (ii) it is reasonably likely that the expenditure will pass the \$50 million threshold test.

#### **41 Form of certificate**

If an application for a certificate is granted, the certificate must:

- (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and
- (e) if the project is part of a joint venture project—specify the joint venture project to which the certificate relates; and

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- (ea) if the project is part of a joint venture project scheme—  
specify the scheme to which the certificate relates; and
- (f) if the project is part of a company group project scheme—  
specify the scheme to which the certificate relates; and
- (g) if the project is part of an individual project scheme—  
specify the scheme to which the certificate relates.



## **Part 5—Variation of registration or certificate**

### **42 Applications for variation**

#### *[Variation of registration]*

- (1) An entity in whose name plant expenditure is registered may apply to the DAA for a variation of any or all of the following:
  - (a) the expenditure;
  - (b) the project to which the registration relates;
  - (c) if the project is part of a joint venture project—the joint venture project to which the registration relates;
  - (ca) if the project is part of a joint venture project scheme—the scheme to which the registration relates;
  - (d) if the project is part of a company group project scheme—the scheme to which the registration relates;
  - (e) if the project is part of an individual project scheme—the scheme to which the registration relates.

#### *[Variation of certificate]*

- (2) An entity who holds a certificate in relation to plant expenditure may apply to the DAA for a variation of any or all of the following:
  - (a) the expenditure;
  - (b) the project to which the certificate relates;
  - (c) if the project is part of a joint venture project—the joint venture project to which the certificate relates;
  - (ca) if the project is part of a joint venture project scheme—the scheme to which the certificate relates;
  - (d) if the project is part of a company group project scheme—the scheme to which the certificate relates;
  - (e) if the project is part of an individual project scheme—the scheme to which the certificate relates.

#### *[Joint ventures]*

- (3) An entity is not entitled to make an application for a variation of a joint venture project, or a joint venture project scheme, to which a

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registration or certificate relates unless each other party to the joint venture makes a corresponding application.

*[Company group project schemes]*

- (4) A company is not entitled to make an application for a variation of a company group project scheme to which a registration or certificate relates unless each of the other members of the company group involved in the scheme make a corresponding application.

### **43 Form of application**

- (1) The application must be in writing in the approved form.
- (2) The application must contain such information as is required by the form to be given.
- (3) The application must be accompanied by a report.
- (4) The report must be in writing in the approved form.
- (5) The report is to be about:
  - (a) the expenditure and the project; and
  - (b) if the project is part of a joint venture project—the joint venture project; and
  - (ba) if the project is part of a joint venture project scheme—the scheme; and
  - (c) if the project is part of a company group project scheme—the scheme; and
  - (ca) if the project is part of an individual project scheme—the scheme; and
  - (d) such other matters as are specified in the form.
- (6) The application and accompanying report must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:
  - (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;

- (b) in any other case—the natural person designated by the form as the signatory.

#### **44 DAA may refuse to consider application unless applicant gives information etc. requested by DAA**

If the DAA gives a request to the applicant under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

#### **45 DAA's decision on application**

- (1) After considering the application, the DAA must decide to:
  - (a) grant the application; or
  - (b) refuse the application.
- (2) The DAA must give written notice of the decision to the applicant.
- (3) A notice of a refusal of an application must set out reasons for the refusal.

#### **46 Criteria for granting application**

*[Variation of expenditure]*

- (1) The DAA must not grant an application for variation of expenditure unless the DAA is satisfied that:
  - (a) in any case—the entity has incurred, or proposes to incur, the varied expenditure in carrying out the same, or substantially the same, project as was specified in the original registration or certificate, as the case may be; and
  - (b) if the entity's project is part of a joint venture project—the varied expenditure relates to the same, or substantially the same, joint venture project as was specified in the original registration or certificate, as the case may be; and
  - (ba) if the entity's project is part of a joint venture project scheme—the varied expenditure relates to the same, or substantially the same, joint venture project scheme as was specified in the original registration or certificate, as the case may be; and

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- (c) if the entity's project is part of a company group project scheme—the varied expenditure relates to the same, or substantially the same, company group project scheme as was specified in the original registration or certificate, as the case may be; and
- (d) if the entity's project is part of an individual project scheme—the varied expenditure relates to the same, or substantially the same, individual project scheme as was specified in the original registration or certificate, as the case may be.

*[Variation of project]*

- (2) The DAA must not grant an application for variation of a project unless the DAA is satisfied that:
  - (a) in any case—the varied project is the same, or substantially the same, project as was specified in the original registration or certificate, as the case may be; and
  - (b) if the entity's project is part of a joint venture project—the varied project relates to the same, or substantially the same, joint venture project as was specified in the original registration or certificate, as the case may be; and
  - (ba) if the entity's project is part of a joint venture project scheme—the varied project relates to the same, or substantially the same, joint venture project scheme as was specified in the original registration or certificate, as the case may be; and
  - (c) if the entity's project is part of a company group project scheme—the varied project relates to the same, or substantially the same, company group project scheme as was specified in the original registration or certificate, as the case may be; and
  - (d) if the entity's project is part of an individual project scheme—the varied project relates to the same, or substantially the same, individual project scheme as was specified in the original registration or certificate, as the case may be.

*[Variation of joint venture project]*

- (3) The DAA must not grant an application for variation of a joint venture project unless the DAA is satisfied that the varied joint venture project is the same, or substantially the same, as the joint venture project specified in the original registration or certificate, as the case may be.

*[Variation of joint venture project scheme]*

- (3A) The DAA must not grant an application for variation of a joint venture project scheme unless the DAA is satisfied that the varied joint venture project scheme is the same, or substantially the same, as the joint venture project scheme specified in the original registration or certificate, as the case may be.

*[Variation of company group project scheme]*

- (4) The DAA must not grant an application for variation of a company group project scheme unless the DAA is satisfied that the varied company group project scheme is the same, or substantially the same, as the company group project scheme specified in the original registration or certificate, as the case may be.

*[Variation of an individual project scheme]*

- (5) The DAA must not grant an application for variation of an individual project scheme unless the DAA is satisfied that the varied individual project scheme is the same, or substantially the same, as the individual project scheme specified in the original registration or certificate, as the case may be.

#### **47 Date of effect of variation**

If the DAA grants the application, the variation has effect in relation to expenditure incurred by the applicant on or after:

- (a) the date of the variation; or
- (b) if the applicant requests—such earlier date as the DAA specifies.

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**48 Variation of project specification**

- (1) If:
  - (a) the DAA grants the application; and
  - (b) the variation involves a change to the nature of the project, joint venture project, joint venture project scheme, company group project scheme or individual project scheme specified in the original registration or certificate, as the case may be;the DAA must vary the specification of the project, joint venture project, joint venture project scheme, company group project scheme or individual project scheme accordingly.
- (2) The variation has effect in relation to expenditure incurred by the applicant on or after:
  - (a) the date of the variation; or
  - (b) if the applicant requests—such earlier date as the DAA specifies.

## **Part 6—Transfer of benefits of registration or certificate**

### **Division 1—Takeovers not involving re-constituted joint ventures or re-constituted partnerships**

#### **49 Application for transfer**

If:

- (a) either of the following applies to an entity (the *transferor*):
  - (i) plant expenditure is registered in the name of the entity;
  - (ii) the entity holds a certificate in relation to plant expenditure; and
- (b) the transferor has ceased, or proposes to cease, to carry out the project concerned; and
- (c) another entity (the *transferee*) has taken over, or proposes to take over, the completion of the project (with or without modification); and
- (d) either:
  - (i) the transferee has incurred, or proposes to incur, plant expenditure in carrying out the completion of the project (with or without modification); or
  - (ii) both:
    - (A) the transferee has incurred, or proposes to incur, expenditure in acquiring from the transferor a unit of plant that was new in the hands of the transferor; and
    - (B) the acquisition has taken place, or will take place, in the course of the transferee's takeover, or proposed takeover, of the completion of the project (with or without modification); and
- (e) the takeover, or proposed takeover, is not covered by Division 2 (which deals with re-constituted joint ventures); and
- (f) the takeover, or proposed takeover, is not covered by Division 3 (which deals with re-constituted partnerships); and

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- (g) if the project was or is part of a company group project scheme:
    - (i) both the transferor and the transferee are members of the company group to which the scheme relates; or
    - (ii) both:
      - (A) the transferee has taken over, or proposes to take over, the completion of each of the projects to which the scheme relates; and
      - (B) applications under this section are made by the transferee and by each of the group companies to which the scheme relates; and
  - (h) if the project was or is part of an individual project scheme—both:
    - (i) the transferee has taken over, or proposes to take over, the completion of each of the projects to which the scheme relates; and
    - (ii) applications under this section are made by the transferee and the transferor in relation to each of the projects to which the scheme relates;
- the transferor and the transferee may jointly apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.

### 50 Form of application

- (1) The application must be in writing in the approved form.
- (2) The application must contain such information as is required by the form to be given.
- (3) The application must be accompanied by a report.
- (4) The report must be in writing in the approved form.
- (5) The application and accompanying report must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:



- (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
- (b) in any other case—the natural person designated by the form as the signatory.

### **51 DAA may refuse to consider application unless applicant gives information etc. requested by DAA**

If the DAA gives a request to an applicant under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

### **52 DAA's decision on application**

- (1) After considering the application, the DAA must decide to:
  - (a) grant the application; or
  - (b) refuse the application.
- (2) The DAA must give written notice of the decision to the applicants.
- (3) A notice of a refusal must set out reasons for the refusal.

### **53 Criteria for granting application**

The DAA must not grant the application unless the DAA is satisfied that:

- (a) the transferor has ceased, or genuinely proposes to cease, to carry out the project; and
- (b) the transferee has taken over, or genuinely proposes to take over, the completion of the project (with or without modification); and
- (c) in the case of plant expenditure which the transferee claims to have incurred in carrying out the completion of the project (with or without modification)—the plant expenditure has been incurred by the transferee in carrying out the project; and

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- (d) in the case of plant expenditure which the transferee claims to propose to incur in carrying out completion of the project (with or without modification)—the proposal is genuine; and
- (e) the transferee has taken over, or is proposing to take over, the completion of the project (with or without modification) for genuine commercial reasons; and
- (f) if the completion of the project has been, or is to be, taken over by the transferee with modifications:
  - (i) in any case—the modified project does not amount to a substantially different project from the transferor’s original project; and
  - (ii) if the transferor’s original project was part of a joint venture project—the modified project is not part of a joint venture project that is substantially different from the original joint venture project; and
  - (iia) if the transferor’s original project was part of a joint venture project scheme—the modified project is not part of a joint venture project scheme that is substantially different from the original joint venture project scheme; and
  - (iii) if the transferor’s original project was part of a company group project scheme—the modified project is not part of a company group project scheme that is substantially different from the original company group project scheme; and
  - (iv) if the transferor’s original project was part of an individual project scheme—the modified project is not part of an individual project scheme that is substantially different from the original individual project scheme; and
- (g) having regard to:
  - (i) the financial capacity of the transferee; and
  - (ii) such other matters as the DAA considers relevant; it is reasonably likely that the transferee will complete the carrying out of the project (with or without modification); and
- (h) the expenditure incurred, or proposed to be incurred, by the transferee in carrying out the completion of the project (with

or without modification) has passed the prospective deduction test.

#### **54 Form of transfer of benefits of registration**

If the DAA grants an application for transfer of the benefits of registration:

- (a) the DAA must cancel the transferor's registration; and
- (b) this Act has effect, in relation to an application made by the transferee for registration of, or for a certificate in relation to, the whole or a part of the plant expenditure incurred, or proposed to be incurred, by the transferee in carrying out the completion of the project concerned (with or without modification), as if:
  - (i) section 27 (which deals with the timing of applications for registration) had not been enacted; and
  - (ii) the \$50 million threshold test were modified so that so much of:
    - (A) the gross capital expenditure incurred by the transferor in respect of carrying out the project; and
    - (B) if there have been one or more prior successive transferors—the gross capital expenditure incurred by the prior successive transferors in respect of carrying out the project;as the DAA considers reasonable were treated as if it were gross capital expenditure incurred by the transferee in carrying out the project.

#### **55 Form of transfer of benefits of certificate**

If the DAA grants an application for transfer of the benefits of a certificate, the DAA must:

- (a) terminate the transferor's certificate, with effect in relation to expenditure incurred by the transferor after:
  - (i) the date on which the DAA grants the application for transfer; or
  - (ii) if the transferor requests—such earlier date as the DAA specifies; and

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- (b) grant the transferee a pre-qualifying certificate in relation to the whole or a specified part of the plant expenditure incurred, or proposed to be incurred, by the transferee in carrying out completion of the project concerned (with or without modification).

### **56 Form of certificate**

If the DAA grants a certificate under this Part, the certificate must:

- (a) be in writing in the approved form; and
- (b) be in the name of the transferee; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and
- (e) if the project is part of a joint venture project—specify the joint venture project to which the certificate relates; and
- (ea) if the project is part of a joint venture project scheme—specify the scheme to which the certificate relates; and
- (f) if the project is part of a company group project scheme—specify the scheme to which the certificate relates; and
- (g) if the project is part of an individual project scheme—specify the scheme to which the certificate relates.

### **57 DAA may direct that plant be treated as new plant**

If:

- (a) the transferee has acquired from the transferor, or proposes to acquire from the transferor, a unit of plant that was new in the hands of the transferor; and
- (b) the acquisition has taken place, or will take place, in the course of the transferee's takeover, or proposed takeover, of the completion of the project (with or without modification); and
- (c) the DAA considers that it would be reasonable to treat the unit of plant as new in the hands of the transferee;

the DAA may:

- (d) make a decision on the application on the assumption that the unit of plant was new in the hands of the transferee when the plant was or is so acquired by the transferee; and
- (e) give the transferor and the transferee a written direction that, if the DAA grants the application for transfer of the benefits of the registration or the certificate, this Act and Subdivision B of Division 3 of Part III of the Tax Act are taken to have, and to have had, effect as if the unit of plant:
  - (i) were new in the hands of the transferee when the plant was or is so acquired by the transferee; and
  - (ii) were not new in the hands of the transferor at any time.

## **Division 2—Re-constituted joint ventures**

### **58 Registration cancelled, and certificate terminated, if joint venture is re-constituted**

If:

(a) either:

- (i) plant expenditure is registered in the name of an entity;  
or
- (ii) an entity holds a certificate in relation to plant expenditure; and

(b) the project concerned is part of a joint venture project; and

(c) there is a change in the composition of the parties to the joint venture;

then:

(d) in the case of a registration—the registration is cancelled;  
and

(e) in the case of a certificate—the certificate is terminated with effect in relation to expenditure incurred by the entity after the date of the change.

### **59 Application for transfer of benefits of registration or certificate to parties to re-constituted joint venture**

If:

(a) either of the following applies to an entity (*old party*):

- (i) a registration of plant expenditure in the name of the entity was cancelled under section 58;
- (ii) a certificate held by the entity in relation to plant expenditure was terminated under section 58; and

(b) the cancellation or termination was the result of a change in the composition of the parties to a joint venture (*old joint venture*) who carried on the various parts of a joint venture project (*old joint venture project*); and

(c) the following conditions are satisfied in relation to an entity (*new party*) (who may be the same entity as the old party):

- (i) the new party is a party to a joint venture (*new joint venture*);
  - (ii) at least one of the parties to the old joint venture is a party to the new joint venture; and
  - (iii) the parties to the new joint venture have carried out, or are proposing to carry out, a project (*new joint venture project*) which consists of the takeover, or proposed takeover, of the completion of the old joint venture project (with or without modification); and
  - (iv) the new party has carried out, or proposes to carry out, a project (*new party's project*) which consists of a part of the new joint venture project; and
  - (d) either:
    - (i) the new party has incurred, or proposes to incur, plant expenditure in carrying out the new party's project; or
    - (ii) both:
      - (A) the new party has incurred, or proposes to incur, expenditure in acquiring from an old party a unit of property that was new in the hands of the old party; and
      - (B) the acquisition has taken place, or will take place, in the course of carrying out the new party's project; and
  - (e) if the old joint venture project was part of a joint venture project scheme—the new joint venture project is part of a joint venture project scheme;
- the new party may apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.

## **60 Form of application**

- (1) The application must be in writing in the approved form.
- (2) The application must contain such information as is required by the form to be given.
- (3) The application must be accompanied by a report.
- (4) The report must be in writing in the approved form.

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- (5) The report is to be about such matters as are specified in the form.
- (5A) The application and accompanying report must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:
  - (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
  - (b) in any other case—the natural person designated by the form as the signatory.
- (6) All of the applications relating to a new joint venture project must be set out in the same document.

### **61 DAA may refuse to consider application unless applicant gives information etc. requested by DAA**

If the DAA gives a request to the applicant under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

### **62 DAA's decision on application**

- (1) After considering the application, the DAA must decide to:
  - (a) grant the application; or
  - (b) refuse the application.
- (2) The DAA must give written notice of the decision to the applicant.
- (3) A notice of a refusal must set out reasons for the refusal.

### **63 Criteria for granting application**

The DAA must not grant the application unless the DAA is satisfied that:

- (a) in the case of plant expenditure which the new party claims to have incurred in carrying out the new party's project—the plant expenditure has been incurred by the new party in carrying out the project; and



- (b) in the case of plant expenditure which the new party claims to propose to incur in carrying out the new party's project—the proposal is genuine; and
- (c) the parties to the new joint venture have taken over, or are proposing to take over, the completion of the old joint venture project (with or without modification) for genuine commercial reasons; and
- (d) if the completion of the old joint venture project has been, or is to be, taken over by the parties to the new joint venture with modifications—the modified joint venture project does not amount to a substantially different project from the old joint venture project; and
- (da) if the old joint venture project was part of a joint venture project scheme—the new joint venture project is not part of a joint venture project scheme that is substantially different from the original joint venture project scheme; and
- (e) having regard to:
  - (i) the financial capacity of the new party; and
  - (ii) such other matters as the DAA considers relevant;it is reasonably likely that the new party will complete the carrying out of the new party's project; and
- (f) having regard to:
  - (i) the financial capacity of each other party to the new joint venture; and
  - (ii) such other matters as the DAA considers relevant;it is reasonably likely that the parties to the new joint venture will complete the carrying out of the new joint venture project; and
- (g) the expenditure incurred, or proposed to be incurred, by the new party in carrying out the new party's project has passed the prospective deduction test.

## **64 Form of transfer of benefits of registration**

If the DAA grants an application for transfer of the benefits of registration, this Act has effect, in relation to an application made by the new party for registration of, or for a certificate in relation to, the whole or a part of the plant expenditure incurred, or

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proposed to be incurred, by the new party in carrying out the new party's project as if:

- (a) section 27 (which deals with the timing of applications for registration) had not been enacted; and
- (b) the \$50 million threshold test were modified so that so much of:
  - (i) the gross capital expenditure incurred by the parties to the old joint venture in respect of carrying out the old joint venture project; and
  - (ii) if there have been one or more prior successive old joint ventures—the gross capital expenditure incurred by the parties to the prior successive old joint ventures in respect of carrying out the old joint venture projects;as the DAA considers reasonable were treated as if it were gross capital expenditure incurred by the parties to the new joint venture project in carrying out the new joint venture project.

### **65 Form of transfer of benefits of certificate**

If the DAA grants an application for transfer of the benefits of a certificate, the DAA must grant the new party a pre-qualifying certificate in relation to the whole or a specified part of the plant expenditure incurred, or proposed to be incurred, by the new party in carrying out the new party's project.

### **66 Form of certificate**

If the DAA grants a certificate under this Part, the certificate must:

- (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and
- (e) specify the new joint venture project to which the certificate relates; and
- (f) if the project is part of a joint venture project scheme—specify the scheme to which the certificate relates.

**67 DAA may direct that plant be treated as new plant**

If:

- (a) the new party has acquired from an old party, or proposes to acquire from an old party, a unit of plant that was new in the hands of the old party; and
- (b) the acquisition has taken place, or will take place, in the course of carrying out the new party's project; and
- (c) the DAA considers that it would be reasonable to treat the plant as new in the hands of the new party;

the DAA may:

- (d) make a decision on the application on the assumption that the unit of plant was new in the hands of the new party when the plant was or is so acquired by the new party; and
- (e) give the new party and the old party a written direction that, if the DAA grants the application for transfer of the benefits of the registration or the certificate, this Act and Subdivision B of Division 3 of Part III of the Tax Act are taken to have, and to have had, effect as if the unit of plant:
  - (i) were new in the hands of the new party when the plant was or is so acquired by the new party; and
  - (ii) were not new in the hands of the old party at any time.

## **Division 3—Re-constituted partnerships**

### **68 Registration cancelled, and certificate terminated, if partnership is re-constituted**

If:

(a) either:

- (i) plant expenditure is registered in the name of a partnership; or
- (ii) a partnership holds a certificate in relation to plant expenditure; and

(b) there is a change in the constitution of the partnership;

then:

- (c) in the case of a registration—the registration is cancelled; and
- (d) in the case of a certificate—the certificate is terminated with effect in relation to expenditure incurred by the partnership after the date of the change.

### **69 Application for transfer of benefits of registration or certificate to re-constituted partnership**

If:

(a) either of the following applies to a partnership (*old partnership*);

- (i) a registration of plant expenditure in the name of the old partnership is cancelled under section 68;
- (ii) a certificate held by the old partnership in relation to plant expenditure is terminated under section 68; and

(b) the following conditions are satisfied in relation to another partnership (*new partnership*):

- (i) the new partnership has taken over, or proposes to take over, the completion of the project concerned (with or without modification);
- (ii) at least one partner of the old partnership is a partner of the new partnership; and

(c) either:

- (i) the new partnership has incurred, or proposes to incur, plant expenditure in carrying out the completion of the project (with or without modification); or
- (ii) both:
  - (A) the new partnership has incurred, or proposes to incur, expenditure in acquiring from the old partnership a unit of plant that was new in the hands of the old partnership; and
  - (B) the acquisition has taken place, or will take place, in the course of the new partnership's takeover, or proposed takeover, of the completion of the project (with or without modification); and
- (d) if the old partnership's project was part of an individual project scheme—the new partnership's project is part of an individual project scheme;

the new partnership may apply to the DAA for a transfer of the benefits of the registration or certificate, as the case may be.

## **70 Form of application**

- (1) The application must be in writing in the approved form.
- (2) The application must contain such information as is required by the form to be given.
- (3) The application must be accompanied by a report.
- (4) The report must be in writing in the approved form.
- (5) The report is to be about such matters as are specified in the form.
- (6) The application and accompanying report must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:
  - (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
  - (b) in any other case—the natural person designated by the form as the signatory.

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**71 DAA may refuse to consider application unless applicant gives information etc. requested by DAA**

If the DAA gives a request to the applicant under Part 7 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

**72 DAA's decision on application**

- (1) After considering the application, the DAA must decide to:
  - (a) grant the application; or
  - (b) refuse the application.
- (2) The DAA must give written notice of the decision to the applicant.
- (3) A notice of a refusal must set out reasons for the refusal.

**73 Criteria for granting application**

The DAA must not grant the application unless the DAA is satisfied that:

- (a) in the case of plant expenditure which the applicant claims to have incurred in carrying out the completion of the project (with or without modification)—the plant expenditure has been incurred by the applicant in carrying out the project; and
- (b) in the case of plant expenditure which the applicant claims to propose to incur in carrying out completion of the project (with or without modification)—the proposal is genuine; and
- (c) the applicant has taken over, or is proposing to take over, the completion of the project (with or without modification) for genuine commercial reasons; and
- (d) if the completion of the project has been, or is to be, taken over by the applicant with modifications—the modified project does not amount to a substantially different project from the old partnership's original project; and
- (da) if the old partnership's project was part of an individual project scheme—the new partnership's project is not part of an individual project scheme that is substantially different

from the old partnership's original individual project scheme; and

- (e) having regard to:
  - (i) the financial capacity of the transferee; and
  - (ii) such other matters as the DAA considers relevant;it is reasonably likely that the applicant will complete the carrying out of the project (with or without modification); and
- (f) the expenditure incurred, or proposed to be incurred, by the applicant in carrying out the completion of the project (with or without modification) has passed the prospective deduction test.

#### **74 Form of transfer of benefits of registration**

If the DAA grants an application for transfer of the benefits of registration, this Act has effect, in relation to an application made by the new partnership for registration of, or for a certificate in relation to, the whole or a part of the plant expenditure incurred, or proposed to be incurred, by the new partnership in carrying out the completion of the project concerned (with or without modification), as if:

- (a) section 27 (which deals with the timing of applications for registration) had not been enacted; and
- (b) the \$50 million threshold test were modified so that so much of:
  - (i) the gross capital expenditure incurred by the old partnership in respect of carrying out the project; and
  - (ii) if there have been one or more prior successive old partnerships—the gross capital expenditure incurred by the prior successive old partnerships in respect of carrying out the project;

as the DAA considers reasonable were treated as if it were gross capital expenditure incurred by the new partnership in carrying out the project.

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**75 Form of transfer of benefits of certificate**

If the DAA grants an application for transfer of the benefits of a certificate, the DAA must grant the new partnership a pre-qualifying certificate in relation to the whole or a specified part of the plant expenditure incurred, or proposed to be incurred, by the new partnership in carrying out the completion of the project concerned (with or without modification).

**76 Form of certificate**

If the DAA grants a certificate under this Part, the certificate must:

- (a) be in writing in the approved form; and
- (b) be in the name of the applicant; and
- (c) specify the project to which the certificate relates; and
- (d) specify the plant expenditure to which the certificate relates; and
- (e) if the project is part of an individual project scheme—specify the scheme to which the certificate relates.

**77 DAA may direct that plant be treated as new plant**

If:

- (a) the new partnership has acquired from the old partnership, or proposes to acquire from the old partnership, a unit of plant that was new in the hands of the old partnership; and
- (b) the acquisition has taken place, or will take place, in the course of the new partnership's takeover, or proposed takeover, of the completion of the project (with or without modification); and
- (c) the DAA considers that it would be reasonable to treat the unit of plant as new in the hands of the new partnership;

the DAA may:

- (d) make a decision on the application on the assumption that the unit of plant was new in the hands of the new partnership when the plant was or is so acquired by the new partnership; and
- (e) give the old partnership and the new partnership a written direction that, if the DAA grants the application for transfer



of the benefits of the registration or the certificate, this Act and Subdivision B of Division 3 of Part III of the Tax Act are taken to have, and to have had, effect as if the unit of plant:

- (i) were new in the hands of the new partnership when the plant was or is so acquired by the new partnership; and
- (ii) were not new in the hands of the old partnership at any time.

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## **Part 7—DAA's information-gathering powers**

### **78 Entities to which this Part applies**

This Part applies to an entity if:

- (a) plant expenditure is registered in the name of the entity or the entity has applied for such registration; or
- (b) the entity holds a certificate or the entity has applied for a certificate; or
- (c) the entity has applied for a variation of the expenditure, project, joint venture project, joint venture project scheme, company group project scheme or individual project scheme to which a registration or certificate held by the entity relates; or
- (d) the entity has applied (whether jointly or otherwise) for a transfer of the benefits of a registration or certificate.

### **79 DAA may request entity to give information or produce documents etc.**

- (1) For the purposes of this Act, the DAA may, by written notice given to an entity, request the entity:
  - (a) to give information to the DAA within the time and in the manner specified in the notice; or
  - (b) to produce documents to the DAA within the time and in the manner specified in the notice; or
  - (c) to give certified copies of documents to the DAA within the time and in the manner specified in the notice.
- (2) It is not an offence to contravene the notice.

### **80 How DAA may deal with documents etc. produced by entity**

- (1) The DAA or an officer of the Department authorised in writing by the DAA may inspect, take extracts from, and make copies of, any document or copy produced or given to the DAA under section 79.
- (2) The DAA may retain a certified copy of a document given in accordance with a request covered by paragraph 79(1)(c).

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- (3) The DAA may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, a document produced under paragraph 79(1)(b).
- (4) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the DAA to be a true copy.
- (5) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (6) Until a certified copy is supplied, the DAA must, at such times and places as the DAA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

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## **Part 8—Cancellation or termination of registration or certificate**

### **81 Cancellation or termination—failure to comply with request to give information etc.**

If an entity fails to comply with a request made by the DAA under Part 7, the DAA may, by written notice given to the entity:

- (a) cancel any registration of plant expenditure in the name of the entity; or
- (b) terminate a certificate held by the entity, with effect in relation to expenditure incurred by the entity after the date of termination.

### **82 Cancellation—false or misleading statements etc.**

*[False or misleading statements—Part 7 request not involved]*

- (1) If an entity, in connection with the operation of this Act (other than Part 7):
  - (a) makes a statement, either orally or in writing, to the DAA or to an officer of the Department that is false or misleading in a material particular; or
  - (b) omits from a statement made, either orally or in writing, to the DAA or to an officer of the Department any matter or thing without which the statement is misleading in a material particular; or
  - (c) gives or produces a document or copy to the DAA or to an officer of the Department that contains information that is false or misleading in a material particular;the DAA may, by written notice given to the entity, cancel:
  - (d) any registration of plant expenditure in the name of the entity; or
  - (e) a certificate held by the entity (even if the certificate has been terminated).

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*[False or misleading information given under Part 7]*

- (2) If an entity, in compliance with a notice under Part 7, gives information that is false or misleading in a material particular, the DAA may, by written notice given to the entity, cancel:
- (a) any registration of plant expenditure in the name of the entity; or
  - (b) a certificate held by the entity (even if the certificate has been terminated).

*[False or misleading documents given under Part 7]*

- (3) If an entity, in compliance with a notice under Part 7, produces a document, or gives a copy of a document, that, to the knowledge of the entity, is false or misleading in a material particular, the DAA may, by written notice given to the entity, cancel:
- (a) any registration of plant expenditure in the name of the entity; or
  - (b) a certificate held by the entity (even if the certificate has been terminated).

*[Subsection (3) does not apply if document accompanied by explanation]*

- (4) Subsection (3) does not apply to an entity who produces a document, or gives a copy of a document, that, to the knowledge of the entity, is false or misleading in a material particular if the document or copy is accompanied by a written statement:
- (a) stating that the document or copy is, to the knowledge of the entity, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the entity, false or misleading.

*[Imputed knowledge of bodies corporate and partnerships etc.]*

- (5) For the purposes of subsections (3) and (4):
- (a) a body corporate is taken to know anything known by any of its directors or employees; and
  - (b) a partnership is taken to know anything known by:

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- (i) if any of the partners are natural persons—any such partner; and
- (ii) if any of the partners are bodies corporate—any of the directors or employees of any such partner; and
- (c) a natural person is taken to know anything known by an employee of the natural person.

### **83 Cancellation of registration—contravention of conditions**

If:

- (a) plant expenditure is registered in the name of an entity; and
- (b) the entity contravenes any of the conditions to which the registration is subject;

the DAA may, by written notice given to the entity, cancel the registration.

### **84 Cancellation of registration on request**

- (1) An entity may request the DAA to cancel any registration of plant expenditure in the name of the entity.
- (2) The DAA must comply with the request.

### **85 Termination of certificate on request**

- (1) An entity may request the DAA to terminate a certificate held by the entity, with effect in relation to expenditure incurred by the entity after the date of termination.
- (2) The DAA must comply with the request.

## **Part 9—Tax effects of certification**

### **86 When plant expenditure pre-qualifies under this Act**

For the purposes of the Tax Act, if:

- (a) an entity holds a certificate relating to plant expenditure incurred, or proposed to be incurred, by the entity in carrying out a project in Australia; and
- (b) the plant expenditure is incurred by the entity in carrying out the project; and
- (c) if the project is part of a joint venture project specified in the certificate—the plant expenditure is incurred in carrying out that part of the joint venture project; and
- (d) if the project is part of a company group project scheme specified in the certificate—the entity is a member of the company group concerned at the time the plant expenditure is incurred;

then:

- (e) to the extent that the plant expenditure is incurred in respect of the acquisition or construction of a unit of plant—the plant expenditure is taken to have pre-qualified under this Act; and
- (f) to the extent that the plant expenditure is incurred in respect of the lease of a unit of plant under a long-term lease agreement where the lessor is a leasing company—the expenditure of a capital nature incurred by the lessor in respect of the acquisition or construction by the lessor of the unit of plant is taken to have pre-qualified under this Act.

### **87 Effect of cancellation of certificate**

For the purposes of this Part, if a certificate is cancelled, the certificate is taken never to have been granted.

### **88 Effect of termination of certificate**

For the purposes of this Part, if a certificate held by an entity is terminated with effect in relation to expenditure incurred by the entity after a particular date:

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- (a) the certificate remains in force; and
- (b) the certificate continues to apply in relation to expenditure incurred by the entity on or before that date.

### **89 Effect of variation of certificate**

For the purposes of this Part, if a certificate held by an entity is varied with effect in relation to expenditure incurred by the entity after a particular date, the variation does not apply in relation to expenditure incurred by the entity on or before that date.

### **90 Effect of decision to revoke or set aside a decision relating to a certificate**

For the purposes of this Part, if a decision relating to a certificate is revoked or set aside, the decision is taken never to have been made.

### **91 DAA to notify Commissioner of Taxation**

The DAA must advise the Commissioner of Taxation in writing of particulars of all things done under this Act which are relevant to the operation of Subdivision B of Division 3 of Part III of the Tax Act.

### **92 Amendment of assessments**

Section 170 of the Tax Act does not prevent the amendment of an assessment at any time for the purpose of giving effect to this Act.



## **Part 10—DAA's Powers to facilitate completion of projects**

### **93 DAA's powers to facilitate completion of projects**

If the DAA considers that any action or inaction of a person or body is likely to have the effect of preventing the DAA from:

- (a) registering plant expenditure in the name of an entity; or
- (b) granting a certificate in the name of an entity;

the DAA may, with the consent of the entity, notify the person or body accordingly.

## **Chapter 3—Infrastructure borrowings**

### **Part 1—Preliminary**

#### **93A Object**

The object of this Chapter and the infrastructure borrowings provisions of the *Income Tax Assessment Act 1936* is to provide tax incentives for genuine private sector investment in publicly accessible infrastructure facilities and related facilities. However, the incentives have been terminated for new cases by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*.

#### **93B Simplified outline of scheme of Chapter**

The following is a simplified outline of the scheme of this Chapter:

- (a) a person may apply to the Development Allowance Authority (the **DAA**) for the issue of a certificate in relation to a proposed borrowing that the person considers to be an infrastructure borrowing;  
  

Note: As a result of amendments made by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, no new applications can be made.
- (b) the DAA will issue the certificate if it is satisfied that the borrowing is an infrastructure borrowing and that certain other criteria are met;
- (c) it is a condition of the issue of the certificate that the holder must use the money borrowed in the way proposed in the person's application and must comply with certain other requirements;
- (d) if the certificate holder wishes to transfer to another person all of its interests and liabilities in relation to the borrowing or any facilities acquired or constructed with the money borrowed and certain criteria are met, the DAA must agree to transfer the certificate;
- (e) the DAA may cancel the certificate if the conditions applying to it are contravened, or if the holder fails to

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comply with certain other requirements of the Chapter. In such a case, the holder will be liable to pay an amount that recoups some or all of the tax benefits of the certificate.

**93C Example of how this Chapter works**

*[Typical example—borrowing to finance a tollway]*

- (1) This section sets out an example of how this Chapter works in a typical case involving a borrowing to construct a tollway.

*[Step 1—proposal]*

- (2) By December 1994, a non-exempt public company has developed a proposal to construct a tollway in Australia that it intends to operate for at least 25 years after it becomes income-producing. The estimated cost of the tollway is \$600 million, of which the company intends to borrow \$400 million by a public bond issue at 8% per annum over 10 years. The company intends to build the tollway in 2 stages:
- stage 1, commencing in November 1995 and continuing until November 1998, involving the major earthworks
  - stage 2, commencing in February 1999 and ending at the end of 2001, involving construction of bridges, road pavement, stabilisation of embankments and construction of related facilities for toll collection and other staff.

*[Step 2—application to DAA]*

- (3) In January 1995, the company applies to the DAA for the issue of a certificate in relation to the borrowing. The application sets out details of the proposed borrowing and expenditure and other relevant matters.

*[Step 3—action by DAA]*

- (4) The DAA considers the application and determines that the criteria in the Chapter for the issue of a certificate are met. (The criteria relate to such things as the nature of the borrower and the facility, and the proposed public use and charging regime.)

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*[Step 4—issue of certificate]*

- (5) In March 1995, the applicant gives the DAA an undertaking that it will comply with its obligations if the certificate is issued, and the DAA issues the certificate.

*[Step 5—the bond issue]*

- (6) The bond issue takes place in May 1995. Interest paid to bond holders is exempt from income tax or rebatable. The interest is not an allowable deduction for the company.

*[Completion and operation of tollway]*

- (7) The borrowing, construction and use of the tollway all go ahead as planned.

## **Part 2—Interpretation: Infrastructure borrowings etc.**

### **93D Interpretation**

*[List of terms]*

(1) In this Chapter:

***application*** means an application under Part 3.

***approved*** means approved in writing by the DAA.

***assessable income*** has the same meaning as in the Tax Act.

***associate*** has the same meaning as in subsection 26AAB(14) of the Tax Act.

***Australia*** has the same meaning as in Subdivision B of Division 3 of Part III of the Tax Act.

***borrower requirement period***, in relation to a direct infrastructure borrowing, means the period from the time of the borrowing until:

- (a) in a case to which subsection 93K(2) applies—the end of the 25 year period mentioned in that subsection; or
- (b) in a case to which subsection 93K(3) or (4) applies—the time of the transfer mentioned in that subsection.

***borrowing*** means any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

***borrowings cut-off time*** means 12 pm, by legal time in the Australian Capital Territory, on 14 February 1997.

***certificate*** means a certificate issued under Part 3.

***certificate holder requirement period***, in relation to the holder of a certificate that applies either to a direct infrastructure borrowing

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or to a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing, means:

- (a) if the holder is the person to whom the certificate was issued—the borrower requirement period; or
- (b) if the holder is a person to whom the certificate was transferred under section 93V and:
  - (i) subsection 93K(2) applied to the direct infrastructure borrowing; or
  - (ii) subsection 93K(3) or (4) applied to the direct infrastructure borrowing, where the transfer mentioned in that subsection has not yet taken place;so much of the borrower requirement period as occurs after the transfer of the certificate to the holder; or
- (c) if:
  - (i) the holder is a person to whom the certificate was transferred under section 93V; and
  - (ii) subsection 93K(3) or (4) applied to the direct infrastructure borrowing; and
  - (iii) the transfer mentioned in that subsection has taken place;so much of the period of 25 years, following the first use of any of the facilities concerned after their construction or acquisition under the borrowing, as occurs after the transfer of the certificate to the holder.

***construct*** includes extend, improve or up-grade.

***corporate limited partnership*** has the same meaning as in section 94D of the Tax Act.

***Crown lease*** means:

- (a) a lease of land; or
- (b) an easement in connection with land; or
- (c) any other right, power or privilege over, or in connection with, land;

if the lease, easement, right, power or privilege was granted by:

- (d) the Commonwealth, a State or a Territory; or
- (e) an authority of the Commonwealth, a State or a Territory, where, assuming that the authority derived income at the

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time of the grant, that income would be exempt from income tax under the Tax Act because of a relevant exempting provision.

**DAA** means the Development Allowance Authority appointed under Chapter 4.

**direct infrastructure borrowing** has the meaning given by section 93F.

**government body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a body to which section 50-25 of the *Income Tax Assessment Act 1997* applies; or
- (c) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) the income of which is wholly exempt from tax.

**indirect infrastructure borrowing** has the meaning given by section 93G.

**infrastructure borrowing** means a direct infrastructure borrowing, an indirect infrastructure borrowing or a refinancing infrastructure borrowing.

**infrastructure facility** has the meaning given by section 93L.

**listed company** means a company any of the shares of which are listed for quotation in the official list of a stock exchange in Australia or elsewhere.

**non-exempt resident company** means an incorporated body (not in the capacity of trustee), where:

- (a) the body is a resident; and
- (b) the body's income is not exempt from income tax under the Tax Act because of a relevant exempting provision.

**non-exempt resident corporate limited partnership**, in relation to a year of income, means a corporate limited partnership (not in the capacity of trustee) in relation to the year of income, where:

- (a) the partnership is a resident; and

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- (b) the partnership's income is not exempt from income tax under the Tax Act because of a relevant exempting provision.

***prescribed investment*** means an investment of a kind prescribed by the regulations for the purposes of this definition.

***refinancing infrastructure borrowing*** has the meaning given by section 93H.

***related facility*** has the meaning given by section 93M.

***relevant exempting provision*** has the same meaning as in section 160K of the Tax Act.

***resident*** has the same meaning as in the Tax Act.

***Tax Act*** means the *Income Tax Assessment Act 1936*.

***year of income*** has the same meaning as in the Tax Act.

*[References to subsection 93K(3) or (4) applying]*

- (2) A reference in this Chapter, in relation to a certificate, to subsection 93K(3) or (4) applying includes a reference to that subsection applying in connection with a variation of a condition applying to the certificate under section 93T.

*[Ownership where Crown lease]*

- (3) For the purposes of references in sections 93K, 93R and 93S to a borrower or holder of a certificate intending at a particular time (the ***intention time***) to own facilities at or until a particular time, the borrower or holder is taken to intend at the intention time to own, at or until the particular time, facilities that are intended to be, or that are, a fixture on land that is the subject of a Crown lease if:
  - (a) if the Crown lease is a lease of land granted under a statutory law of the Commonwealth, a State or a Territory—it can reasonably be expected, at the intention time, that the Crown lease will run, or (because of law, custom or otherwise) be extended or renewed to run, until at least the end of the period of 25 years following the first use of any of the



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facilities concerned after their construction or acquisition under the borrowing; or

- (b) in any other case—at the time (the *relevant time*) that is the later of the intention time and the time when the first of the facilities begins to be constructed under the borrowing:
  - (i) if the term of the lease will not end before the end of the period of 25 years following the first use of any of the facilities concerned after their construction or acquisition under the borrowing—both the lessor and the lessee intend that the lessee or, where subsection 93K(3) or (4) applies and the transfer to the other person mentioned in that subsection has not yet occurred, the other person will continue to hold the lease throughout the whole of that period on the same terms and conditions as those on which the lease is held at the relevant time; or
  - (ii) if the term of the lease will end before the end of the period of 25 years following the first use of any of the facilities concerned after their construction or acquisition under the borrowing:
    - (A) the lessee has an option that, where subsection 93K(3) or (4) applies and the transfer to the other person mentioned in that subsection has not yet occurred, is transferable to the other person mentioned in that subsection, to renew the lease on the terms and conditions referred to in subparagraph (i) for a period that will not end, or has successive options to renew the lease on those terms and conditions for periods the last of which will not end, before the end of the period of 25 years; and
    - (B) both the lessor and the lessee intend that the lessee or, where subsection 93K(3) or (4) applies and the transfer to the other person mentioned in that subsection has not yet occurred, the other person mentioned in that subsection, will continue to hold the lease throughout the whole of the 25 year period on

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the same terms and conditions as those on which the lease is held at the relevant time.

### **93E Kinds of infrastructure borrowing**

There are 3 kinds of infrastructure borrowing:

- (a) a direct infrastructure borrowing (see section 93F); and
- (b) an indirect infrastructure borrowing (see section 93G); and
- (c) a refinancing infrastructure borrowing (see section 93H).

### **93F Direct infrastructure borrowing**

A direct infrastructure borrowing is a borrowing of money where:

- (a) the borrower requirements set out in section 93I are met; and
- (b) the requirement relating to the use of the borrowed money, set out in section 93J, is met; and
- (c) the requirement relating to the use of facilities on which the borrowed money is spent, set out in section 93K, is met.

### **93G Indirect infrastructure borrowing**

An indirect infrastructure borrowing is a borrowing of money by an incorporated body where:

- (a) the borrower requirements set out in section 93I are met; and
- (b) the body intends, at the time of the borrowing, to use the borrowed money only:
  - (i) by lending it to another person where that loan will constitute the whole or part of a direct infrastructure borrowing by that other person in relation to which a certificate is in force; and
  - (ii) if it is not able to be lent to the other person immediately after it is borrowed—by investing it in a prescribed investment until it is.

### **93H Refinancing infrastructure borrowing**

*[Meaning of refinancing infrastructure borrowing]*

- (1) A refinancing infrastructure borrowing is a borrowing of money where:
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- (a) the borrower requirements set out in section 93I are met; and
- (b) the borrower intends, at the time of the borrowing, to use the money borrowed only:
  - (i) to repay the whole or part of any of the following borrowings:
    - (A) a direct infrastructure borrowing; or
    - (B) an indirect infrastructure borrowing; or
    - (C) a borrowing that is a refinancing infrastructure borrowing because of another application of this subsection;where a certificate held by the borrower is in force in relation to the borrowing to be wholly or partly repaid; and
  - (ii) if the money is not able to be used to make the repayment immediately after it is borrowed—by investing it in a prescribed investment until it is.

*[Interpretive provision]*

- (2) For the purposes of references in this Chapter, a refinancing infrastructure borrowing relates to a direct infrastructure borrowing or to an indirect infrastructure borrowing if the repayment mentioned in subparagraph (1)(b)(i) is of:
  - (a) the direct infrastructure borrowing or the indirect infrastructure borrowing, as the case may be; or
  - (b) another refinancing infrastructure borrowing that, under a previous application of this subsection, relates to the direct infrastructure borrowing or the indirect infrastructure borrowing, as the case may be.

**93I Infrastructure borrowings—borrower requirements**

*[Borrower requirements]*

- (1) For a borrowing to be an infrastructure borrowing, the requirements of this section must be met.

*[Basic requirements]*

- (2) The borrower must:

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- (a) be:
  - (i) in any case—an incorporated body (not in the capacity of trustee) at the time of the borrowing or a corporate limited partnership (not in the capacity of trustee) in relation to the year of income in which the borrowing takes place; or
  - (ii) in the case of a direct infrastructure borrowing or a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing—a corporate unit trust (within the meaning of section 102J of the Tax Act), or a public trading trust (within the meaning of section 102R of the Tax Act), in relation to the year of income in which the borrowing takes place; and
- (b) where the borrower is an incorporated body or a corporate limited partnership and the borrowing is a direct infrastructure borrowing or a refinancing infrastructure borrowing that relates to such a direct infrastructure borrowing—at the time of the borrowing, intend to be an incorporated body (not in the capacity of trustee) throughout the borrower requirement period, or a corporate limited partnership (not in the capacity of trustee) throughout each year of income in which any part of the borrower requirement period occurs; and
- (c) where the borrower is a trust to which subparagraph (a)(ii) applies—at the time of the borrowing, intend to be such a trust in relation to each year of income in which any part of the borrower requirement period occurs; and
- (d) where the borrower is an incorporated body or a trust to which subparagraph (a)(ii) applies—not be making the borrowing in partnership with anyone else; and
- (e) in any case—subject to subsection (4), not be a government body or government owned (see subsection (3)) at the time of the borrowing.

*[Meaning of **government owned**]*

- (3) For the purposes of paragraph (2)(e):
  - (a) an incorporated body is government owned if:
    - (i) it is limited by shares; and

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- (ii) a government body is the beneficial owner of at least 50% of the total rights:
  - (A) to dividends paid by the body; or
  - (B) to distributions of capital of the body on winding-up or otherwise; or
  - (C) to vote at meetings of shareholders of the body; and
- (b) a corporate limited partnership is government owned if a government body is the beneficial owner of more than 50% of the interests in profits or capital of the partnership; and
- (c) a trust is government owned if a government body is the beneficial owner of more than 50% of the interests in income or corpus of the trust.

*[Paragraph (2)(e) not to apply to certain bodies]*

- (4) Paragraph (2)(e) does not apply to a borrower if the borrower is, in accordance with criteria published in the *Gazette* by the Minister for the purposes of this subsection, a body that operates on a commercial basis.
- (4A) In the case of:
  - (a) an indirect infrastructure borrowing; or
  - (b) a refinancing infrastructure borrowing that relates to an indirect infrastructure borrowing;the borrower must be:
  - (c) a non-exempt resident company at the time of the borrowing; or
  - (d) a non-exempt resident corporate limited partnership in relation to the year of income in which the borrowing takes place.
- (4B) If the borrower is an incorporated company (not in the capacity of trustee) and the borrowing is:
  - (a) an indirect infrastructure borrowing that relates to a direct infrastructure borrowing; or
  - (b) a refinancing infrastructure borrowing that relates to an indirect infrastructure borrowing covered by paragraph (a);

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the borrower must, at the time of the borrowing, intend to be a non-exempt resident company throughout the applicable borrower requirement period. For this purpose, the ***applicable borrower requirement period*** is the borrower requirement period in relation to the direct infrastructure borrowing.

- (4C) If the borrower is a corporate limited partnership (not in the capacity of trustee) in relation to the year of income in which the borrowing takes place and the borrowing is:
- (a) an indirect infrastructure borrowing that relates to a direct infrastructure borrowing; or
  - (b) a refinancing infrastructure borrowing that relates to an indirect infrastructure borrowing covered by paragraph (a);
- the borrower must, at the time of the borrowing, intend to be a non-exempt resident corporate limited partnership in relation to each year of income in which any part of the applicable borrower requirement period occurs. For this purpose, the ***applicable borrower requirement period*** is the borrower requirement period in relation to the direct infrastructure borrowing.

*[Direct infrastructure borrowings by listed companies]*

- (5) If:
- (a) the infrastructure borrowing is:
    - (i) a direct infrastructure borrowing; or
    - (ii) a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing;
  - by an incorporated body limited by shares; and
  - (b) the incorporated body is a listed company; and
  - (c) at the time of the borrowing, a person is the beneficial owner of shares carrying more than half the voting rights in the incorporated body;
- that person must not, at the time of the borrowing, intend to dispose of enough of those shares to cause the number of voting rights to fall to or below half during the borrower requirement period in relation to the direct infrastructure borrowing.

*[Direct infrastructure borrowings by unlisted companies]*

- (6) If:

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- (a) the infrastructure borrowing is:
  - (i) a direct infrastructure borrowing; or
  - (ii) a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing;
- by an incorporated body limited by shares; and
- (b) the incorporated body is not a listed company; and
- (c) at the time of the borrowing, a person either alone or together with an associate or associates is the beneficial owner of shares carrying more than half the voting rights in the incorporated body;

that person, or that person and the associates, must not intend, at the time of the borrowing, to dispose of enough of those shares to cause the number of voting rights to fall to or below half during the borrower requirement period in relation to the direct infrastructure borrowing.

**93J Direct infrastructure borrowing—requirement relating to spending of borrowed money**

*[Spending requirement]*

- (1) For a borrowing to be a direct infrastructure borrowing, the borrower must, at the time of the borrowing, intend to use the borrowed money only:
  - (a) by spending it on:
    - (i) the construction of one or more infrastructure facilities; or
    - (ii) subject to subsection (2), the construction or acquisition of one or more related facilities; or
    - (iii) subject to subsection (3), the payment of interest, or of amounts in the nature of interest, on a direct infrastructure borrowing; and
  - (b) if it is unable to be spent immediately after it is borrowed—by investing it in a prescribed investment until it is.

*[Spending on related facilities]*

- (2) Spending money on the construction or acquisition of a related facility only qualifies under subsection (1) if:

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- (a) the borrower also intends to spend some of the borrowed money as mentioned in paragraph (1)(a) on one or more of the infrastructure facilities to which the related facility relates; or
- (b) the following conditions are satisfied:
  - (i) the borrower already owns the infrastructure facility or facilities to which the related facility relates; and
  - (ii) the requirements of section 93K are satisfied in relation to that infrastructure facility or those infrastructure facilities (assuming the money were also to be spent on them) as well as the related facility at the time of the borrowing; and
  - (iii) the borrower intends to begin the construction, or make the acquisition of the related facility, not later than 10 years after:
    - (A) if the borrower constructed the infrastructure facility or facilities to which it relates—the beginning of construction of the infrastructure facility, or the first of the infrastructure facilities, to which it relates; or
    - (B) if the borrower acquired the infrastructure facility or facilities to which it relates—the time of acquisition of the infrastructure facility, or the first of the infrastructure facilities, to which it relates.

*[Spending on the payment of interest]*

- (3) Spending money on the payment of interest, or of amounts in the nature of interest, only qualifies under subsection (1):
  - (a) to the extent that the interest or those amounts relate to that part of the period of the borrowing that occurs during the period (the **construction period**) in which any of the facilities referred to in paragraph (1)(a), or any of the facilities referred to in paragraph (1)(b) that are being constructed, are under construction; and
  - (b) if the payment is made during the construction period.



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*[Exclusions]*

- (4) A borrowing does not qualify for the purposes of subsection (1) if the borrower intends to spend the money borrowed:
- (a) on entering into or acquiring a lease; or
  - (b) on acquiring land on which there is a building or structure that is to form part of the infrastructure facility or the related facility concerned; or
  - (c) on refinancing a loan.

*[Facility can be part of or related to other facilities]*

- (5) It does not matter for the purposes of subsection (1) if the infrastructure facility is to be part of or related to any other infrastructure facility of any person.

*[acquisition includes dismantling etc.]*

- (6) In paragraph (1)(b), **acquisition** includes dismantling, transportation or installation in connection with the acquisition.

**93K Direct infrastructure borrowing—requirement relating to use or sale of facilities on which borrowed money is to be spent**

*[3 kinds of intention qualify]*

- (1) For the borrowing to be a direct infrastructure borrowing, it is also necessary that, at the time of the borrowing, the borrower has an intention of the kind set out in subsection (2), (3) or (4).

*[Intention to use]*

- (2) One intention that the borrower may have for the purposes of subsection (1) is that:
- (a) it will own, use principally for gaining or producing assessable income and effectively control the use of, the facilities on which the money will be spent (other than by leasing them); and
  - (b) the ownership, use for gaining or producing assessable income and effective control will continue for at least

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25 years after the first such use by the borrower of any of the facilities concerned after their construction or acquisition;  
and

- (c) it will not do anything that will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned.

*[Intention to sell]*

- (3) Another intention that the borrower may have for the purposes of subsection (1) is that:

- (a) it will own the facilities on which the money will be spent;  
and  
(b) after constructing or acquiring the facilities on which the money will be spent and before they are used, it will transfer all of its rights, interests and obligations in respect of the facilities to another person who will be able to satisfy the requirements of section 93V for the transfer of the borrower's certificate.

It is not necessary that the identity of the person be known by the borrower at the time of the borrowing.

*[Intention to use before selling]*

- (4) Another intention that the borrower may have for the purposes of subsection (1) is that:

- (a) it will, after constructing or acquiring the facilities on which the money will be spent, own, use principally for gaining or producing assessable income and effectively control the use of, those facilities (other than by leasing them) for a period less than 25 years after the first such use by the borrower of any of those facilities after their construction or acquisition;  
and  
(b) it will then transfer all of its rights, interests and obligations in respect of the facilities to another person who will be able to satisfy the requirements of section 93V for the transfer of the borrower's certificate; and

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- (c) it will not do anything during the period before the transfer that will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of those facilities.

It is not necessary that the length of the period or the identity of the person be known at the time of the borrowing.

**93L Infrastructure facilities**

*[7 kinds of facility]*

- (1) There are 7 kinds of infrastructure facility.

*[Land transport facility]*

- (2) One kind of infrastructure facility is a land transport facility, that is to say, a road, tunnel, bridge, or railway line, or a combination of these, in Australia that is to be used for the transport of the public or their goods at a charge to them (whether the transport is by the member of the public concerned or by another person).

*[Air transport facility]*

- (3) Another kind of infrastructure facility is an air transport facility, that is to say, a runway, and any associated taxiway and runway apron, in Australia that is to be used by aircraft transporting the public or their cargo at a charge to them.

*[Seaport facility]*

- (4) Another kind of infrastructure facility is a seaport facility, that is to say, a wharf, or dock, in Australia for the public to embark or disembark, or for loading or unloading their cargo, onto or from seagoing vessels, where there is a charge to the public for the transport of the public or their cargo on the vessels.

*[Electricity generation, transmission or distribution facility]*

- (5) Another kind of infrastructure facility is an electricity generation, transmission or distribution facility, that is to say, any one, or combination of 2 or more, of the following facilities:
- (a) an electricity generation facility on land in Australia;

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- (b) an electricity transmission facility, where the electricity generation facility concerned is on land in Australia;
  - (c) an electricity distribution facility on land in Australia;
- where the electricity generated, transmitted or distributed is to be principally for sale to the public either directly by the operator of the facility or indirectly through other persons.

*[Gas pipeline facility]*

- (6) Another kind of infrastructure facility is a gas pipeline facility, that is to say, the whole or part of a pipeline that is to be used for transporting gas from a processing plant on land in Australia principally for sale to the public either directly by the operator of the facility or indirectly through other persons.

*[Water supply facility]*

- (7) Another kind of infrastructure facility is a water supply facility, that is to say, any one, or combination of 2 or more, of the following:
  - (a) dams, weirs, reservoirs or tanks that are to be used for storing, and regulating the flow of, water for public consumption, or other use by the public, at a charge to them;
  - (b) bores that are to be used for extracting water for public consumption, or other use by the public, at a charge to them;
  - (c) channels or pipelines that are to be used:
    - (i) for supplying water for public consumption, or other use by the public, at a charge to them; or
    - (ii) for carrying water between dams or other storage places from which it is to be supplied through channels or pipelines for public consumption, or other use by the public, at a charge to them;
  - (d) pumps and associated structures that are to be used:
    - (i) in extracting water from bores covered by paragraph (b); or
    - (ii) for pumping water along channels or pipelines covered by paragraph (c);
  - (e) equipment and structures that are to be used for treating water that is to be supplied to the public through pipelines at a charge to them, to make it fit for the public to drink.

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*[Sewage or wastewater facility]*

- (8) Another kind of infrastructure facility is a sewage or wastewater facility, that is to say:
- (a) equipment, excavations and structures that are to be used for treating, at a charge to the public, sewage, or other wastes in water, produced by the public:
    - (i) to reduce the damage caused by its disposal in the natural environment; or
    - (ii) to make any component of the things treated suitable for re-use; or
  - (b) channels, drains or pipelines for carrying sewage, or other wastes in water, produced by the public to or from the equipment and structures covered by paragraph (a); or
  - (c) both of these.

**93M Related facilities**

*[Basic test]*

- (1) Related facilities are facilities in Australia that are reasonably necessary for an infrastructure facility to be able to operate for the purpose for which it was constructed.

*[Examples]*

- (2) The following are examples of facilities that are related facilities in respect of an infrastructure facility, provided that they pass the test in subsection (1):
- (a) plant and other equipment (for example, rolling stock in the case of a railway) for use in operating the infrastructure facility;
  - (b) buildings or other structures from which staff are to operate the infrastructure facility;
  - (c) buildings or other structures for storing freight, cargo, plant, fuel, stores or equipment;
  - (d) stations or passenger or freight terminals;
  - (e) subject to paragraphs (4)(a) and (6)(a), maintenance facilities.

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*[Access roads etc. excluded]*

- (3) In the case of any infrastructure facility, a road, bridge, tunnel or railway to provide access to the infrastructure facility is not a related facility (or part of the infrastructure facility itself).

*[Dry-docks etc. excluded]*

- (4) In the case of a seaport facility, the following are not related facilities (or part of the infrastructure facility itself):
- (a) a dry-dock or other facility for repair or maintenance of vessels;
  - (b) a vessel.

*[Dams etc. excluded]*

- (5) In the case of an electricity generation, transmission or distribution facility, the following are not related facilities (or part of the infrastructure facility itself):
- (a) a dam or coal mine;
  - (b) facilities for transporting fuel or water to the site at which the electricity generation, transmission or distribution takes place.

*[Hangars etc. excluded]*

- (6) In the case of an air transport facility, the following are not related facilities (or part of the infrastructure facility itself):
- (a) a hangar or other facility for storage, repair or maintenance of aircraft;
  - (b) an aircraft.

*[Processing plant etc. excluded]*

- (7) In the case of a gas pipeline facility, the following are not related facilities (or part of the infrastructure facility itself):
- (a) the processing plant from which the gas pipeline transports the gas;
  - (b) any drilling, extraction, processing or other plant or equipment for use in obtaining the gas, processing it or transporting it to the processing plant in paragraph (a).

## **Part 3—Certificates**

### **Division 1—Issue, variation and transfer etc.**

#### **93N Application for certificate**

*[Application to DAA]*

- (1) Subject to subsection (7), a person who proposes to borrow money, where the person considers the borrowing to be an infrastructure borrowing, may apply to the DAA for a certificate under this Chapter in relation to the borrowing.

*[Details in application]*

- (2) The application must contain sufficient details to enable the DAA to decide whether the borrowing is an infrastructure borrowing.

*[Dates in application]*

- (3) The application must also specify dates by which the person intends to do the following:
  - (a) in any case—borrow the money;
  - (b) in the case of a direct infrastructure borrowing:
    - (i) spend the borrowed money in constructing or acquiring any facility concerned; and
    - (ii) complete specified stages in the construction of any facility that is intended to be constructed;
  - (c) in the case of an indirect infrastructure borrowing—lend the borrowed money as mentioned in section 93G;
  - (d) in the case of a refinancing infrastructure borrowing—use the borrowed money to repay the other infrastructure borrowing mentioned in subparagraph 93H(1)(b)(i).

*[Indirect infrastructure borrowing—additional requirement]*

- (4) If the borrowing is an indirect infrastructure borrowing, the application must be accompanied by:

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- (a) a copy of the certificate in relation to the other borrowing mentioned in subparagraph 93G(b)(i); or
- (b) an application for such a certificate in relation to the other borrowing.

*[Refinancing infrastructure borrowing—additional requirement]*

- (5) If the borrowing is a refinancing infrastructure borrowing, the application must be accompanied by a copy of the certificate in relation to the other borrowing mentioned in subparagraph 93H(1)(b)(i).

*[Variation of application]*

- (6) The applicant may, in writing given to the DAA, vary the application at any time before the DAA advises the applicant in accordance with subsection 93P(1).

*New applications not to be made*

- (7) After the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, a person is not entitled to apply to the DAA for a certificate under this Chapter.

*Certain past applications ineffective*

- (8) If a person applied to the DAA for a certificate under this Chapter during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the application has no effect, and is taken never to have had any effect.

## 93O Criteria for issuing certificate

*[Criteria]*

- (1) Subject to subsection (2) and sections 93P and 93PA, the DAA must issue the certificate if:
  - (a) in any case—the DAA is satisfied that:
    - (i) the proposed borrowing is an infrastructure borrowing;
    - and



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- (ii) the dates specified in the application in accordance with subsection 93N(3) are reasonable; and
- (b) in the case of an indirect infrastructure borrowing where a certificate is not in force in relation to the other borrowing mentioned in subparagraph 93G(b)(i)—the DAA decides to issue such a certificate at the same time as it issues the certificate in relation to the indirect infrastructure borrowing.

*[Laws restricting competition]*

- (2) If:
  - (a) the borrowing is a direct infrastructure borrowing; and
  - (b) there is in force, at the time at which the DAA proposes to issue the certificate in relation to the borrowing, a law that the DAA is satisfied will prohibit or restrict the operation of other facilities in competition with the infrastructure facilities concerned;the DAA must not issue the certificate.

**93P Undertaking to comply with certificate conditions**

*[DAA to request undertaking]*

- (1) Subject to subsection (4), if the DAA is satisfied of the matters required for the issue of a certificate under section 93O, the DAA must advise the applicant that it will issue the certificate if the applicant gives the DAA an undertaking to the effect that, if the certificate is issued, the applicant will comply with the conditions applying to the certificate under section 93R.

Note: In summary, the conditions require the applicant to do the things set out in the application (or the application as varied), to maintain its status as an incorporated body, corporate limited partnership or trust, and to keep proper records.

*[Form of undertaking]*

- (2) The undertaking must be in the approved form, and must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, the undertaking must be signed on behalf of the applicant by whichever of the following natural persons is applicable:

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- (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
- (b) in any other case—the natural person designated by the form as the signatory.

*[Undertaking required before certificate issued]*

- (3) The DAA must not issue the certificate until the undertaking is received.

*New advice not to be given*

- (4) After the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA must not give advice to the applicant under subsection (1).

*Certain past advice ineffective*

- (5) If the DAA gave advice to an applicant under subsection (1) during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, that advice has no effect, and is taken never to have had any effect.

### **93PA Termination of certificate issue provisions**

- (1) After the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA must not issue a certificate under this Chapter unless it gave written advice to the applicant for the certificate in accordance with subsection 93P(1) of this Act before the borrowings cut-off time.
- (2) Any certificate issued by the DAA under this Chapter during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997* has no effect, and is taken never to have had any effect, unless the DAA gave written advice to the applicant for the certificate in accordance with subsection 93P(1) of this Act before the borrowings cut-off time.

### **93Q Form of certificate etc.**

*[Form etc.]*

- (1) If an application for a certificate is granted, the certificate must:
  - (a) be in writing in the approved form; and
  - (b) be in the name of the applicant; and
  - (c) contain details of the borrowing of money to which it relates and a statement whether the borrowing is a direct infrastructure borrowing, an indirect infrastructure borrowing or a refinancing infrastructure borrowing.

*[Cancellation etc.]*

- (2) The certificate:
  - (a) may not be varied or revoked, but may be cancelled in accordance with this Part; and
  - (b) remains in force at all times after its issue until it is cancelled in accordance with this Part.

### **93R Conditions applying to certificate**

The following conditions apply to the certificate:

- (a) if the certificate applies to a direct infrastructure borrowing or to a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing—that the holder will be:
  - (i) an incorporated body throughout the certificate holder requirement period; or
  - (ii) a corporate limited partnership, or a trust of a kind mentioned in subparagraph 93I(2)(a)(ii), in relation to each year of income in which any part of the certificate holder requirement period occurs;
- (b) if the holder is:
  - (i) the person to whom the certificate was issued; or
  - (ii) a person to whom the certificate was transferred, where subsection 93K(2) applies; or

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- (iii) a person to whom the certificate was transferred, where subsection 93K(3) or (4) applies and the transfer mentioned in that subsection has not yet occurred; that the holder will:
- (iv) in any case—do, if applicable by the date specified in the application, all the things that were specified in the application as things the applicant intended to do in relation to:
  - (A) the borrowing; and
  - (B) the spending, lending or investing of the borrowed money; and
  - (C) the construction or acquisition of any facility; and
  - (D) the ownership, use and control of any facility; and
  - (E) any transfer of the holder's rights, interests and obligations in respect of any facility; and
  - (F) any other matter; and
- (v) if the certificate applies to a direct infrastructure borrowing—not do anything that will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; and
- (vi) in any case—keep proper records in respect of all dealings by the holder with the borrowed money and the doing of all other things specified in the application (for example, in respect of things done in constructing any facility);
- (c) if the holder is a person to whom the certificate was transferred, where subsection 93K(3) or (4) applies and the transfer mentioned in that subsection has occurred—that the holder will:
  - (i) own, use principally for gaining or producing assessable income and effectively control the use of, the facilities concerned (other than by leasing them) until at least 25 years after the first use of any of the facilities concerned after their construction or acquisition under the borrowing; and

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- (ii) not do anything that will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; and
- (iii) keep proper records in respect of the ownership, use and control of the facilities concerned.

**93S Application for variation of conditions applying to a certificate**

The holder of a certificate may apply to the DAA for variation of the conditions applying to the certificate under paragraph 93R(b) or (c).

**93T Criteria for variation of conditions applying to a certificate**

Subject to section 93TA, if the DAA is satisfied that:

- (a) assuming that the things specified in the application for the issue of the certificate had originally been as proposed to be varied, the DAA would still have issued the certificate; and
  - (b) it is reasonable to do so;
- the DAA must, in writing, vary the conditions.

**93TA Conditions not to be varied if total tax payable reduced**

*Request to Commissioner of Taxation*

- (1) If, after the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA becomes satisfied as mentioned in section 93T of this Act in relation to an application to vary the conditions applying to a certificate, the DAA must request the Commissioner of Taxation in writing to make a determination in accordance with subsection (2).

*Nature of determination*

- (2) After receiving the request, the Commissioner must determine whether or not, if the conditions are varied in accordance with the application, there is likely to be, as a result of the variation, a reduction in the sum of the present values (worked out when the Commissioner makes the determination) of all amounts of tax that have or may become payable, under Acts of which the

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Commissioner of Taxation has the general administration, by the persons whose liability to tax may be affected by the variation.

### *Information to Commissioner*

- (3) The DAA must give the Commissioner any information that the Commissioner requires for the purposes of making the determination.

### *Written advice of determination*

- (4) The Commissioner must advise the DAA and the applicant in writing of the Commissioner's determination.

### *Conditions not to be varied unless reduction unlikely*

- (5) The DAA must not vary the conditions if the Commissioner's determination is that there is likely to be a reduction of the kind mentioned in subsection (2).

### *Objections*

- (6) If the applicant is dissatisfied with the determination by the Commissioner, the applicant may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## **93TB Reconsideration of pre-commencement variations**

### *Request to Commissioner*

- (1) If, during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA approved any variation of conditions applying to a certificate, the DAA must, as soon as practicable after the commencement of that Act, request the Commissioner of Taxation in writing to advise in accordance with subsection (2).

### *Commissioner to advise of determination*

- (2) After receiving the request, the Commissioner must advise the DAA and the person who applied for the variation, in writing, of the determination that the Commissioner would have made under

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subsection 93TA(2) (assuming that section 93TA had been in force at the time) if the DAA had requested the Commissioner to make a determination in relation to the variation of the conditions immediately before they were varied.

*Application of subsections 93TA(3) and (6) etc.*

- (3) Subsections 93TA(3) and (6), and Part IVC of the *Taxation Administration Act 1953*, apply in the same way to the Commissioner's advice as they do to a determination under subsection 93TA(2).

*Effect of advice*

- (4) If the Commissioner advises that he or she would have determined that there was likely to be a reduction of the kind mentioned in subsection 93TA(2), the variation of the conditions has no effect, and is taken never to have had any effect.

### **93U Transfer of certificate**

If the holder of a certificate proposes to transfer the certificate to another person, the holder and the other person may jointly apply to the DAA for the transfer of the certificate on a specified date.

### **93V Criteria for transfer of certificate**

Subject to section 93W, the DAA must, in writing, transfer the certificate to the transferee on the specified date if the DAA is satisfied that:

- (a) by the specified date, all rights, interests and obligations of the certificate holder in relation to:
  - (i) if subparagraph (ii) does not apply:
    - (A) the spending, lending or other use of the borrowed money; and
    - (B) the acquisition, construction, ownership, use and control of any facility covered by the conditions applying to the certificate; or
  - (ii) if the transfer of the certificate to the transferee will enable effect to be given to a requirement, in a condition applying to the certificate as a result of

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- subsection 93K(3) or (4), for the holder to transfer to another person all of the holder's rights, interests and obligations in relation to facilities—those facilities; will be transferred to the transferee; and
- (b) the rights, interests and obligations will not be transferred to the transferee in partnership with anyone else; and
  - (c) the requirements of section 93I would be satisfied in relation to the transferee if the transferee had been the person who proposed to borrow the money and the borrower requirement period in section 93I were the certificate holder requirement period; and
  - (d) if the transfer is approved, the transferee intends to comply with the conditions that will apply to the certificate.

**93W Undertaking to comply with certificate conditions**

*[DAA to request undertaking]*

- (1) If the DAA is satisfied of the matters required for the transfer of a certificate under section 93V, the DAA must advise the applicants that it will transfer the certificate if the transferee gives the DAA an undertaking to the effect that, if the certificate is transferred, the transferee will comply with the conditions that will apply to the certificate under section 93R.

*[Form of undertaking]*

- (2) The undertaking must be in the approved form, and must be signed by the transferee if the transferee is a natural person. If the transferee is not a natural person, the undertaking must be signed on behalf of the transferee by whichever of the following natural persons is applicable:
  - (a) if the transferee is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
  - (b) in any other case—the natural person designated by the form as the signatory.



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*[Undertaking required before transfer]*

- (3) The DAA must not transfer the certificate to the transferee until the undertaking is received.

**93X Provisions relating to applications under this Division**

*[Approved form]*

- (1) An application must be in writing in the approved form.

*[Information in form]*

- (2) The application must contain such information as is required by the form to be given.

*[Accompanying reports etc.]*

- (3) The application must be accompanied by any report or other document required by the form to be given.

*[Signing of application etc.]*

- (4) The application, and any accompanying report or other document created by an applicant, must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:
- (a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;
  - (b) in any other case—the natural person designated by the form as the signatory.

*[Power to refuse to consider application]*

- (5) If the DAA gives a request to an applicant under Part 4 that is relevant to the application, the DAA may refuse to consider the application unless the applicant complies with the request.

*[Decision on application]*

- (7) After considering an application, the DAA must decide:

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- (a) to grant the application; or
- (b) to refuse the application.

*[Notice of decision]*

- (8) The DAA must give written notice of the decision to each applicant.

*[Reasons for refusal]*

- (9) A notice of a refusal of an application must set out the reasons for the refusal.

**Division 2—Cancellation****93Z Cancellation or termination—failure to comply with request to give information or provide report**

If a certificate holder fails to comply with a request made by the DAA under section 93ZC or with the requirements of section 93ZE, the DAA may, by written notice given to the holder, cancel the certificate.

**93ZA Cancellation—false or misleading statements etc.**

*[False or misleading statements—Part 4 request not involved]*

- (1) If a certificate holder, in connection with the operation of this Chapter (other than Part 4):
- (a) makes a statement, either orally or in writing, to the DAA or to an officer of the Department that is false or misleading in a material particular; or
  - (b) omits from a statement made, either orally or in writing, to the DAA or to an officer of the Department any matter or thing without which the statement is misleading in a material particular; or
  - (c) gives or produces a document or copy to the DAA or to an officer of the Department that contains information that is false or misleading in a material particular;

the DAA may, by written notice given to the holder, cancel the certificate.

*[False or misleading information given under Part 4]*

- (2) If a certificate holder, in compliance with a notice under Part 4, gives information that is false or misleading in a material particular, the DAA may, by written notice given to the holder, cancel the certificate.

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*[False or misleading documents given under Part 4]*

- (3) If a certificate holder, in compliance with a notice under Part 4, produces a document, or gives a copy of a document, that, to the knowledge of the holder, is false or misleading in a material particular, the DAA may, by written notice given to the holder, cancel the certificate.

*[Subsection (3) does not apply if document accompanied by explanation]*

- (4) Subsection (3) does not apply to a certificate holder who produces a document, or gives a copy of a document, that, to the knowledge of the holder, is false or misleading in a material particular if the document or copy is accompanied by a written statement:
- (a) stating that the document or copy is, to the knowledge of the holder, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the holder, false or misleading.

*[Imputed knowledge of bodies corporate and partnerships etc.]*

- (5) For the purposes of subsections (3) and (4):
- (a) an incorporated body is taken to know anything known by any of its directors or employees; and
  - (b) a corporate limited partnership is taken to know anything known by:
    - (i) if any of the partners is a natural person—that partner; and
    - (ii) if any of the partners is an incorporated body—any of the directors or employees of that partner; and
  - (c) a natural person is taken to know anything known by an employee of the natural person.

**93ZAA Cancellation of certificate that applies to an indirect infrastructure borrowing etc.—holder ceases to be a resident**

- (1) If:
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- (a) a certificate held by an incorporated company (not in the capacity of trustee) applies to:
  - (i) an indirect infrastructure borrowing that relates to a direct infrastructure borrowing; or
  - (ii) a refinancing infrastructure borrowing that relates to an indirect infrastructure borrowing covered by subparagraph (i); and
- (b) at the time when the company became the holder of the certificate, the holder was a non-exempt resident company; and
- (c) the holder has ceased to be a non-exempt resident company before the end of the applicable borrower requirement period;

the DAA is taken to have cancelled the certificate with effect from the time of the cessation. For this purpose, the ***applicable borrower requirement period*** is the borrower requirement period in relation to the direct infrastructure borrowing.

(2) If:

- (a) a certificate held by a partnership (not in the capacity of trustee) applies to:
  - (i) an indirect infrastructure borrowing that relates to a direct infrastructure borrowing; or
  - (ii) a refinancing infrastructure borrowing that relates to an indirect infrastructure borrowing covered by subparagraph (i); and
- (b) the holder was a non-exempt resident corporate limited partnership in relation to the year of income in which the partnership became the holder of the certificate; and
- (c) the holder has ceased to be a non-exempt resident corporate limited partnership in relation to a year of income in which any part of the applicable borrower requirement period occurs;

the DAA is taken to have cancelled the certificate with effect from the time of the cessation. For this purpose, the ***applicable borrower requirement period*** is the borrower requirement period in relation to the direct infrastructure borrowing.

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- (3) If a certificate is cancelled under subsection (1) or (2), the cessation is taken to be the ground relied on by the DAA for cancelling the certificate.

**93ZAB Cancellation of certificate that applies to an indirect infrastructure borrowing—transfer of rights etc.**

- (1) If:
- (a) a certificate applies to an indirect infrastructure borrowing; and
  - (b) the holder transfers to another person (the *transferee*) any or all of the holder's rights, interests and obligations in relation to the lending of the borrowed money as mentioned in subparagraph 93G(b)(i); and
  - (c) 30 days pass and:
    - (i) in a case where all of the holder's rights, interests and obligations are transferred—the holder has neither repaid the whole of the borrowing nor passed the certificate transfer test set out in subsection (3); or
    - (ii) in a case where some, but not all, of the holder's rights, interests and obligations are transferred—the holder has not repaid the whole of the borrowing;
- the DAA is taken to have cancelled the certificate with effect from the time of the transfer.
- (2) If the certificate is cancelled under subsection (1), the transfer is taken to be the ground relied on by the DAA for cancelling the certificate.
- (3) For the purposes of this section, the holder *passes the certificate transfer test* at a particular time if, before that time:
- (a) an application has been made under section 93U to transfer the certificate to the transferee; and
  - (b) either:
    - (i) the DAA has transferred the certificate to the transferee under this Division; or
    - (ii) the DAA was required to transfer the certificate to the transferee under this Division.

**93ZAC Cancellation of certificate that applies to an indirect infrastructure borrowing—total repayment of related direct infrastructure borrowing**

- (1) If:
- (a) a certificate applies to an indirect infrastructure borrowing that relates to a direct infrastructure borrowing; and
  - (b) the whole of the direct infrastructure borrowing is repaid; and
  - (c) 30 days pass and:
    - (i) in a case where the repayment is made using a refinancing infrastructure borrowing—the holder has neither repaid the whole of the indirect infrastructure borrowing nor passed the certificate transfer test set out in subsection (3); or
    - (ii) in any other case—the holder has not repaid the whole of the indirect infrastructure borrowing;
- the DAA is taken to have cancelled the certificate with effect from the time of the repayment of the direct infrastructure borrowing.
- (2) If the certificate is cancelled under subsection (1), the repayment of the direct infrastructure borrowing is taken to be the ground relied on by the DAA for cancelling the certificate.
- (3) For the purposes of this section, the holder *passes the certificate transfer test* at a particular time if, before that time:
- (a) an application has been made under section 93U to transfer the certificate to the borrower in relation to the refinancing infrastructure borrowing (the *transferee*); and
  - (b) either:
    - (i) the DAA has transferred the certificate to the transferee under this Division; or
    - (ii) the DAA was required to transfer the certificate to the transferee under this Division.

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**93ZAD Cancellation of certificate that applies to an indirect infrastructure borrowing—partial repayment of related direct infrastructure borrowing**

- (1) If:
  - (a) a certificate applies to an indirect infrastructure borrowing that relates to a direct infrastructure borrowing; and
  - (b) a percentage (being a percentage less than 100%) of the direct infrastructure borrowing is repaid; and
  - (c) 30 days pass and the holder has not repaid that percentage of the indirect infrastructure borrowing;the DAA is taken to have cancelled the certificate with effect from the time of the repayment of that percentage of the direct infrastructure borrowing.
- (2) If the certificate is cancelled under subsection (1), the repayment of that percentage of the direct infrastructure borrowing is taken to be the ground relied on by the DAA for cancelling the certificate.

**93ZB Cancellation for contravention of conditions applying to certificate etc.**

*[Cancellation of certificate]*

- (1) The DAA may, by written notice to the holder, cancel a certificate if the DAA is satisfied that the holder has not complied with the conditions applying to the certificate.

*[Cancellation of certificates connected with a cancelled direct infrastructure borrowing certificate]*

- (2) If the DAA cancels the certificate that applies to a direct infrastructure borrowing, it must also cancel any certificate applying to:
  - (a) an indirect infrastructure borrowing, where the direct infrastructure borrowing is the one mentioned in subparagraph 93G(b)(i); and
  - (b) a refinancing infrastructure borrowing that relates to the direct infrastructure borrowing.



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*[Cancellation of certificates connected with a cancelled indirect infrastructure borrowing certificate]*

- (3) If the DAA cancels (whether under subsection (2) or otherwise) the certificate that applies to an indirect infrastructure borrowing, it is taken to have also cancelled any certificate that applies to a refinancing infrastructure borrowing that relates to the indirect infrastructure borrowing. The grounds relied on by the DAA for cancelling the certificate that applies to the refinancing infrastructure borrowing are taken to be the same as the grounds relied on by the DAA for cancelling the certificate that applies to the indirect infrastructure borrowing.

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## **Part 4—Provision of information to DAA**

### **93ZC DAA may request person to give information or produce documents etc.**

*[Making of request]*

- (1) For the purposes of this Chapter, the DAA may, by written notice given to a person who has made an application or who is a certificate holder, request the person:
  - (a) to give information to the DAA within the time and in the manner specified in the notice; or
  - (b) to produce documents to the DAA within the time and in the manner specified in the notice; or
  - (c) to give certified copies of documents to the DAA within the time and in the manner specified in the notice.

*[Contravention not an offence]*

- (2) It is not an offence to contravene the notice.

### **93ZD How DAA may deal with documents etc. produced by person**

*[Inspection, copies etc.]*

- (1) The DAA or an officer of the Department authorised in writing by the DAA may inspect, take extracts from, and make copies of, any document or copy produced or given to the DAA under section 93ZC.

*[Retention of certified copy]*

- (2) The DAA may retain a certified copy of a document given in accordance with a request covered by paragraph 93ZC(1)(c).

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*[Retention of document]*

- (3) The DAA may, for the purposes of this Chapter, take, and retain for as long as is necessary for those purposes, a document produced under paragraph 93ZC(1)(b).

*[Copy of retained document]*

- (4) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the DAA to be a true copy.

*[Evidence]*

- (5) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

*[Access to document]*

- (6) Until a certified copy is supplied, the DAA must, at such times and places as the DAA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

**93ZE Certificate holder to provide annual progress reports**

The holder of a certificate that was issued or transferred to the holder must:

- (a) within one month after the end of the first 12 month period (the **reporting year**) after the issue of the certificate; and
- (b) within one month after the end of each 12 month period (also a **reporting year**) after the first reporting year and while the certificate remains in force;

report in writing to the DAA on things done, during the reporting year concerned, in complying with conditions applying to the certificate under paragraph 93R(b) or (c).

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**Part 5—Provision of information by DAA to  
Commissioner of Taxation**

**93ZF Provision of information to Commissioner of Taxation**

The DAA must advise the Commissioner of Taxation in writing of particulars of:

- (a) all certificates issued; and
- (b) all certificates transferred; and
- (c) all certificates cancelled; and
- (d) all other matters relevant to the operation of Division 16L of Part III of the Tax Act.

## **Part 6—DAA's power to facilitate issue or transfer of certificate**

### **93ZG DAA's powers to facilitate issue or transfer of certificate**

If the DAA considers that any action or inaction of a person or body is likely to have the effect of preventing the DAA from issuing or transferring a certificate under this Chapter, the DAA may, with the consent of each applicant, notify the person or body accordingly.

## Chapter 4—General

### Part 1—Interpretation

#### 93AA Interpretation

In this Chapter, unless the contrary intention appears:

*AAT* means the Administrative Appeals Tribunal.

*DAA* means the Development Allowance Authority appointed under this Chapter.

*document certification provision* means section 15A of the *Taxation Administration Act 1953* in so far as that section applies in relation to this Act.

*partnership* has the same meaning as in section 6 of the *Income Tax Assessment Act 1936*.

*prosecution provisions* means Part III of the *Taxation Administration Act 1953*, in so far as that Part applies in relation to this Act.

*reviewable decision* means a decision of the DAA under Part 2, 3, 4, 5, 6 or 8 of Chapter 2, Part 3 of Chapter 3 or Part 4 of Chapter 4.

*State taxation officer disclosure provision* means section 13J of the *Taxation Administration Act 1953* in so far as that section applies in relation to this Act.

### Part 2—Development Allowance Authority

#### 94 Creation of single-person statutory office of Development Allowance Authority

There is to be a Development Allowance Authority (*DAA*).

## **95 Appointment of DAA**

The DAA is to be appointed by the Governor-General.

## **96 DAA may be full-time or part-time**

The DAA may be appointed on a full-time basis or a part-time basis.

## **97 DAA's term of office**

The DAA holds office for the period specified in the instrument of appointment.

## **99 Person may hold both the office of DAA and the office of Commissioner of the Industry Commission**

Neither this Act nor the *Industry Commission Act 1989* prevents a person from holding both:

- (a) an office of Commissioner of the Industry Commission; and
- (b) the office of DAA (whether on a full-time basis or a part-time basis).

## **101 DAA's terms and conditions of appointment**

The DAA holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

## **102 DAA's remuneration and allowances**

- (1) The DAA is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination is in force, the DAA is to be paid such remuneration as is specified in the regulations.
- (3) The DAA is to be paid such allowances as are specified in the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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**103 Full-time DAA's leave of absence**

- (1) A full-time DAA has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time DAA leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

**104 Resignation of DAA**

The DAA may resign the office of DAA by signed instrument delivered to the Governor-General.

**105 Termination of appointment of DAA**

*[Misbehaviour or physical or mental incapacity]*

- (1) The Governor-General may terminate the appointment of the DAA for misbehaviour or physical or mental incapacity.

*[Bankruptcy, conflict of interest, absence from duty etc.]*

- (2) The Governor-General must terminate the appointment of the DAA if the DAA:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) fails, without reasonable excuse, to comply with section 107 (which deals with conflict of interest); or
  - (c) is appointed on a full-time basis and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (d) is appointed on a full-time basis and engages in paid employment outside the duties of the office of DAA without the consent of the Minister; or
  - (e) is appointed on a part-time basis and engages in paid employment that, in the opinion of the Minister, conflicts with the proper performance of his or her duties.



*[Insufficient workload to justify full-time appointment]*

- (3) The Governor-General must terminate the appointment of a full-time DAA if the Minister issues a written determination stating that the Minister is of the opinion that the workload of the DAA is insufficient to justify a full-time appointment.

## **106 Acting DAA**

*[Appointment to act as the DAA]*

- (1) The Minister may appoint a person to act as the DAA:
  - (a) during a vacancy in the office of DAA, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the DAA is absent from duty or from Australia or is, for any other reason, unable to perform the duties of that office.

*[Acting appointment not to be challenged on technical grounds]*

- (5) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **107 Conflict of interest**

*[DAA to notify business interests to Minister]*

- (1) The DAA must give written notice to the Minister of all direct or indirect pecuniary interests that the DAA has or acquires in any business, or in any body corporate carrying on a business.

*[DAA to notify potential conflict of interest to Minister]*

- (2) If the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA, the DAA must:

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- (a) give written notice to the Minister of that interest; and
- (b) take no further action on the matter before:
  - (i) the end of 28 days after the date on which the Minister receives the notice; or
  - (ii) the date on which written advice of a decision of the Minister under subsection (4) is given in relation to the matter;whichever first occurs.

*[Minister may direct DAA to delegate]*

- (3) If:
  - (a) the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA; and
  - (b) the Minister considers that the interest could conflict with the proper performance of the DAA's functions in relation to that matter;then:
  - (c) the Minister must give the DAA a written notice directing the DAA:
    - (i) not to deal with the matter personally; and
    - (ii) to delegate the DAA's functions and powers in relation to that matter to an SES employee or acting SES employee occupying a specified position in the Department; and
    - (iii) not to delegate the DAA's functions and powers in relation to that matter to any other person; and
  - (d) the DAA must comply with the direction.

*[Minister may allow DAA to deal with matter personally]*

- (4) If:
  - (a) the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA; and

- (b) the Minister does not consider that the interest could conflict with the proper performance of the DAA's functions in relation to that matter;

the Minister may give the DAA a written notice stating that the Minister has no objection to the DAA dealing with the matter personally.

*[Minister's direction to be given within 28 days of notification of DAA's interest]*

(5) If:

- (a) the DAA has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the DAA; and
- (b) the Minister considers that the interest could conflict with the proper performance of the DAA's functions in relation to that matter; and
- (c) the DAA gives written notice to the Minister of that interest under subsection (2);

a direction under subsection (3) in relation to that matter has no effect unless it is given before the end of 28 days after the date on which the Minister receives the notice.

## **Part 3—Administration**

### **108 Delegation by DAA**

The DAA may, by writing, delegate to an SES employee or acting SES employee in the Department all or any of the DAA's functions or powers under:

- (a) this Act; or
- (b) the document certification provision; or
- (c) the State taxation officer disclosure provisions; or
- (d) the prosecution provisions.

### **109 Consultants**

The DAA may engage as consultants, on such terms and conditions as are determined by the DAA, persons having suitable qualifications and experience.

### **110 Commonwealth authorities may assist DAA**

- (1) This section applies to an authority established by or under a law of the Commonwealth.
- (2) In addition to the functions otherwise conferred on the authority, the authority may, at the request of the DAA, provide assistance to the DAA relating to the administration of this Act.
- (3) The authority may charge fees for the provision of the assistance.

## **Part 4—Protection of commercial-in-confidence information**

### **111 Application for protection of commercial-in-confidence information**

- (1) An application under Part 3, 4, 5 or 6 of Chapter 2 or Part 3 of Chapter 3 may be accompanied by an application that certain information given in accordance with that Part (other than section 34) be treated as commercial-in-confidence information under this Part.
- (2) The giving of information, or the production or giving of a document or copy, under section 34, Part 7 of Chapter 2 or Part 4 of Chapter 3 may be accompanied by an application that some or all of the information or of the contents of the document or copy be treated as commercial-in-confidence information under this Part.
- (3) An application under subsection (1) or (2) must be in writing in the approved form.

### **112 DAA may declare that information is to be treated as commercial-in-confidence information**

*[Declaration]*

- (1) If, on an application under subsection 111(1) or (2), the DAA is satisfied that:
  - (a) publication of the information specified in the application could reasonably be expected to prejudice substantially the commercial interests of the applicant; and
  - (b) the prejudice outweighs the public interest in the publication of the information;the DAA may declare that the information is to be treated as commercial-in-confidence information for the purposes of this Part.

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*[Notification of decision on application]*

- (2) The DAA must give the applicant written notice of the decision about the application.

*[Confidential status maintained until reconsideration or review finalised]*

- (3) For the purposes of this Part, if the DAA refuses an application under subsection 111(1) or (2) in relation to information, the information is treated as commercial-in-confidence information at a particular time if:
- (a) the time is after the application is made but before the end of the period of 21 days after the giving of the notice of refusal; or
  - (b) if, during that period, the applicant requests the DAA to reconsider the decision refusing the application—the time is during the period when that reconsideration, or any subsequent application to the AAT, has not been finalised.

*[Reconsideration taken not to be finalised during period when AAT application can be made]*

- (4) For the purposes of this section, a reconsideration of a decision is taken not to have been finalised during the period of 28 days after:
- (a) if, because of the operation of subsection 119(4), the decision is taken to be confirmed—the day on which the decision is taken to have been confirmed; or
  - (b) in any other case—the day on which the decision on the reconsideration is notified to the entity concerned.

*[Reasons for decision]*

- (5) If the DAA refuses to make a declaration, the notice of refusal must set out the reasons for the refusal.

**113 DAA may revoke declaration**

*[Revocation of declaration]*

- (1) If:

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- (a) there is in force a declaration under section 112 that information given by a person is to be treated as commercial-in-confidence information for the purposes of this Part; and
- (b) the DAA is satisfied that:
  - (i) publication of the information could not reasonably be expected to prejudice substantially the commercial interests of the person; or
  - (ii) both:
    - (A) publication of the information could reasonably be expected to prejudice substantially the commercial interests of the person; and
    - (B) the public interest in the publication of the information outweighs the prejudice;

the DAA may, by written notice given to the entity, revoke the declaration with effect from the 21st day after the day on which the revocation is notified to the person.

*[When power of revocation may be exercised]*

- (2) The DAA's powers under subsection (1) may be exercised:
  - (a) on the DAA's own initiative; or
  - (b) upon application being made by the person concerned.

*[Confidential status maintained until reconsideration or review finalised]*

- (3) For the purposes of this Part, if:
  - (a) the DAA revokes a declaration under section 112 relating to information; and
  - (b) before the revocation takes effect, the person concerned requests the DAA to reconsider the decision to revoke the declaration;

the information is treated as commercial-in-confidence information at a particular time after the revocation takes effect if that time is during the period when that reconsideration, or any subsequent application to the AAT, has not been finalised.

Section 114

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*[Reconsideration taken not to be finalised during period when AAT application can be made]*

- (4) For the purposes of this section, a reconsideration of a decision is taken not to have been finalised during the period of 28 days after:
- (a) if, because of the operation of subsection 119(4), the decision is taken to be confirmed—the day on which the decision is taken to have been confirmed; or
  - (b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.

*[Reasons for decision]*

- (5) If the DAA revokes a declaration, the notice of the revocation must set out the reasons for the revocation.

**114 Commercial-in-confidence information must not be disclosed**

- (1) A person who:
- (a) has commercial-in-confidence information; and
  - (b) has it only because of performing duties or functions under this Act; and
  - (c) knows that the information is commercial-in-confidence information;

must not disclose any of the information.

Penalty: Imprisonment for 2 years.

- (1A) Subsection (1) does not apply if the disclosure is:
- (a) in the course of carrying out functions and duties under this Act; or
  - (b) to the Commissioner of Taxation, for the purposes of the administration of an Act of which the Commissioner of Taxation has the general administration; or
  - (c) by order of a court; or
  - (d) with the consent of the person who applied to have the information treated as commercial-in-confidence information.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.



Section 114

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- (2) For the purposes of this section, information is commercial-in-confidence information at a particular time if, and only if, at that time:
- (a) there is in force a declaration under section 112 that the information is to be treated as commercial-in-confidence information for the purposes of this Part; or
  - (b) the information is otherwise treated as commercial-in-confidence information for the purposes of this Part.

## Part 5—Reports by DAA

### 115 Quarterly reports by DAA

- (1) The DAA must, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operation of this Act during that quarter, including information about:
  - (a) the number and type of registrations (if any) granted under Chapter 2 during that quarter; and
  - (b) the number and type of certificates (if any) granted under this Act during that quarter.
- (2) This section applies to a quarter if:
  - (b) there is not in force a direction under section 116 relating to a period which wholly or partly overlaps the quarter.

- (3) In this section:

*quarter* means so much of a quarter commencing on 1 July, 1 September, 1 January or 1 April as occurs after the commencement of this section.

### 116 Periodic reports by DAA

- (1) The Minister may, by written notice given to the DAA, direct the DAA to prepare and give to the Minister a report on the operation of this Act during a specified period.
- (2) The DAA must comply with the direction.

### 117 Annual report

- (1) The DAA must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the operation of this Act during that year.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

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- (4) If this section does not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of this section and ending on the next 30 June as if:
- (a) if the period is less than 6 months—the period were included in the next financial year; or
  - (b) in any other case—the period were a financial year.

**118 Reports to deal with ancillary provisions of the *Taxation Administration Act 1953***

A reference in this Part to the operation of this Act includes a reference to the operation of:

- (a) the document certification provision; and
- (b) the State taxation officer disclosure provisions; and
- (c) the prosecution provisions.

## **Part 6—Review of decisions**

### **119 Reconsideration of reviewable decisions**

- (1) A person who is affected by a reviewable decision may, if dissatisfied with the decision, by notice given to the DAA within:
  - (a) the period of 21 days after the day on which the decision first comes to the attention of the person; or
  - (b) such further period as the DAA allows;request the DAA to reconsider the decision.
- (2) The reasons for making the request must be set out in the request.
- (3) Upon receipt of the request, the DAA must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as the DAA thinks fit.
- (4) If the DAA does not confirm, revoke or vary a decision before the end of the period of 40 days after the day on which the DAA received the request under subsection (1) to reconsider the decision, the DAA is taken, at the end of that period, to have confirmed the decision under subsection (3).
- (5) If the DAA confirms, revokes or varies a decision before the end of the period referred to in subsection (4), the DAA must, by notice given to the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be.

### **120 Review of decisions by Administrative Appeals Tribunal**

- (1) Applications may be made to the AAT for review of decisions of the DAA that have been confirmed or varied under subsection 119(3).
- (2) If, because of the operation of subsection 119(4), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period:

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- (a) commencing on the day on which the decision is taken to have been confirmed; and
  - (b) ending on the 28th day after that day.
- (3) If a request is made under subsection 119(1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the AAT for a review of that decision.

**121 Statements to accompany notification of decisions**

- (1) If written notice is given to a person affected by a reviewable decision that the reviewable decision has been made, that notice must include a statement to the effect that:
  - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the DAA in accordance with subsection 119(1); and
  - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the DAA upon that reconsideration confirming or varying the first-mentioned decision, make application to the AAT for review of the decision so confirmed or varied.
- (2) If:
  - (a) the DAA confirms or varies a reviewable decision under subsection 119(3); and
  - (b) gives to the person written notice of the confirmation or variation of the decision;that notice must include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the AAT for review of the decision.
- (3) A failure to comply with this section does not affect the validity of a decision.

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## Part 7—Miscellaneous

### 122 Giving of documents to partnerships

For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

#### 122A Certified copies of documents

- (1) The DAA may certify that a document is a copy of a document (*original document*) issued by the DAA under this Act.
- (2) Subject to subsection (3), a document purporting to be a copy certified under subsection (1) must be received in all courts and tribunals in proceedings arising out of a law of the Commonwealth as evidence as if it were the original document.
- (3) Subsection (2) does not apply in relation to a document if:
  - (a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy; or
  - (b) in any other case—it is proved that the document is not a true copy.

### 123 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Table of Acts****Notes to the *Development Allowance Authority Act 1992*****Note 1**

The *Development Allowance Authority Act 1992* as shown in this compilation comprises Act No. 99, 1992 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 19 December 1996 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Development Allowance Authority Act 1992</i>	99, 1992	30 June 1992	30 June 1992	
<i>Development Allowance Authority Amendment Act 1992</i>	129, 1992	24 Oct 1992	Ss. 1, 2 and 37: Royal Assent Remainder: (a)	—
<i>Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992</i>	167, 1992	11 Dec 1992	1 July 1993	—
<i>Development Allowance Authority Amendment Act 1993</i>	2, 1994	18 Jan 1994	18 Jan 1994	—
<i>Taxation Laws Amendment (Infrastructure Borrowings) Act 1994</i>	163, 1994	16 Dec 1994	16 Dec 1994	—
<i>Taxation Laws Amendment Act (No. 4) 1994</i>	181, 1994	19 Dec 1994	Schedule 1 (items 22-85): 13 Oct 1994 Remainder: Royal Assent	Sch. 6 (items 1, 9)
<i>Taxation Laws Amendment Act (No. 2) 1995</i>	169, 1995	16 Dec 1995	Schedule 1 (items 15, 16): Royal Assent (b) Schedule 10 (Part 1): (b)	Sch. 1 (item 16)
<i>Taxation Laws Amendment Act (No. 3) 1996</i>	78, 1996	19 Dec 1996	Schedule 3 (items 1-10): 30 Oct 1995 (c)	Sch. 3 (item 10) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Income Tax (Consequential Amendments) Act 1997</i>	39, 1997	17 Apr 1997	1 July 1997	—
<i>Taxation Laws Amendment (Infrastructure Borrowings) Act 1997</i>	104, 1997	30 June 1997	30 June 1997	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	S. 4: Royal Assent (d) Schedule 3 (items 66, 67): (d)	S. 4 [see Table A]
<i>Productivity Commission (Repeals, Transitional and Consequential Amendments) Act 1998</i>	15, 1998	16 Apr 1998	16 Apr 1998	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 387-389): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (e)	—
<i>Radiocommunications Legislation Amendment Act 2000</i>	34, 2000	3 May 2000	31 May 2000	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	S. 4 and Schedule 4 (items 1 and 2): 15 Dec 2001 (f)	S. 4 [see Table A]
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]



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**Act Notes**

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- (a) Subsection 2(2) of the *Development Allowance Authority Amendment Act 1992* provides as follows:

- (2) The remaining provisions of this Act are taken to have commenced immediately after the commencement of the *Development Allowance Authority Act 1992*.

The *Development Allowance Authority Act 1992* came into operation on 30 June 1992.

- (b) The *Development Allowance Authority Act 1992* was amended by the *Taxation Laws Amendment Act (No. 2) 1995*, subsections 2(1) and (4) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (4) Part 1 of Schedule 10 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1994*.

The *Taxation Laws Amendment (Infrastructure Borrowings) Act 1994* came into operation on 16 December 1994.

- (c) The *Development Allowance Authority Act 1992* was amended by the *Taxation Laws Amendment Act (No. 3) 1996*, subsection 2(3) of which provides as follows:

- (3) Schedule 3 is taken to have commenced on 30 October 1995.

- (d) The *Development Allowance Authority Act 1992* was amended by section 4 and Schedule 3 (items 66 and 67) only of the *Tax Law Improvement Act 1997*, subsections 2(1)-(3) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
- (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.

- (e) The *Development Allowance Authority Act 1992* was amended by Schedule 1 (items 387-389) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.

- (f) The *Development Allowance Authority Act 1992* was amended by Schedule 4 (items 1 and 2) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.



**Table of Amendments****Table of Amendments**

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

Provision affected	How affected
Heading to Part 1 .....	rep. No. 163, 1994
Heading to Chapt. 1 .....	ad. No. 163, 1994
S. 2A .....	ad. No. 146, 2001
Heading to Chapt. 2 .....	ad. No. 163, 1994
S. 3 .....	am. No. 163, 1994
S. 4 .....	am. No. 129, 1992; Nos. 2 and 163, 1994
S. 5 .....	am. No. 163, 1994
S. 6 .....	am. Nos. 129 and 167, 1992; Nos. 2 and 163, 1994; No. 34, 2000
Ss. 7, 8 .....	am. No. 163, 1994
S. 9 .....	am. No. 129, 1992; No. 163, 1994
Ss. 10, 11 .....	am. No. 163, 1994
Heading to s. 12 .....	am. No. 34, 2000
S. 12 .....	am. No. 163, 1994, No. 34, 2000
Heading to Div. 2 of Part 2 .....	am. No. 129, 1992
S. 13 .....	am. No. 163, 1994
S. 13A .....	ad. No. 129, 1992 am. No. 163, 1994
S. 14 .....	am. No. 129, 1992; No. 163, 1994
S. 14A .....	ad. No. 129, 1992 am. No. 163, 1994
S. 15 .....	am. Nos. 2 and 163, 1994
S. 16 .....	am. No. 163, 1994; No. 15, 1998
Ss. 17-19 .....	am. No. 129, 1992; No. 163, 1994
S. 20 .....	am. No. 129, 1992
S. 21 .....	am. No. 129, 1992; No. 163, 1994
S. 22 .....	am. No. 129, 1992; No. 163, 1994; No. 39, 1997
Ss. 24, 25 .....	am. No. 163, 1994
Div. 11 of Part 2 (s. 25A) .....	ad. No. 129, 1992
S. 25A .....	ad. No. 129, 1992 am. No. 163, 1994
Div. 12 of Part 2 (s. 25B) .....	ad. No. 129, 1992
S. 25B .....	ad. No. 129, 1992 am. No. 163, 1994
S. 27 .....	am. No. 2, 1994
S. 28 .....	am. No. 129, 1992; No. 181, 1994
Ss. 31, 32 .....	am. No. 129, 1992
S. 37 .....	am. No. 129, 1992; No. 181, 1994
S. 40 .....	am. No. 2, 1994
Ss. 41, 42 .....	am. No. 129, 1992

**Table of Amendments**

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

Provision affected	How affected
S. 43 .....	am. No. 129, 1992; No. 181, 1994
S. 46 .....	am. No. 129, 1992
Ss. 48, 49 .....	am. No. 129, 1992
S. 50 .....	am. No. 181, 1994
S. 53 .....	am. No. 129, 1992
S. 56 .....	am. No. 129, 1992
S. 59 .....	am. No. 129, 1992
S. 60 .....	am. No. 181, 1994
S. 63 .....	am. No. 129, 1992
S. 66 .....	am. No. 129, 1992
S. 69 .....	am. No. 129, 1992
S. 70 .....	am. No. 181, 1994
S. 73 .....	am. No. 129, 1992
S. 76 .....	am. No. 129, 1992
S. 78 .....	am. No. 129, 1992
S. 86 .....	am. No. 129, 1992
Chapt. 3 .....	ad. No. 163, 1994
(ss. 93A-93Z, 93ZA-93ZG)	
Part 1 .....	ad. No. 163, 1994
(ss. 93A-93C)	
Ss. 93A, 93B .....	ad. No. 163, 1994
	am. No. 104, 1997
S. 93C .....	ad. No. 163, 1994
Part 2 (ss. 93D-93M) .....	ad. No. 163, 1994
S. 93D .....	ad. No. 163, 1994
	am. No. 169, 1995; No. 78, 1996; Nos. 104 and 121, 1997
Ss. 93E-93H .....	ad. No. 163, 1994
S. 93I .....	ad. No. 163, 1994
	am. No. 78, 1996
S. 93J .....	ad. No. 163, 1994
S. 93K .....	ad. No. 163, 1994
	am. No. 169, 1995
Ss. 93L, 93M .....	ad. No. 163, 1994
Part 3 .....	ad. No. 163, 1994
(ss. 93N-93Z, 93ZA, 93ZB)	
Ss. 93N-93P .....	ad. No. 163, 1994
	am. No. 104, 1997
S. 93PA .....	ad. No. 104, 1997
Ss. 93Q-93S .....	ad. No. 163, 1994
S. 93T .....	ad. No. 163, 1994
	am. No. 104, 1997
Ss. 93TA, 93TB .....	ad. No. 104, 1997
Ss. 93U-93W .....	ad. No. 163, 1994
S. 93X .....	ad. No. 163, 1994
	am. No. 104, 1997

**Table of Amendments**

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

Provision affected	How affected
S. 93Y .....	ad. No. 163, 1994 rep. No. 104, 1997
S. 93Z.....	ad. No. 163, 1994
S. 93ZA .....	ad. No. 163, 1994
Ss. 93ZAA-93ZAD .....	ad. No. 78, 1996
S. 93ZB .....	ad. No. 163, 1994 am. No. 78, 1996
Part 4 .....	ad. No. 163, 1994 (ss. 93ZC-93ZE)
Ss. 93ZC-93ZE .....	ad. No. 163, 1994
Part 5 (s. 93ZF) .....	ad. No. 163, 1994
S. 93ZF .....	ad. No. 163, 1994
Part 6 (s. 93ZG) .....	ad. No. 163, 1994
S. 93ZG .....	ad. No. 163, 1994
Heading to Part 11 .....	rep. No. 163, 1994
Heading to Chapt. 4 .....	ad. No. 163, 1994
Heading to Part 1 of Chapt. 4 .....	ad. No. 163, 1994
S. 93AA .....	ad. No. 163, 1994
Heading to Part 2 of Chapt. 4 .....	ad. No. 163, 1994
S. 98 .....	rep. No. 163, 1994
S. 100 .....	rep. No. 159, 2001
S. 103 .....	am. No. 146, 1999
S. 106 .....	am. No. 163, 1994
S. 107 .....	am. No. 146, 1999
Heading to Part 12 Renumbered Part 3.....	No. 163, 1994
S. 108 .....	am. No. 146, 1999
Heading to Part 13 Renumbered Part 4 .....	No. 163, 1994
S. 111 .....	am. No. 163, 1994
S. 113 .....	am. No. 163, 1994
S. 114 .....	am. No. 163, 1994; No. 146, 2001
Heading to Part 14 Renumbered Part 5.....	No. 163, 1994
S. 115 .....	am. No. 163, 1994
S. 117 .....	am. No. 163, 1994
Heading to Part 15 Renumbered Part 6 .....	No. 163, 1994
S. 119 .....	am. No. 163, 1994
S. 121 .....	am. No. 163, 1994
Heading to Part 16 Renumbered Part 7.....	No. 163, 1994
S. 122A .....	ad. No. 129, 1992

## **Table A**

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### **Table A**

#### **Application, saving or transitional provisions**

*Taxation Laws Amendment Act (No. 3) 1996* (No. 78, 1996)

### **Schedule 3**

#### **10 Application of amendments**

- (1) Subsections 93I(4A), (4B) and (4C) and section 93ZAA of the *Development Allowance Authority Act 1992* as amended by this Schedule apply to an indirect infrastructure borrowing or a refinancing infrastructure borrowing, where a certificate in respect of the borrowing was issued on or after 30 October 1995.
  - (2) Sections 93ZAB, 93ZAC and 93ZAD of the *Development Allowance Authority Act 1992* as amended by this Schedule apply to an indirect infrastructure borrowing, where a certificate in respect of the borrowing was issued on or after 30 October 1995.
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*Tax Law Improvement Act 1997* (No. 121, 1997)

#### **4 Application of amendments**

An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.

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*Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001* (No. 146, 2001)

#### **4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
  - (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after
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**Table A**

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the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001*  
(No. 159, 2001)

**Schedule 1**

**97 Application of amendments**

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.