



Taxation Laws Amendment Act (No. 6) 1992

Act No. 227 of 1992 as amended

This compilation was prepared on 23 September 2010
taking into account amendments up to Act No. 75 of 2010

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

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

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TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992 - LONG TITLE

An Act to amend the law relating to taxation

PART 1 - PRELIMINARY

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 1

Short title [see Note 1]

1. This Act may be cited as the Taxation Laws Amendment Act (No. 6) 1992.

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 2

Commencement [see Note 1]

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Division 5 of Part 2 commences on 19 August 1992.

(3) Division 6 of Part 2 commences, or is taken to have commenced, on 1 January 1993, immediately after the commencement of the Social Security Amendment Act (No. 2) 1992.

PART 2 - AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

Division 1 - Principal Act

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 3

Principal Act

3. In this Part, "Principal Act" means the Income Tax Assessment Act 1936.*1*

1 No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; No. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by

No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); Nos. 20, 35, 45, 57, 58, 60, 61, 87, 119 and 135, 1990; Nos. 4, 5, 6, 48, 55, 100, 203, 208 and 216, 1991; and Nos. 3, 35, 70, 80, 81, 92, 98 and 101, 1992.

Division 2 - Amendments to deny deductions to employees for expenses incurred in connection with non-compulsory uniforms/wardrobes

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992
- SECT 4

4. After section 51AK of the Principal Act the following section is inserted:

No deduction to employee for expenditure incurred in connection with a non-compulsory uniform/wardrobe
(No deduction)

"51AL.(1) A deduction is not allowable under this Act to an employee for a non-compulsory uniform/wardrobe expense incurred on or after 1 September 1993. ("No deduction" rule does not apply if clothing designs entered on Register of Approved Occupational Clothing)

"(2) The rule in subsection (1) does not apply if:

(a) at the time the expense was incurred by the employee, the designs of the set of one or more items of clothing to which the expense relates were entered on the Register of Approved Occupational Clothing kept under subsection (5); and

(b) the applicant for the entry of the designs was the employer of the employee.

(Meaning of "non-compulsory uniform/wardrobe expense")

"(3) For the purposes of this section, a non-compulsory uniform/wardrobe expense is expenditure to the extent to which it is incurred in connection with a non-compulsory uniform/wardrobe and includes, but is not limited to, expenditure incurred:

(a) in acquiring an item of clothing included in a non-compulsory uniform/wardrobe; or

(b) in repairing, cleaning or maintaining an item of clothing included in a non-compulsory uniform/wardrobe; or

(c) in upgrading or improving an item of clothing included in a non-compulsory uniform/wardrobe; or

(d) in connection with borrowing money for the purposes of acquiring an item of clothing included in a non-compulsory uniform/wardrobe.

(Meaning of "non-compulsory uniform/wardrobe")

"(4) For the purposes of the application of this section to an employee, a non-compulsory uniform/wardrobe is a set of one or more items of clothing (other than protective clothing), where:

(a) the items of clothing, when considered as a set, distinctively identify the wearer as a person associated, directly or indirectly, with:

(i) the employer of the employee; or

(ii) a group consisting of:

(A) the employer of the employee; and

(B) one or more associates of the employer (within the meaning of section 26AAB); and

(b) either:

(i) the employer of the employee does not have an express policy

to the effect that, except in special circumstances:

(A) the employee is not allowed to substitute an item of clothing not included in the set for an item of clothing included in the set when the employee is performing duties of his or her employment; and

(B) all of the other employees of the employer belonging to the same class as the employee (other than employees engaged for temporary or relief purposes) are not allowed to substitute an item of clothing not included in the set for an item of clothing included in the set when they are performing duties of their employment; or

(ii) the employer has such a policy but does not consistently enforce it.

(Register of Approved Occupational Clothing)

"(5) The TCFDA must keep a register, to be known as the Register of Approved Occupational Clothing, listing such designs as are required to be on the register because of this section.

(Register to be open for inspection)

"(6) The TCFDA must cause the Register of Approved Occupational Clothing to be made available for inspection at any reasonable time by any person on request.

(Approved occupational clothing guidelines)

"(7) The Treasurer must, as soon as practicable after the commencement of this section, formulate written guidelines ('approved occupational clothing guidelines') setting out criteria that must be met by designs of sets of one or more items of clothing if the designs are to be entered on the Register of Approved Occupational Clothing.

(Guidelines to be published etc.)

"(8) The Treasurer must cause the approved occupational clothing guidelines to be:

(a) published in the Gazette; and

(b) made available, without charge, to any interested person.

(Matters to be taken into account in making guidelines)

"(9) In making approved occupational clothing guidelines about the entry of the designs of particular kinds of sets of one or more items of clothing, the matters to which the Treasurer is to have regard include, but are not limited to:

(a) the extent to which the designs of the items of clothing, when considered as a set, distinctively identify the wearer as a person associated, directly or indirectly, with:

(i) the applicant for the entry of the designs; or

(ii) a group consisting of:

(A) the applicant for the entry of the designs; and

(B) one or more associates of the applicant for the entry of the designs (within the meaning of section 26AAB); and

(b) the nature of the business or activities carried on by the applicant for the entry of the designs.

(Guidelines to be disallowable)

"(10) An instrument formulating approved occupational clothing guidelines is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(Applications for entry on the Register of Approved Occupational Clothing)

"(11) An employer may apply to the TCFDA for the designs of a set of one or more items of clothing (other than protective clothing) to be entered on the Register of Approved Occupational Clothing.

(Form of application etc.)

"(12) The application must be:

(a) in writing; and

(b) in a form approved in writing by the TCFDA; and
(c) accompanied by such information as the TCFDA requires.
(TCFDA's decision on application)
"(13) After considering the application, the TCFDA must decide to:
(a) grant the application; or
(b) refuse the application.
(TCFDA deemed to have refused application if no decision made within 90 days)
"(14) If the TCFDA has not made a decision under subsection (13) before whichever time ('eligible time') is the later of the following times:
(a) the end of the period ('original 90-day period') of 90 days after the day on which the application was received by the TCFDA;
(b) if the TCFDA, by written notice given to the applicant within the original 90-day period, requests the applicant to give further information about the application-the end of the period of 90 days after the TCFDA receives the further information;
then, at the eligible time, the TCFDA is taken to have made a decision under subsection (13) to refuse the application.
(Notice of decision)
"(15) If the TCFDA makes a decision under subsection (13) before the eligible time, the TCFDA must give written notice of the decision to the applicant.
(Reasons for refusal to be given)
"(16) A notice under subsection (15) relating to a refusal must set out the reasons for the refusal.
(When entry takes effect)
"(17) If the TCFDA decides to grant the application, the entry takes effect on:
(a) the day on which the decision is made; or
(b) if the applicant requests-such earlier date as the TCFDA specifies.
(Criteria for grant of application)
"(18) The TCFDA must not grant an application unless the TCFDA is satisfied that the designs meet the criteria set out in the approved occupational clothing guidelines.
(Removal of entry)
"(19) The TCFDA must remove an entry from the Register of Approved Occupational Clothing if requested to do so by the employer who applied for the entry.
(Correction of clerical errors etc.)
"(20) The TCFDA may correct a clerical error or an obvious mistake in an entry in the Register of Approved Occupational Clothing and, if the TCFDA does so, the correction takes effect on the day on which the entry took effect.
(Review of decisions by Tribunal)
"(21) Applications may be made to the Tribunal for review of decisions of the TCFDA under subsection (13) or (17).
(Statements to accompany notification of decisions)
"(22) If the TCFDA makes a decision under subsection (13) or (17) and gives to a person whose interests are affected by the decision written notice of the decision, that notice must:
(a) in all cases-include a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision; and
(b) except where subsection 28(4) of that Act applies-include a statement to the effect that a request may be made under section 28 of that Act by or on behalf of such a person for a statement setting out the findings on material questions of fact, referring to the evidence or the material on which those

findings were based and giving the reasons for the decision;
but a failure to comply with this subsection does not affect the validity of the decision.

(Delegation by TCFDA)

"(23) Section 61 of the Textiles, Clothing and Footwear Development Authority Act 1988 applies in relation to the TCFDA's powers under this section in a corresponding way to the way in which it applies to the TCFDA's powers under that Act.

(TCFDA to give Commissioner information about entries)

"(24) The TCFDA must give the Commissioner information about entries on the Register of Approved Occupational Clothing if requested to do so by the Commissioner.

("Employee" includes recipient of prescribed payments)

"(25) For the purposes of this section, the definition of 'salary or wages' in section 221A applies as if paragraph (q) of that definition had not been enacted.

(Definitions)

"(26) In this section:

'approved occupational clothing guidelines' means guidelines made under subsection (7);

'class of employees' means a class of employees based on the level or category of work;

'clothing' includes accessories (for example: belts, ties, scarves and hats);

'design', in relation to an item of clothing, includes features of colour, construction, durability, ornamentation, pattern and shape;

'disease' includes any mental or physical ailment, disorder, defect or morbid condition whether of sudden onset or gradual development and whether of genetic or other origin;

'employee' has the same meaning as in section 221A;

'employer' has the same meaning as in section 221A;

'employment', in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results in the person being treated as an employee;

'protective clothing' means clothing of a kind that is for use wholly or principally:

(a) to protect the wearer or another person from, or from risk of:

(i) death; or

(ii) the contraction, aggravation, acceleration or recurrence of a disease; or

(b) to protect the wearer from, or from risk of:

(i) injury (including the aggravation, acceleration or recurrence of an injury); or

(ii) the loss or destruction of, or damage to:

(A) other clothing worn by the wearer; or

(B) an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the wearer;

'Register of Approved Occupational Clothing' means the Register of Approved Occupational Clothing required by subsection (5);

'TCFDA' means the Textiles, Clothing and Footwear Development Authority established by the Textiles, Clothing and Footwear Development Authority Act 1988."

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 5

Transitional - "no deduction" rule does not apply if expense incurred before 1 July 1995 and clothing designs approved by Commissioner

5. The rule in subsection 51AL(1) of the Principal Act as amended by this Act does not apply if:

- (a) the expense is incurred before 1 July 1995; and
- (b) before that day and whether before or after the expense is incurred, the Commissioner, on application by the employer of an employee, gives the employer a written statement to the effect that the Commissioner is of the opinion that the designs of the set of one or more items of clothing to which the expense relates were a "corporate uniform" or a "corporate wardrobe" within the meaning of Taxation Ruling IT 2641; and
- (c) if the application for the statement is made after 31 August 1993 - sets of one or more items of clothing having those designs were available for purchase by employees of the employer on or before 31 August 1993.

Division 3 - Amendments relating to tax-deductible gifts

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 6

Gifts, pensions etc.

6. Section 78 of the Principal Act is amended by omitting from subparagraph (1)(a)(xxxvi) "College of Pathologists of Australia" and substituting "Royal College of Pathologists of Australasia".

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 7

Application

7. The amendment made by this Division applies in relation to gifts made on or after 16 January 1980.

Division 4 - Amendments relating to dividend streaming

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 8

Ascertainment of required franking amount

8. Section 160AQE of the Principal Act is amended:

- (a) by omitting from the formula in subsection (2) "SDD" and substituting "SDD + LD + SD";
- (b) by omitting "and" from the end of the definition of the component "SDD" in subsection (2);
- (c) by omitting from paragraph (b) of the definition of the component "TD" in subsection (2) "dividend." and substituting "dividend;";
- (d) by adding at the end of subsection (2) the following definitions: "LD is:
 - (a) if:
 - (i) another company proposes to pay one or more dividends ('proposed linked dividends'), where the payment of those dividends will:
 - (A) result in one or more franking debits of the first-mentioned company arising under subsection 160AQCB(3) (which deals with dividend streaming); and
 - (B) take place at a time when the other company is not a

resident; and

(ii) the current dividend will be:

(A) one of the substituted dividends mentioned in that subsection in its application to the proposed linked dividends; and

(B) paid on or after the date of commencement of this paragraph;

the total amount of the proposed linked dividends; or

(b) in any other case-0; and SD is:

(a) if:

(i) the current dividend will:

(A) result in a franking debit of the first-mentioned company arising under subsection 160ACQB(4) (which deals with dividend streaming); and

(B) be one of the scheme dividends mentioned in that subsection; and

(C) be paid on or after the date of commencement of this paragraph; and

(ii) another company has paid, pays, or proposes to pay, one or more dividends ('eligible substituted dividends'), where those dividends:

(A) are covered by the substituted dividends mentioned in that subsection in its application to those scheme dividends; and

(B) were paid, are paid, or are proposed to be paid, at a time when the other company was not, is not, or will not be, a resident, as the case requires;

the total amount of the eligible substituted dividends; or

(b) in any other case-0."

Division 5 - Amendments relating to limited partnerships

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 9

9. After Division 5 of Part III of the Principal Act the following Division is inserted:

"Division 5A-Income of certain limited partnerships

"Subdivision A-Preliminary

Object

"94A. The object of this Division is to provide for certain limited partnerships to be treated as companies for tax purposes.

Interpretation

"94B. In this Division:

'corporate limited partnership' has the meaning given by section 94D;

'income tax law' means:

(a) this Act (other than this Division); and

(b) an Act that imposes any tax payable under this Act; and

(c) the Income Tax Rates Act 1986; and

(d) the Taxation Administration Act 1953, so far as it relates to an Act covered by paragraph (a), (b) or (c); and

(e) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c) or (d); and

(f) regulations under an Act covered by any of the preceding paragraphs;

'limited partnership' means a partnership where the liability of at least one of the partners is limited;

'year of income' means (except in paragraph 94L(b)) the year of income in which 19 August 1992 occurred or a later year of income.

Continuity of limited partnership not affected by changes in composition

"94C. For the purposes of this Division, a change in the composition of a limited partnership does not affect the continuity of the partnership.

"Subdivision B-Corporate limited partnerships

Corporate limited partnerships

"94D. For the purposes of this Division, a limited partnership is a corporate limited partnership in relation to a year of income of the partnership if:

(a) the year of income is the 1995-96 year of income or a later year of income; or

(b) the partnership was formed on or after 19 August 1992; or

(c) both:

(i) the partnership was formed before 19 August 1992; and

(ii) the partnership does not pass the continuity of business test set out in section 94E; or

(d) all of the following apply:

(i) the partnership was formed before 19 August 1992;

(ii) a change in the composition of the partnership occurs during the period:

(A) beginning on 19 August 1992; and

(B) ending at the end of the year of income;

(iii) the partners do not elect, in accordance with section 94F, that the partnership is not to be treated as a corporate limited partnership in relation to the year of income.

Continuity of business test

"94E. In determining whether a limited partnership is a corporate limited partnership in relation to a year of income, the partnership passes the continuity of business test if, and only if:

(a) at all times during the period:

(i) beginning on 19 August 1992; and

(ii) ending at the end of the year of income;

the partnership carried on the same business as it carried on immediately before the beginning of that period; and

(b) the partnership did not, at any time during that period, derive income from a business of a kind that it did not carry on, or from a transaction of a kind that it had not entered into in the course of its business operations, before that period.

Change in composition of limited partnership-election that partnership not be treated as an eligible limited partnership

"94F. An election referred to in paragraph 94D(d) in relation to a limited partnership and in relation to a year of income has no effect unless:

(a) the partnership passes the continuity of ownership test set out in section 94G; and

(b) the election is made:

(i) within 6 months after the end of the later of the following years of income:

(A) the year of income to which the election relates;

(B) the year of income in which the Taxation Laws Amendment Act (No. 6) 1992 received the Royal Assent; or

(ii) within such further period as the Commissioner allows.

Continuity of ownership test

"94G. In determining whether a limited partnership is a corporate limited partnership in relation to a year of income, the partnership passes the continuity of ownership test if, and only if:

(a) at all times during the period:

(i) beginning on 19 August 1992; and

(ii) ending at the end of the year of income;
more than 50% of the interests in the partnership were held by persons who, immediately before that period, held more than 50% of the interests in the partnership; or

(b) the condition set out in paragraph (a) is not satisfied only because of the acquisition during so much of that period as occurred before 1 July 1993 of interests in the partnership, where the acquisitions are in response to, and in accordance with the terms of:

(i) a prospectus, offer or invitation issued before 19 August 1992; or

(ii) if that prospectus, offer or invitation was varied before 19 August 1992-that prospectus, offer or invitation as so varied.

"Subdivision C-Corporate tax modifications applicable to corporate limited partnerships

Corporate tax modifications applicable to corporate limited partnerships

"94H. If a partnership is a corporate limited partnership in relation to a year of income, the income tax law has effect, in relation to the partnership and in relation to the year of income, subject to the changes set out in the following provisions of this Subdivision.

"Company" includes corporate limited partnership

"94J. A reference in the income tax law (other than the definitions of 'dividend', and 'resident' or 'resident of Australia', in section 6 of this Act) to a company or to a body corporate includes a reference to the partnership.

"Partnership" does not include corporate limited partnership

"94K. A reference in the income tax law to a partnership does not include a reference to the partnership.

"Dividend" includes distribution of corporate limited partnership

"94L. A reference in the income tax law to a dividend:

(a) includes a reference to a distribution made by the partnership, whether in money or in other property, to a partner in the partnership; and

(b) does not include a reference to a distribution to the extent to which the distribution is attributable to profits or gains arising during a year of income in relation to which the partnership was not a corporate limited partnership.

Drawings etc. deemed to be dividends paid out of profits

"94M.(1) If the partnership pays or credits an amount to a partner in the partnership:

(a) against the profits or anticipated profits of the partnership; or

(b) otherwise in anticipation of the profits of the partnership;

(whether or not the amount of the profits or anticipated profits is ascertainable), the amount paid or credited is taken, for the purposes of the income tax law, to be a dividend paid by the partnership to the partner out of profits derived by the partnership.

"(2) If the partnership makes a subsequent distribution, the Commissioner must take such steps (if any) as are necessary to ensure that the partner is not subject to double taxation.

"Private company" does not include corporate limited partnership

"94N. A reference in the income tax law to a private company in relation to the year of income does not include a reference to the partnership.

"Share" includes interest in corporate limited partnership

"94P. A reference in the income tax law to a share includes a reference to an interest in the partnership.

"Shareholder" includes partner in corporate limited partnership

"94Q. A reference in the income tax law to a shareholder includes a reference to a partner in the partnership.

"Liquidator" may include partner in corporate limited partnership

"94R. For the purposes of the income tax law:

(a) a reference to the liquidator of the partnership includes a reference to a partner in the partnership who carries out the winding-up of the partnership; and

(b) a reference to distributions made by a liquidator in the course of winding up the partnership includes a reference to distributions made by such a partner to himself or herself in the course of winding-up the partnership. Continuity of corporate limited partnership not affected by changes in composition

"94S. For the purposes of the income tax law, a change in the composition of the partnership does not affect the continuity of the partnership.

Residence of corporate limited partnership

"94T. For the purposes of the income tax law, the partnership is a resident or a resident of Australia if, and only if:

(a) the partnership was formed in Australia; or

(b) either:

(i) the partnership carries on business in Australia; or

(ii) the partnership's central management and control is in

Australia.

Incorporation

"94U. For the purposes of the income tax law, the partnership is taken to have been incorporated:

(a) in the place where it was formed; and

(b) under a law in force in that place.

Obligations and offences

"94V.(1) The application of the income tax law to the partnership as if the partnership were a company is subject to the following changes:

(a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;

(b) the partners are jointly and severally liable to pay any amount that would be payable by the partnership;

(c) any offence against the income tax law that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

"(2) In a prosecution of a person for an offence that the person is taken to have committed because of paragraph (1)(c), it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the relevant act or omission; and

(b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

Pre-1995-96 years of income-certain corporate obligations do not arise if partnership became a corporate limited partnership because of something which happened during the year of income

"94W. If:

(a) the year of income is earlier than the 1995-96 year of income; and

(b) the partnership is a corporate limited partnership in relation to the year of income because of the occurrence of one or more events during the year of income which resulted in the partnership failing to pass:

(i) the continuity of business test set out in section 94E; or

(ii) the continuity of ownership test set out in section 94G; and

(c) at a time during the period:

(i) beginning at the beginning of the year of income; and

(ii) ending at the time when that event, or the earliest of those

events, occurred;

an obligation was imposed on the partnership under the income tax law in the

partnership's capacity as a company; and

(d) the partnership passed both of the following tests in relation to each earlier year of income:

(i) the continuity of business test set out in section 94E;

(ii) the continuity of ownership test set out in section 94G;

the income tax law has effect as if that obligation had never arisen.

Modification of loss provisions

"94X. Sections 50H and 80A apply in relation to the partnership as if the provisions relating to voting power had not been enacted.

Modification of provisions relating to the collection of company tax

"94Y. In spite of anything in Division 1B of Part VI, for the purposes of that Division, the notional tax of the partnership in respect of the year of income is taken to be nil if:

(a) the year of income is the year of income in which 19 August 1992 occurred; or

(b) the partnership was not a corporate limited partnership in relation to the immediately preceding year of income."

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 10

Transitional

10. The amendments made by this Division do not result in a person being guilty of an offence in respect of anything done, or omitted to be done, before the day on which this Act receives the Royal Assent.

Division 6 - Amendments relating to family payment advance

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 11

Index of payments covered by Subdivision

11. Section 24AB of the Principal Act is amended by omitting from the Table:

"Family payment	
and substituting:	24ABW"
"Family payment	24ABW
"Family payment advance	24ABX".

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 12

12. After section 24ABW of the Principal Act the following section is inserted:

Family payment advance

"24ABX. Payments of family payment advance under Part 2.17, or the Family Payment Rate Calculator in section 1069, of the Social Security Act 1991, are exempt."

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 13

Application

13. The amendments made by this Division apply to payments made on or after 1 January 1993.

Division 7 - Amendments relating to prescribed payments

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 14

Interpretation

14. Section 202A of the Principal Act is amended by inserting the following definition:

"'eligible paying authority' has the meaning given by subsection 221YHA(4);".

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 15

Interim notices

15. Section 202BD of the Principal Act is amended:

(a) by inserting in subsection (1) ", or eligible paying authority in relation to," after "employer of";

(b) by inserting in subsection (1) "or eligible paying authority" after "employer";

(c) by inserting in subsection (5) "or eligible paying authority" after "employer";

(d) by adding at the end the following subsection:

"(7) If:

(a) an application for a tax file number is pending; and

(b) the applicant notifies the Commissioner, in writing, of the name and address of an eligible paying authority in relation to the applicant (being an eligible paying authority whose name and address are not already stated in the application);

the eligible paying authority's name and address are taken, at the end of 7 days after the notification, to have been stated in the application.".

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 16

16. After the heading to Division 3A of Part VI, the following headings and sections are inserted:

"Subdivision A-Object and simplified outline

Object

"221YHAAF. The object of this Division is to provide for the collection of tax by deduction from certain payments for work ('prescribed payments') made by payers ('eligible paying authorities').

Simplified outline

(Scope of section)

"221YHAAG.(1) The following is a simplified outline of Subdivision B.

(Non-householders generally required to deduct)

"(2) Generally, non-householders are required to deduct a set percentage of the prescribed payment.

(Varying the amount to be deducted)

"(3) The percentage is lower if the payee has made a 'payee declaration'. If the declaration contains a 'deduction variation certificate number', the deduction is reduced further, and may be reduced to nil if the declaration contains a 'deduction exemption certificate number'. On the other hand, a greater deduction must be made if the payee chooses to make a 'higher deduction percentage election'.

(Reporting obligations)

"(4) Amounts deducted must be sent to the Commissioner, and also requirements relating to various forms must be complied with. The forms are:

(a) monthly 'remittance advice forms' that are sent with deductions; and
(b) annual or construction-project-based 'reconciliation statement forms' (that reconcile amounts deducted and amounts sent) and 'payment summary forms'.

(Householder obligations)

"(5) Payees who are to receive prescribed payments from householders must give the householders 'householder payment summary forms'. Householders must send the forms to the Commissioner after the end of the project concerned.

(Reporting exemptions)

"(6) Payees who are given approval to quote 'reporting exemptions numbers' can avoid having deductions made, and can relieve eligible paying authorities of their reporting obligations.

(Issuing authorities)

"(7) Authorities that issue permits for construction projects are required to give information to the Commissioner about the projects.

(Application of deductions)

"(8) Amounts deducted are applied in payment of the payee's tax liabilities.
"Subdivision B-Operative provisions".

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 17

Interpretation

17. Section 221YHA of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of "deduction form", "first instalment payment", "householder notification form", "instalment series", "invoice", "month", "non-instalment payment", "non-reportable payment", "obligation transfer form", "prescribed certificate", "reconciliation form", "reporting exemption declaration" and "subsequent instalment payment";

(b) by inserting in subsection (1) the following definitions:

" 'deduction exemption certificate number' means the number included in a deduction exemption certificate in accordance with paragraph 221YHQ(1A)(a);

'deduction variation certificate number' means the number included in a deduction variation certificate in accordance with subsection 221YHP(3);

'deduction variation certificate percentage' means the percentage specified in a deduction variation certificate in accordance with subsection 221YHP(2);

'eligible paying authority' has the meaning given by subsection (4) of this section;

'higher deduction percentage election' has the meaning given by subsection 221YHR(4);

'higher deduction percentage election form' has the meaning given by subsection 221YHR(3);

'householder' has the meaning given by subsection (3) of this section;

'householder payment summary form' means a document, in a form approved by the Commissioner for the purposes of this definition, that requires the provision of information relating to prescribed payments made by a householder in respect of the whole or part of a construction project;

'non-declaration percentage' means 48.25% or any other percentage that may be prescribed in substitution by regulations for the purposes of this definition;

'ordinary percentage' means 20% or any other percentage that may be prescribed in substitution by regulations for the purposes of this

definition;

'owner-builder' has the meaning given by subsection (3B) of this section;

'payee declaration' has the meaning given by subsection 221YHB(4);

'payee declaration form' has the meaning given by subsection 221YHB(3);

'payment summary form' means a document, in a form approved by the Commissioner for the purposes of this definition, that requires the provision of information relating to prescribed payments made by paying authorities who are not householders in relation to the payments;

'reconciliation statement form' means a document, in a form approved by the Commissioner for the purposes of this definition, that requires the reconciliation of amounts deducted from prescribed payments and amounts of deductions sent to the Commissioner;

'remittance advice form' means a document, in a form approved by the Commissioner for the purposes of this definition, that requires the provision of information relating to deductions from prescribed payments that are sent to the Commissioner;

'tax file number' has the meaning given by section 202A;"

(c) by omitting subsections (6) and (7).

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 18

18. Sections 221YHAA to 221YHD (inclusive) of the Principal Act are repealed and the following sections are substituted:

Making of payee declarations

(Payee may give payee declaration form to eligible paying authority)

"221YHB.(1) Subject to subsection (2), a payee who becomes entitled to receive a prescribed payment from an eligible paying authority may, for the purposes of this section, at any time before the payment is made give a payee declaration form, completed and signed by the payee, to the eligible paying authority.

(Form not to be given to householders or where reporting exemption number quoted)

"(2) Subsection (1) does not apply if:

(a) the eligible paying authority is a householder in relation to the prescribed payment; or

(b) the payee has quoted a reporting exemption number to the eligible paying authority and the approval to quote it is in force when the declaration form would otherwise be given.

(Meaning of "payee declaration form")

"(3) A 'payee declaration form' is a document, in a form approved by the Commissioner for the purposes of this subsection, that (in addition to anything else that it requires or permits):

(a) requires the payee completing the form:

(i) to state his or her tax file number; or

(ii) to state that an application by the payee for a tax file number is pending; or

(iii) to state that the payee has a tax file number but does not know what it is and has asked the Commissioner to inform the payee of the number; and

(b) permits the payee completing the form:

(i) to state a deduction variation certificate number and deduction variation certificate percentage; or

(ii) to state a deduction exemption certificate number.

(Meaning of "payee declaration")

"(4) If the payee gives the form to the eligible paying authority, the payee

is said to make a 'payee declaration' to the eligible paying authority.
(When declaration in force)

"(5) A payee declaration made to an eligible paying authority is in force at all times after it is made until any of the following happens:

(a) 1 year passes after the eligible paying authority makes a prescribed payment to the payee (being a payment made when the declaration is in force) without the payee again becoming entitled to receive a prescribed payment from the eligible paying authority;

(b) the payee makes another payee declaration to the eligible paying authority;

(c) the payee quotes a reporting exemption number to the eligible paying authority;

(d) the Commissioner, by notice in the Gazette, determines that:

(i) all payee declarations cease to be in force; or

(ii) a specified class of payee declarations that includes the particular payee declaration ceases to be in force;

(e) subsection (6) or (8) applies.

(Tax file number not provided)

"(6) Subject to subsection (7), a payee declaration ceases to be in force if:

(a) the payee declaration form concerned contained a statement of a kind mentioned in subparagraph (3)(a)(ii) or (iii) in relation to a tax file number; and

(b) 28 days have passed since the payee declaration was made without the payee having informed the eligible paying authority of his or her tax file number.

(Section 202BD notice in force)

"(7) If, within the 28 days, a notice in relation to the payee given to the eligible paying authority under section 202BD comes into force, the payee declaration does not cease to be in force until no notice in relation to the payee given to the eligible paying authority under section 202BD is in force.

(Payee has no tax file number)

"(8) A payee declaration ceases to be in force if:

(a) the Commissioner is satisfied that the tax file number stated in the payee declaration form has been cancelled since the form was given or is for any other reason not the payee's tax file number; and

(b) the Commissioner is not satisfied that the payee has a tax file number; and

(c) the Commissioner, by written notice given to the eligible paying authority and the payee, informs them accordingly and states that the declaration ceases to be in force on a specified day (which must not be earlier than the day on which the notice is given to the payee). In such a case, the payee declaration ceases to be in force on the day specified in the notices.

(Statement of reasons to payee)

"(9) The Commissioner must, together with the notice to the payee, give the payee a written statement of the reasons for the decision to give the notice.
(Payee's tax file number incorrectly stated)

"(10) If:

(a) the Commissioner is satisfied that the tax file number stated in the payee declaration form has been cancelled since the form was given or is for any other reason wrong; and

(b) the Commissioner is satisfied that the payee has a tax file number; the Commissioner may give the eligible paying authority written notice of the incorrect statement and of the payee's tax file number. If the Commissioner does so, the eligible paying authority must, in any form under this Division

requiring the payee's tax file number that the eligible paying authority completes after that time (before another payee declaration is made by the payee to the eligible paying authority), state that tax file number.

Sending of payee declaration form to Tax Office

(Obligations for eligible paying authorities)

"221YHC.(1) If a payee gives a payee declaration form to an eligible paying authority, the eligible paying authority must:

- (a) sign the form; and
- (b) after doing the things required by paragraphs (c) and (d), send the form to the office of a Deputy Commissioner within the forwarding period (see subsection (2)); and
- (c) if the payee declaration form does not state a tax file number but the payee informs the eligible paying authority of the number before the eligible paying authority sends the form-write the number on the form; and
- (d) make a copy of the form; and
- (e) retain the copy until the end of the financial year after that in which the payee declaration ceases to be in force.

Penalty: \$1,000.

(Meaning of "forwarding period")

"(2) The forwarding period is a period of 28 days (or longer, if extended under subsection (3)) beginning on:

- (a) if the form states the payee's tax file number-the day on which the payee gives the form to the eligible paying authority; or
- (b) if not-the earlier of the day on which the payee informs the eligible paying authority of the tax file number or the first day after the payee declaration ceases to be in force under subsection 221YHB(6).

(Extension of forwarding period)

"(3) The Commissioner may, by notice in writing to the eligible paying authority, extend the forwarding period.

Deductions where payee declaration

(Section applies where payee declaration)

"221YHD.(1) This section applies if:

- (a) an eligible paying authority makes a prescribed payment (in relation to which the eligible paying authority is not a householder) to a payee; and
- (b) a payee declaration made to the eligible paying authority by the payee is in force when the payment is made.

(Ordinary percentage to be deducted)

"(2) In such a case, the eligible paying authority must, subject to this section, deduct the ordinary percentage of the payment.

(Deduction variation certificates)

"(3) Subject to subsection (5), if:

- (a) a deduction variation certificate number and deduction variation certificate percentage are stated in the payee declaration form; and
 - (b) the eligible paying authority reasonably believes the certificate is in force;
- the eligible paying authority must deduct the deduction variation certificate percentage of the payment.

(Deduction exemption certificates)

"(4) Subject to subsection (5), if:

- (a) a deduction exemption certificate number is stated in the payee declaration form; and
 - (b) the eligible paying authority reasonably believes the certificate is in force;
- the eligible paying authority must not deduct anything under subsection (2) from the payment.
-

(Higher deduction percentage elections)

"(5) If a higher deduction percentage election made to the eligible paying authority by the payee is in force in relation to the payment when it is made, the eligible paying authority must deduct the percentage of the payment stated in the higher deduction percentage election form.

(Offence)

"(6) An eligible paying authority, other than a government body, that contravenes this section is guilty of an offence punishable on conviction by a maximum fine of \$1,000.

Deductions where no payee declaration

(Section applies where no payee declaration or reporting exemption number etc.)

"221YHDA.(1) This section applies if an eligible paying authority makes a prescribed payment to a payee and:

(a) no payee declaration made to the eligible paying authority by the payee is in force when the payment is made; and

(b) the eligible paying authority is not a householder in relation to the prescribed payment; and

(c) the payee has not quoted a reporting exemption number to the eligible paying authority before the payment is made, or has done so but the eligible paying authority reasonably believes the approval to quote it is not in force when the payment is made.

(Non-declaration percentage to be deducted)

"(2) If this section applies, the eligible paying authority must deduct the non-declaration percentage of the payment.

(Offence)

"(3) An eligible paying authority, other than a government body, that contravenes this section is guilty of an offence punishable on conviction by a maximum fine of \$1,000.

Eligible paying authority (non-householder) notification obligation

(Paying authority notification form)

"221YHDB.(1) If:

(a) a person enters into a contract under which the person is liable to make a prescribed payment in relation to which the person is not a householder; and

(b) the person has not previously sent a form under this subsection to the Commissioner; the person must, within 14 days after entering into the contract, send the Commissioner a paying authority notification form, completed and signed by the person.

(Offence)

"(2) If the person (not being a government body) does not do so, the person is guilty of an offence punishable on conviction by a maximum fine of \$100.

Eligible paying authority (non-householder) reporting etc. obligations

(Meaning of "reportable payment")

"221YHDC.(1) For the purposes of this section, a prescribed payment made by an eligible paying authority to a payee is a 'reportable payment' if:

(a) the eligible paying authority is not a householder in relation to the prescribed payment; and

(b) the payee has not quoted a reporting exemption number to the eligible paying authority before the payment is made, or has done so but the eligible paying authority reasonably believes the approval to quote it is not in force when the payment is made.

(Monthly obligation to send deductions)

"(2) An eligible paying authority that makes one or more reportable payments in a month must, within 14 days after the end of the month, send together to the Commissioner all amounts deducted under section 221YHD or 221YHDA from the

payments.

(Offence)

"(3) An eligible paying authority, other than a government body, that contravenes subsection (2) (including that subsection as varied under subsection (11)) is guilty of an offence punishable on conviction by imprisonment for a maximum period of 12 months. In addition, the court may order the eligible paying authority to pay to the Commissioner as a penalty an amount not greater than the amount required to be deducted under section 221YHD or 221YHDA from any reportable payment to which the contravention relates.

(Monthly obligation to report)

"(4) The eligible paying authority must:

- (a) before sending the amounts under subsection (2) to the Commissioner, complete and sign a remittance advice form in respect of the amounts; and
- (b) make a copy of the form; and
- (c) send the form to the Commissioner with the amounts.

(End of year obligations for non-owner-builders)

"(5) If an eligible paying authority that makes one or more reportable payments during a financial year to a payee is not an owner-builder in relation to some or all of the payments, the eligible paying authority must:

- (a) no later than the first 14 July after the end of the financial year;
 - (i) complete and sign a payment summary form in respect of the payments in relation to which the eligible paying authority is not an owner-builder; and
 - (ii) make 2 copies of the form; and
 - (iii) make reasonable efforts to give the form to the payee; and
- (b) no later than the first 14 August after the end of the financial year:
 - (i) complete and sign a reconciliation statement form in respect of the payments; and
 - (ii) make a copy of the form; and
 - (iii) send the form, together with one of the copies of the payment summary form, to the Commissioner.

(End of year obligations for owner-builders)

"(6) If:

(a) an eligible paying authority is an owner-builder in relation to reportable payments made to a payee under a contract or contracts in relation to the whole or part of a construction project; and

(b) at the end of a financial year, the eligible paying authority has not yet completed the project or the part;
then the eligible paying authority must:

- (c) no later than the first 14 July after the end of the financial year;
 - (i) complete and sign a payment summary form in respect of those reportable payments that were made to the payee during the financial year; and
 - (ii) make 2 copies of the form; and
 - (iii) make reasonable efforts to give the form to the payee; and
- (d) no later than the first 14 August after the end of the financial year:
 - (i) complete and sign a reconciliation statement form in respect of the payments; and
 - (ii) make a copy of the form; and
 - (iii) send the form, together with one of the copies of the payment summary form, to the Commissioner.

(End of project obligations for owner-builders)

"(7) If:

(a) an eligible paying authority is an owner-builder in relation to reportable payments made to a payee under a contract or contracts in relation

to the whole or part of a construction project; and

(b) the eligible paying authority completes the project or part;
then the eligible paying authority must comply with subsection (8).

(Nature of obligations)

"(8) The eligible paying authority must, within 6 weeks after completing the project or the part of the project:

(a) complete and sign a payment summary form in respect of those reportable payments that were made to the payee during the financial year in which the project or the part was completed; and

(b) make 2 copies of the form; and

(c) make reasonable efforts to give the form to the payee; and

(d) complete and sign a reconciliation statement form in respect of the payments; and

(e) make a copy of the form; and

(f) send the form, together with one of the copies of the payment summary form, to the Commissioner.

(Retention of records)

"(9) An eligible paying authority must keep the copies of all of the forms that the eligible paying authority is required to make under this section (other than those copies required to be sent to the Commissioner) for at least 5 years after the end of the financial year in which the reportable payments to which the copies relate were made.

(Offence)

"(10) An eligible paying authority, other than a government body, that contravenes subsection (4), (5), (6), (8) or (9) (including any of those subsections as varied by subsection (11)) is guilty of an offence punishable on conviction by a maximum fine of \$2,000.

(Extension of time limits)

"(11) The Commissioner may, in such cases and to the extent the Commissioner thinks fit, by written notice given to an eligible paying authority, extend any time set out in subsection (2), (5), (6) or (8) for compliance with the requirements of that subsection.

(Variation of reporting etc. requirements where deduction exemption certificate)

"(12) If:

(a) the payee in respect of the reportable payments to which subsection (2), (4), (5), (6) or (8) applies has made a payee declaration to an eligible paying authority that is in force when the payments are made; and

(b) a deduction exemption certificate number is stated in the payee declaration form; and

(c) the certificate is in force when the payments are made;
the Commissioner may, in such cases and to the extent the Commissioner thinks fit, by written notice given to the eligible paying authority, vary the requirements of that subsection in their application in relation to the eligible paying authority.

Householders

(Section applies where householder and no reporting exemption number approval)

"221YHDD.(1) This section applies if:

(a) a person enters into a contract or contracts in relation to the whole or part of a construction project and as a result another person will be a householder in relation to prescribed payments under the contract or contracts; and

(b) a reporting exemption number has not been quoted to the householder by the payee or one has, but the approval to quote it is no longer in force.

(Payee to give householder payment summary form)

"(2) If this section applies, the payee must, before the first prescribed payment is made, give the householder a householder payment summary form with the part relating to the payee completed and signed by the payee.

(Offence)

"(3) A payee, other than a government body, who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding \$100.
(End of project obligations for householder)

"(4) If this section applies, the householder must, within 6 weeks after completion of the project or part:

(a) in accordance with subsection (5), complete and sign, in respect of the project, the part of a householder payment summary form relating to the householder; and

(b) make a copy of the form; and

(c) send the form to the Commissioner.

(Form that is to be used)

"(5) If, by the time within the 6 weeks when the householder intends to complete the form, the payee has given the householder a form with the part relating to the payee completed and signed (whether or not given as required by subsection (2) before the first prescribed payment was made), the householder must use that form. If not, the householder must use another form, and must fill out the part relating to the payee to the extent that the householder is able to do so.

(Retention of copy of householder payment summary form)

"(6) Subject to subsection (7), the householder must keep the copy of the payment summary form (required to be made by paragraph (4)(b)) until 6 months have passed after the end of the financial year in which the project or part was completed.

(Payee request for copy)

"(7) If, before the end of the 6 months, the payee asks for the copy, the householder must give it to the payee.

(Offence)

"(8) If a householder contravenes subsection (4), (6) or (7), the householder is guilty of an offence punishable on conviction by a maximum fine of \$100.

Issuing authorities

"221YHDE.(1) If an issuing authority issues a construction permit in respect of a construction project, the issuing authority must, in accordance with subsection (2), give the Commissioner such information in relation to the project as the Commissioner, by Gazette notice, requires for the purposes of this subsection.

"(2) The issuing authority must give the information within 14 days after the end of the month in which it issues the permit, or within such further period as the Commissioner allows."

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- SECT 19

Credits in respect of deductions from prescribed payments

19. Section 221YHF of the Principal Act is amended:

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

"(1) If:

(a) any deductions have been made under this Division from prescribed payments made in a year of income to a person (not being a partnership or the trustee of a trust estate); and

(b) an assessment has been made of the tax payable, or the Commissioner is

satisfied that no tax is payable, by the person in relation to the year of income;

the person is entitled to a credit of an amount equal to the deductions.";

(b) by omitting from subsection (2) all the words before paragraph (b) and substituting:

"(2) If:

(a) any deductions have been made under this Division from prescribed payments made in a year of income to a partnership; and";

(c) by omitting from subsection (3) all the words before paragraph (a) and substituting:

"(3) The following provisions have effect where any deductions are made under this Division from prescribed payments made during a year of income to the trustee of a trust estate:";

(d) by omitting subsections (4), (5) and (6).

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- SECT 20

Failure to pay amounts deducted to Commissioner

20. Section 221YHJ of the Principal Act is amended by omitting from subsection (1) "sub-subparagraph 221YHD(1)(b)(v)(A) or subparagraph 221YHD(1D)(c)(i)" and substituting "subsection 221YHDC(2)".

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- SECT 21

Repeal of section 221YHK

21. Section 221YHK of the Principal Act is repealed.

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- SECT 22

Remission of certain amounts

22. Section 221YHL of the Principal Act is amended by omitting from subsection (2) ", sub-subparagraph 221YHJ(1)(b)(ii)(A) or subsection 221YHK(1)" and substituting "or sub-subparagraph 221YHJ(1)(b)(ii)(A)".

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- SECT 23

Persons discharged from liability in respect of deductions

23. Section 221YHM of the Principal Act is amended by inserting "or 221YHDA" after "221YHD".

TAXATION LAWS AMENDMENT ACT (No. 6) 1992 No. 227 of 1992

- SECT 24

24. Section 221YHP of the Principal Act is repealed and the following section is substituted:

Deduction variation certificates
(Applications)

"221YHP.(1) A person may apply to the Commissioner, in a form approved by the Commissioner for the purpose, for the issue to the person of a deduction variation certificate specifying, as the deduction variation certificate percentage, the percentage requested by the person in the application. The percentage must be less than the ordinary percentage."

(Conditions of issue of certificate)

"(2) The Commissioner must issue the certificate, and specify in it the percentage as the deduction variation certificate percentage, if the Commissioner is satisfied that:

(a) the percentage is a reasonable estimate of the percentage that would be represented by the tax payable from time to time, on a whole year of income basis, on the person's taxable income if the person's assessable income consisted only of prescribed payments; and

(b) during the period of 12 months before making the application, the applicant has satisfactorily complied with his or her obligations under Acts administered by the Commissioner.

(Deduction variation certificate number)

"(3) The Commissioner must include in the certificate a number as its deduction variation certificate number.

(When certificate in force)

"(4) The deduction variation certificate comes into force on the day on which it is issued to the person and, subject to subsection (5), remains in force at all times afterwards.

(When certificate ceases to be in force)

"(5) The deduction variation certificate ceases to be in force if:

(a) it is revoked under section 221YHS; or

(b) a later deduction variation certificate comes into force in relation to the person.".

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- SECT 25

Deduction exemption certificates and reporting exemption approvals

25. Section 221YHQ of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsections:

"(1) A person may apply to the Commissioner, in a form approved by the Commissioner for the purpose, for:

(a) the issue to the person of a deduction exemption certificate; or

(b) approval for the person to quote a reporting exemption number.

"(1A) If the conditions in subsection (2) are met or subsection (4) applies, the Commissioner must, in accordance with the application, either:

(a) issue the deduction exemption certificate to the person and include in it a number as its deduction exemption certificate number; or

(b) by writing sent to the person, approve the person quoting, in the manner set out in subsection (10), a specified number as a reporting exemption number during a period (not exceeding 3 years) specified in the approval.";

(b) by omitting from subsection (2) all the words before paragraph (a) and substituting "For the purposes of subsection (1A), the conditions are that:";

(c) by omitting subparagraph (2) (a) (iv);

(d) by omitting subsection (4) and substituting the following subsection:

"(4) If the conditions in subsection (2) are not met, but having regard to:

(a) the purpose of this Division; and

(b) the special circumstances (if any) that exist or existed in relation to the applicant; and

(c) such other matters (if any) as the Commissioner thinks fit; the Commissioner is of the opinion that it would be unreasonable not to issue the deduction exemption certificate or approve the person quoting a reporting exemption number, the Commissioner must issue the certificate or approve the quoting.";

(e) by inserting in paragraph (5) (a) "or approval to quote, if given," after "if issued,";

(f) by omitting subsection (6);

(g) by omitting subsections (8), (9) and (10) and substituting the following subsections:

"(8) A deduction exemption certificate comes into force when it is issued to the applicant and, subject to section 221YHS, remains in force at all times afterwards.

"(9) Subject to section 221YHSA, an approval to quote a reporting exemption number is in force at all times during the period specified in the approval.

"(10) If the Commissioner has given approval to a person to quote a number as a reporting exemption number, the person quotes the number to an eligible paying authority by giving written notice to the eligible paying authority, while the approval is in force, stating the number and the day on which the period specified in the approval ends.

"(11) If a person quotes a reporting exemption number to an eligible paying authority, the eligible paying authority must keep the notice:

(a) if the eligible paying authority is a householder in relation to all prescribed payments that the eligible paying authority makes to the person during the period specified in the approval-for 1 year after the end of the financial year in which the period ends; and

(b) in any other case-for 5 years after the end of the financial year in which the period ends.

"(12) If the eligible paying authority (not being a government body) contravenes subsection (11), he or she is guilty of an offence punishable on conviction by a maximum fine of \$1,000."

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26. Section 221YHR of the Principal Act is repealed and the following section is substituted:

Higher deduction percentage elections
(Payee may give form to eligible paying authority)

"221YHR.(1) Subject to subsection (2), a payee who becomes entitled to receive a prescribed payment may at any time before the payment is made give a completed higher deduction percentage election form to the eligible paying authority liable to make the payment.
(Payee declaration must be in force)

"(2) The payee may only give the form if a payee declaration made by the payee to the eligible paying authority is in force when the payee is to give the form.
(Meaning of "higher deduction percentage election form")

"(3) A 'higher deduction percentage election form' is a document that states a percentage that the payee elects to have deducted from:

(a) one or more specified prescribed payments; or

(b) all prescribed payments made to the payee before a specified date.
(Meaning of "higher deduction percentage election")

"(4) If a payee does as mentioned in subsection (1), the payee is said to make a 'higher deduction percentage election' to the eligible paying authority.
(Cancellation of election)

"(5) The payee may at any time cancel the election by giving written notice of the cancellation to the eligible paying authority.
(Period in force)

"(6) The election is in force in relation to prescribed payments covered by it that are made before any cancellation.

(Retention of election document)

"(7) The eligible paying authority must keep the document in which the election is made for 5 years after the end of the financial year in which:

(a) the prescribed payment, or the last of the prescribed payments, mentioned in paragraph (3)(a) is made; or

(b) the specified date mentioned in paragraph (3)(b) occurs.

(Offence)

"(8) If the eligible paying authority (not being a government body) contravenes subsection (7), he or she is guilty of an offence punishable on conviction by a maximum fine of \$1,000."

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Revocation of certificates

27. Section 221YHS of the Principal Act is amended:

(a) by omitting from subsection (1) "prescribed certificate" and substituting "deduction exemption certificate or a deduction variation certificate";

(b) by omitting subsection (3) and substituting the following subsection:

"(3) If:

(a) before a prescribed payment is made to a person by an eligible paying authority, the person states a deduction variation certificate number or a deduction exemption certificate number in a payee declaration form given to the eligible paying authority; and

(b) the certificate is in force when the form is given; and

(c) after the form is given but before the prescribed payment is made, the certificate is revoked; and

(d) the person does not notify the eligible paying authority of the revocation before the prescribed payment is made; the person is guilty of an offence punishable on conviction by a maximum fine of \$2,000."

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28. After section 221YHS of the Principal Act the following section is inserted:

Revocation of approval to quote reporting exemption number

(Revocation)

"221YHSA.(1) The Commissioner may, at any time, revoke an approval given under paragraph 221YHQ(1A)(b).

(Notification of revocation)

"(2) Where the Commissioner does so, the Commissioner must notify the person to whom the approval was given of the revocation.

(Offence)

"(3) If:

(a) before a prescribed payment is made to a person by an eligible paying authority, the person quotes a reporting exemption number to the eligible paying authority; and

(b) an approval under paragraph 221YHQ(1A)(b) to quote the number is in force when it is quoted; and

(c) after the number is quoted but before the prescribed payment is made, the approval is revoked; and

(d) the person does not notify the eligible paying authority of the revocation before the prescribed payment is made;

the person is guilty of an offence punishable on conviction by a maximum fine of \$2,000."

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Notification and review of decisions

29. Section 221YHT of the Principal Act is amended:

(a) by omitting from subsection (1) ", 221YHQ or 221YHR" and substituting "or 221YHQ";

(b) by inserting before paragraph (2)(a) the following paragraph:

"(aa) subsection 221YHB(8); or";

(c) by omitting from paragraph (2)(b) "221YHR and 221YHS" and substituting "221YHS and 221YHSA".

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Offences

30. Section 221YHU of the Principal Act is amended:

(a) by adding at the end of paragraph (a) "or";

(b) by omitting all the words after paragraph (a) and substituting the following:

"(b) present, for the purpose of obtaining credit, payment or other benefit, a payment summary form or householder payment summary form that was not given to the person by an eligible paying authority in accordance with this Division; or

(c) state in a payee declaration form given for the purposes of section 221YHD a deduction exemption certificate number or a deduction variation certificate number when the relevant certificate is not in force; or

(d) quote a reporting exemption number to an eligible paying authority for the purposes of section 221YHDA, 221YHDC or 221YHDD when an approval to quote the number is not in force.

Penalty: Imprisonment for 12 months."

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Application

31. The amendments made by this Division apply in relation to prescribed payments made on or after 1 January 1993.

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Transitional

(Definitions)

32.(1) In this section:

"amended Act" means the Principal Act as amended by this Division;

"former Act" means the Principal Act as in force immediately before the commencement of the amendments made by this Division.
(Payee declarations)

(2) The reference in subsection 221YHB(1) of the amended Act to a payee who becomes entitled to receive a prescribed payment includes a reference to a payee who was already entitled to receive such a payment at the commencement of this Division.

(Paying authority notification form)

(3) A person is not obliged to send a form to the Commissioner under subsection 221YHDB(1) of the amended Act if the person has previously sent one under subsection 221YHB(1) or (2) of the former Act.

(End of project obligations for householders)

(4) Subsection 221YHDD(4) of the amended Act applies as if the reference in subsection 221YHDD(1) of the amended Act to a person entering into a contract or contracts in relation to the whole or part of a construction project included a reference to a person entering into such a contract or contracts before the commencement of this Division, where the project or the part is completed after the commencement of this Division.

(Issuing authority requirements)

(5) Any requirement by the Commissioner under subsection 221YHB(10) of the former Act that was in force immediately before the commencement of the amendments made by this Division continues in force as if it were a requirement under subsection 221YHDE(1) of the amended Act, until revoked or varied under the latter subsection.

(Deduction variation certificates)

(6) Any certificate issued as a deduction variation certificate by the Commissioner, on or after 1 July 1992 and before the commencement of the amendments made by this Division, is taken:

(a) for the purposes of the former Act in its application in relation to prescribed payments made before 1 January 1993:

(i) to have been issued under section 221YHP of the former Act;
and

(ii) subject to section 221YHS of that Act, to be in force at all times after its issue until the end of 31 December 1992 (despite not specifying a period as the period during which the certificate remains in force); and

(b) if, as a result of paragraph (a), the certificate is in force at the end of 31 December 1992—for the purposes of the amended Act in its application in relation to prescribed payments made on or after 1 January 1993, to continue in force under the amended Act, subject to section 221YHS of that Act, as if it had been issued under the amended Act.

(Deduction exemption certificates)

(7) Any deduction exemption certificate that is in force, for the purposes of the former Act, at the end of 31 December 1992 for a period that, apart from the amendments made by this Act, would extend beyond that date, continues in force, subject to section 221YHS of the amended Act, for the purposes of the amended Act, for the remainder of that period as if it had been issued under the amended Act.

(Reporting exemption declarations)

(8) If a reporting exemption declaration furnished to an eligible paying authority by a person was in force under the former Act immediately before the commencement of the amendments made by this Division, then, for the purposes of the amended Act:

(a) the person is taken to have quoted a reporting exemption number to the eligible paying authority; and

(b) there is taken to be an approval to quote the number under the amended Act that continues in force until the reporting exemption declaration would have ceased to be in force; and

(c) for the purposes of paragraph (b), subsection 221YHR(2) and sections 221YHS and 221YHT of the former Act continue to apply to the declaration.

(Reporting exemption approval number)

(9) If a reporting exemption approval number had been quoted to an eligible paying authority by a person in accordance with an approval of the

Commissioner that was in force under subsection 221YHR(5) of the former Act immediately before the commencement of the amendments made by this Division, then, for the purposes of the amended Act:

(a) the person is taken to have quoted a reporting exemption number to the eligible paying authority; and

(b) there is taken to be an approval to quote the number under the amended Act; and

(c) for the purpose of determining the period during which the approval is in force, subsections 221YHR(6), (7), (8) and (9) of the former Act apply to the approval.

Notes to the *Taxation Laws Amendment Act (No. 6) 1992*

Note 1

The *Taxation Laws Amendment Act (No. 6) 1992* as shown in this compilation comprises Act No. 227, 1992 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 6) 1992</i>	227, 1992	24 Dec 1992	See s. 2	
<i>Taxation Laws Amendment Act (No. 2) 1994</i>	82, 1994	23 June 1994	S. 125: (a)	—
<i>Tax Laws Amendment (2010 Measures No. 2) Act 2010</i>	75, 2010	28 June 2010	Schedule 6 (item 90): 29 June 2010	—

(a) Subsection 2(7) of the *Taxation Laws Amendment Act (No. 2) 1994* provides as follows:

(7) Part 4 is taken to have commenced immediately after the commencement of Division 2 of Part 2 of the *Taxation Laws Amendment Act (No. 6) 1992*.

Division 2 of Part 2 of the *Taxation Laws Amendment Act (No. 6) 1992* commenced on 24 December 1992.

Table of Amendments

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

Provision affected	How affected
S. 5.....	rs. No. 82, 1994
Div. 8 of Part 2	rep. No. 75, 2010
S. 33.....	rep. No. 75, 2010