



Taxation Laws Amendment Act (No. 2) 1993

No. 18 of 1993

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SCHEDULE AMENDMENT OF ACTS



Taxation Laws Amendment Act (No. 2) 1993

No. 18 of 1993

An Act to amend the law relating to taxation

[Assented to 9 June 1993]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 1993*.

Commencement

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

10 **(2)** Divisions 1 and 7 of Part 3, and Part 4, are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.

**PART 2—AMENDMENT OF THE FRINGE BENEFITS TAX
ASSESSMENT ACT 1986**

Division 1—Principal Act

Principal Act

3. In this Part, “**Principal Act**” means the *Fringe Benefits Tax Assessment Act 1986*¹.

Division 2—Amendment relating to child care access

Exempt residual benefits

4. Section 47 of the Principal Act is amended by omitting subsection (8) and substituting the following subsection:

“(8) If:

(a) a residual benefit provided in respect of the employment of an employee arose out of priority of access, for a child or children of the employee, to:

(i) a place that is an eligible child care centre for the purposes of any provision of the *Child Care Act 1972*; or

(ii) family day care; or

(iii) care outside school hours; or

(iv) care in school vacations; and

(b) in order to obtain that priority of access, the employer of the employee, or an associate of the employer, made a contribution under a program administered by the Department of Health, Housing, Local Government and Community Services;

the residual benefit is an exempt benefit.”.

Application

5. The amendment made by this Division applies to residual benefits provided on or after 1 July 1993.

Transitional (change of program name)

6. Subsection 47(8) of the Principal Act (as in force immediately before the commencement of the amendment made by this Division) applies to residual benefits provided on or after 1 July 1992 and before 1 July 1993 as if the reference in paragraph (b) of that subsection to the program known as Services for Families with Children were instead a reference to the Children’s Services Program.

**PART 3—AMENDMENT OF THE INCOME TAX ASSESSMENT
ACT 1936**

Division 1—Principal Act

Principal Act

7. In this Part, “**Principal Act**” means the *Income Tax Assessment Act 1936*².

***Division 2—Amendments to improve the readability of section 78 of the
Principal Act (which deals with deductions for gifts, pensions etc.)***

Subdivision A—New section 78

8. Section 78 of the Principal Act is repealed and the following section is substituted:

Deduction for gifts, pensions etc.

Objects

“78.(1) The object of this section is to provide for the deductibility of certain gifts, contributions, pensions, gratuities and retiring allowances.

Outline

“(2) The following table sets out an outline of this section:

Type of deduction	Entitlement to deduction	Valuation rules	Ancillary provisions
Gifts to certain funds, authorities or institutions	(4), (5)	(12)	—
Gifts to The Australiana Fund, libraries, museums or art galleries	(6)	(13), (14), (15)	(16)
Gifts to Artbank	(7)	(13), (14), (15)	(16)
Gifts of heritage properties to National Trust	(8)	(13), (14), (15)	(16)
Contributions to registered political parties	(9), (10)	(17)	—
Pensions, gratuities or retiring allowances for ex-employees etc.	(11)	—	—

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“(3) The following is an index to this section:

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Australian Academy of Science	(4)-Table 2, item 2.2.2
Australian Academy of Technological Sciences and Engineering Limited	(4)-Table 2, item 2.2.4
Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	(4)-Table 2, item 2.2.3
Australian Administrative Staff College	(4)-Table 2, item 2.2.5
Australiana Fund	(4)-Table 12, item 12.2.1; (6)
Australian and New Zealand Association for the Advancement of Science	(4)-Table 2, item 2.2.6
Australian College of Obstetricians and Gynaecologists	(4)-Table 1, item 1.2.1
Australian College of Occupational Medicine	(4)-Table 1, item 1.2.2
Australian Conservation Foundation Incorporated	(4)-Table 6, item 6.2.1
Australian Institute of International Affairs	(4)-Table 9, item 9.2.1
Australian Ireland Fund	(4)-Table 2, item 2.2.7
Australian National Travel Association	(4)-Table 9, item 9.2.2
Australian Postgraduate Federation in Medicine	(4)-Table 1, item 1.2.3
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Heritage properties	(8)
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H.R.H. The Duke of Edinburgh's Commonwealth Study Conferences (Australia) Incorporated	(4)-Table 2, item 2.2.12

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Royal College of Nursing, Australia	(4)-Table 1, item 1.2.12
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Deductions for gifts—listed funds, authorities and institutions

“(4) A gift by a taxpayer to a fund, authority or institution mentioned in any of the following tables is an allowable deduction for the year of income in which the gift was made if:

- (a) the fund, authority or institution is in Australia; and 5
- (b) the gift is:
 - (i) money; or
 - (ii) property that was purchased by the taxpayer during the 12 months before the gift was made; or
 - (iii) property that is trading stock of the taxpayer to which 10
subsection 36(1) applies, where the taxpayer has not made, and does not make, an election under subsection 36(3) or section 36AAA in relation to the property; and
- (c) the value of the gift is \$2 or more; and
- (d) the gift is not a testamentary gift; and 15
- (e) if one or more special conditions are set out in the table opposite the name of the fund, authority or institution—those conditions are satisfied; and
- (f) if the gift is property—a deduction is not allowable to the taxpayer under subsection (6), (7) or (8) in respect of the gift.

Each item is independent of every other item. 20

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10. Sports and Recreation
11. Philanthropic Trusts
12. Cultural Organisations

TABLE 1—HEALTH

	Item	Fund, authority or institution	Special conditions
1. General	1.1.1	a public hospital	
	1.1.2	a hospital carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of the society or association	
	1.1.3	a public fund established before 23 October 1963 and maintained for the purpose of providing money for hospitals covered by items 1.1.1 or 1.1.2 or for the establishment of such hospitals	
	1.1.4	a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants	the gift must be for such research
	1.1.5	a public institution engaged solely in research into the causes, prevention or cure of disease in human beings, animals or plants	
2. Specific	1.2.1	the Australian College of Obstetricians and Gynaecologists	
	1.2.2	the Australian College of Occupational Medicine	

TABLE 1—HEALTH—continued

	Item	Fund, authority or institution	Special conditions
	1.2.3	the Australian Postgraduate Federation in Medicine	the gift must be made for education or research in medical knowledge or science
	1.2.4	the College of Radiologists in Australasia	the gift must be made for education or research in medical knowledge or science
	1.2.5	the New South Wales College of Nursing	
	1.2.6	the Royal Australian and New Zealand College of Psychiatrists	
	1.2.7	the Royal Australian College of General Practitioners	the gift must be made for education or research in medical knowledge or science
	1.2.8	the Royal Australasian College of Physicians	
	1.2.9	the Royal Australasian College of Surgeons	
	1.2.10	the Royal College of Pathologists of Australasia	the gift must be made for education or research in medical knowledge or science
	1.2.11	the Australian Regional Council of the Royal College of Obstetricians and Gynaecologists	
	1.2.12	the Royal College of Nursing, Australia	

TABLE 2—EDUCATION

	Item	Fund, authority or institution	Special conditions
1. General	2.1.1	a public university	
	2.1.2	a public fund for the establishment of a public university	
	2.1.3	a higher education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	
	2.1.4	a residential educational institution affiliated under statutory provisions with a public university	
	2.1.5	a residential educational institution established by the Commonwealth	
	2.1.6	a residential educational institution that is affiliated with a higher education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	
	2.1.7	an institution that is certified by the Minister for Employment, Education and Training, by signed instrument, to be a technical and further education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	the gift must be for certified purposes of the institution or for the provision of certified facilities for the institution (see subsection (26))
	2.1.8	a public fund established and maintained exclusively for the purpose of providing religious instruction in government schools in Australia	
	2.1.9	a public fund established and maintained by a Roman Catholic archdiocesan or diocesan authority exclusively for the purpose of providing religious instruction in government schools in Australia	

TABLE 2—EDUCATION—continued

	Item	Fund, authority or institution	Special conditions
	2.1.10	a public fund established and maintained exclusively for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college by: (a) a government; or (b) a public authority; or (c) a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association	
	2.1.11	a public fund established and maintained exclusively for providing money for the acquisition, construction or maintenance of an eligible rural school hostel building (see subsection (26))	
2. Specific	2.2.1	The Academy of the Social Sciences in Australia Incorporated	
	2.2.2	the Australian Academy of Science	
	2.2.3	the Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	
	2.2.4	the Australian Academy of Technological Sciences and Engineering Limited	
	2.2.5	the Australian Administrative Staff College	
	2.2.6	the Australian and New Zealand Association for the Advancement of Science	
	2.2.7	the Australian Ireland Fund	
	2.2.8	the Life Education Centre	

TABLE 2—EDUCATION—continued

	Item	Fund, authority or institution	Special conditions
	2.2.9	a company that conducts life education programs under the auspices of the Life Education Centre	<p>(a) the gift must be for the conduct of such programs; and</p> <p>(b) the company must not be carried on for the purposes of profit or gain to its individual members; and</p> <p>(c) the company must, by the terms of the company's constituent document, be prohibited from making any distribution, whether in money, property or otherwise, to its members</p>
	2.2.10	the Council for Christian Education in Schools	
	2.2.11	the Council for Jewish Education in Schools	
	2.2.12	H.R.H. The Duke of Edinburgh's Commonwealth Study Conferences (Australia) Incorporated	
	2.2.13	the Lionel Murphy Foundation	
	2.2.14	the Marcus Oldham Farm Management College	the gift must be for certified purposes of the college or for the provision of certified facilities for the college (see subsection (26))

TABLE 3—RESEARCH

	Item	Fund, authority or institution	Special conditions
1. General	3.1.1	a university, college, institute, association or organisation which is an approved research institute for the purposes of section 73A	the gift must be for purposes of scientific research as defined in section 73A
2. Specific	3.2.1	the Centre for Independent Studies	
	3.2.2	the Ian Clunies Ross Memorial Foundation	
	3.2.3	the Commonwealth	the gift must be made for purposes of research in the Australian Antarctic Territory

TABLE 4—WELFARE AND RIGHTS

	Item	Fund, authority or institution	Special conditions
1. General	4.1.1	a public benevolent institution	
	4.1.2	a public fund established before 23 October 1963 and maintained for the purpose of providing money for public benevolent institutions or for the establishment of public benevolent institutions	
	4.1.3	a public fund established and maintained for the relief of persons in Australia who are in necessitous circumstances	
2. Specific	4.2.1	Amnesty International	
	4.2.2	the Child Accident Prevention Foundation of Australia	
	4.2.3	the National Foundation for Australian Women Limited	
	4.2.4	the National Safety Council of Australia	
	4.2.5	the Pearl Watson Foundation Limited	
	4.2.6	the Royal Society for the Prevention of Cruelty to Animals New South Wales	

TABLE 4—WELFARE AND RIGHTS—continued

	Item	Fund, authority or institution	Special conditions
	4.2.7	the Royal Society for the Prevention of Cruelty to Animals (Victoria)	
	4.2.8	the Royal Queensland Society for the Prevention of Cruelty	
	4.2.9	the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated	
	4.2.10	the Royal Society for the Prevention of Cruelty to Animals Western Australia (Incorporated)	
	4.2.11	the R.S.P.C.A. (Tasmania) Incorporated	
	4.2.12	the Society for the Prevention of Cruelty to Animals (Northern Territory)	
	4.2.13	the Royal Society for the Prevention of Cruelty to Animals (A.C.T.) Incorporated	
	4.2.14	the R.S.P.C.A. Australia Incorporated	

TABLE 5—DEFENCE

	Item	Fund, authority or institution	Special conditions
1. General	5.1.1	the Commonwealth or a State	the gift must be made for purposes of defence
	5.1.2	a public institution established and maintained for the comfort, recreation or welfare of members of the armed forces of any part of Her Majesty's dominions, or of any allied or other foreign force serving in association with Her Majesty's armed forces	
2. Specific	5.2.1	the Shrine of Remembrance Restoration and Development Trust	

TABLE 6—THE ENVIRONMENT

	Item	Fund, authority or institution	Special conditions
1. General	6.1.1	a fund that, when the gift is made, is on the Register of Environmental Organisations kept under section 78AB	
2. Specific	6.2.1	the Australian Conservation Foundation Incorporated	special conditions set out in subsection (25)
	6.2.2	Greening Australia Limited	special conditions set out in subsection (25)
	6.2.3	Landcare Australia Limited	special conditions set out in subsection (25)
	6.2.4	the National Parks Association of New South Wales	special conditions set out in subsection (25)
	6.2.5	the Victorian National Parks Association	special conditions set out in subsection (25)
	6.2.6	the Victoria Conservation Trust	special conditions set out in subsection (25)
	6.2.7	the National Parks Association of Queensland	special conditions set out in subsection (25)
	6.2.8	The Nature Conservation Society of South Australia Incorporated	special conditions set out in subsection (25)
	6.2.9	the National Parks Foundation of South Australia Incorporated	special conditions set out in subsection (25)
	6.2.10	the Western Australian National Parks and Reserves Association Incorporated	special conditions set out in subsection (25)
	6.2.11	the Tasmanian Conservation Trust Incorporated	special conditions set out in subsection (25)
	6.2.12	the National Parks Association of the Australian Capital Territory Incorporated	special conditions set out in subsection (25)
	6.2.13	the National Trust of Australia (New South Wales)	

TABLE 6—THE ENVIRONMENT—*continued*

	Item	Fund, authority or institution	Special conditions
	6.2.14	the National Trust of Australia (Victoria)	
	6.2.15	The National Trust of Queensland	
	6.2.16	The National Trust of South Australia	
	6.2.17	The National Trust of Australia (W.A.)	
	6.2.18	the National Trust of Australia (Tasmania)	
	6.2.19	The National Trust of Australia (Northern Territory)	
	6.2.20	the National Trust of Australia (A.C.T.)	
	6.2.21	the Australian Council of National Trusts	
	6.2.22	the World Wide Fund for Nature Australia	special conditions set out in subsection (25)

TABLE 7—INDUSTRY, TRADE AND DESIGN

	Item	Fund, authority or institution	Special conditions
1. General	7.1.1	—	—
2. Specific	7.2.1	the Industrial Design Council of Australia	
	7.2.2	the Productivity Promotion Council of Australia	
	7.2.3	the Work Skill Australia Foundation Incorporated	

TABLE 8—THE FAMILY

	Item	Fund, authority or institution	Special conditions
1. General	8.1.1	a public fund established and maintained exclusively for the purpose of providing money to be used in giving marriage guidance to persons in Australia through a voluntary organisation or through a branch or section of such an organisation	the organisation, branch or section, as the case may be, must be approved by the Attorney-General (see subsection (24))
2. Specific	8.2.1	the Nursing Mothers' Association of Australia	

TABLE 9—INTERNATIONAL AFFAIRS

	Item	Fund, authority or institution	Special conditions
1. General	9.1.1	a public fund in respect of which there is in force, at the time when the gift is made, a declaration under subsection (21) that the fund is an eligible fund for the purposes of this item	
2. Specific	9.2.1	the Australian Institute of International Affairs	
	9.2.2	the Australian National Travel Association	
	9.2.3	The Foundation for Development Cooperation Ltd	

TABLE 10—SPORTS AND RECREATION

	Item	Fund, authority or institution	Special conditions
1. General	10.1.1	—	—
2. Specific	10.2.1	the Australian Sports Foundation	
	10.2.2	the Girl Guides Association of Australia	
	10.2.3	an institution that is known as a State or Territory branch of the Girl Guides Association of Australia	
	10.2.4	the Scout Association of Australia	
	10.2.5	an institution that is known as a State or Territory branch of the Scout Association of Australia	

TABLE 11—PHILANTHROPIC TRUSTS

	Item	Fund, authority or institution	Special conditions
1. General	11.1.1	—	—
2. Specific	11.2.1	the Connellan Airways Trust	
	11.2.2	The Friends of the Duke of Edinburgh's Award in Australia Incorporated	
	11.2.3	the Herbert Vere Evatt Memorial Foundation Incorporated	
	11.2.4	the Playford Memorial Trust	
	11.2.5	The Sir Robert Menzies Memorial Foundation Limited	
	11.2.6	the Queen Elizabeth II Silver Jubilee Trust for Young Australians	
	11.2.7	the Winston Churchill Memorial Trust	
	11.2.8	the Queen Elizabeth the Second Coronation Gift Fund	

TABLE 12—CULTURAL ORGANISATIONS

	Item	Fund, authority or institution	Special conditions
1. General	12.1.1	a fund that, when the gift is made, is on the Register of Cultural Organisations kept under section 78AA	
	12.1.2	a public library	
	12.1.3	a public museum	
	12.1.4	a public art gallery	
	12.1.5	an institution consisting of a public library, public museum and public art gallery or of any 2 of them	
2. Specific	12.2.1	The Australiana Fund	

Deductions for gifts—ancillary funds

“(5) A gift by a taxpayer to a fund is an allowable deduction for the year of income in which the gift was made if:

- (a) the fund is a public fund established and maintained under a will or instrument of trust exclusively for:

- (i) the purpose of providing money, property or benefits to or for funds, authorities or institutions referred to, and for the purposes (if any) referred to, in any of the items in the tables in subsection (4); or
 - (ii) the establishment of such funds, authorities or institutions; and
- (b) the Commissioner is satisfied that the terms of the will or instrument of trust are such that any money (including income derived from investments and proceeds of the realisation of investments):
 - (i) paid or accrued to the fund as a direct or indirect result of the gift; and
 - (ii) not applied for the purposes of the fund;may not be invested by the trustee otherwise than in a manner in which trustees are permitted by an Act, a State Act or a law of a Territory to invest trust money without special authorisation; and
- (c) the gift is:
 - (i) money; or
 - (ii) property that was purchased by the taxpayer during the 12 months before the gift was made; or
 - (iii) property that is trading stock of the taxpayer to which subsection 36(1) applies, where the taxpayer has not made, and does not make, an election under subsection 36(3) or section 36AAA in relation to the property; and
- (d) the value of the gift is \$2 or more; and
- (e) the gift is not a testamentary gift; and
- (f) if the gift is property—a deduction is not allowable to the taxpayer under subsection (6), (7) or (8) in respect of the gift.

Deductions for gifts of property—Australiana Fund, libraries, museums and art galleries

- “(6) A gift by a taxpayer to:
- (a) The Australiana Fund; or
 - (b) a public library in Australia; or
 - (c) a public museum in Australia; or
 - (d) a public art gallery in Australia; or
 - (e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them;
- is an allowable deduction for the year of income in which the gift was made if:
- (f) the gift is property (other than an estate or interest in land or in a building or part of a building); and
 - (g) the value of the gift is \$2 or more; and

- (h) the property is given to, and accepted by, The Australian Fund or the authority or institution concerned for inclusion in the collection, or any of the collections, maintained or being established by that Fund, authority or institution; and
- (i) the gift is not a testamentary gift; and
- (j) the special valuation conditions set out in subsection (13) are complied with.

Deductions for gifts of property—Artbank

“(7) A gift by a taxpayer to the Commonwealth is an allowable deduction for the year of income in which the gift was made if:

- (a) the gift is property (other than an estate or interest in land or in a building or part of a building); and
- (b) the property is given to, and accepted by the Commonwealth for inclusion in the collection, or any of the collections, maintained or being established for the purposes of Artbank; and
- (c) the gift is not a testamentary gift; and
- (d) the special valuation conditions set out in subsection (13) are complied with.

Deductions for gifts of heritage properties—National Trust

“(8) A gift by a taxpayer to:

- (a) the National Trust of Australia (New South Wales); or
- (b) the National Trust of Australia (Victoria); or
- (c) The National Trust of Queensland; or
- (d) The National Trust of South Australia; or
- (e) The National Trust of Australia (W.A.); or
- (f) the National Trust of Australia (Tasmania); or
- (g) The National Trust of Australia (Northern Territory); or
- (h) the National Trust of Australia (A.C.T.); or
- (i) the Australian Council of National Trusts;

is an allowable deduction for the year of income in which the gift was made if:

- (j) the gift is property; and
- (k) the value of the gift is \$2 or more; and
- (l) the property consists of a place within the meaning of the *Australian Heritage Commission Act 1975*; and

- (m) at the time when the gift was made, the place was listed in the Register of the National Estate kept under the *Australian Heritage Commission Act 1975*; and
- (n) the property was accepted by the National Trust body concerned for the purpose of preserving the property for the benefit of the public; and
- (o) the gift is not a testamentary gift; and
- (p) the special valuation conditions set out in subsection (13) are complied with.

Deductions for contributions to political parties

“(9) A contribution by a taxpayer to a registered political party (within the meaning of the *Commonwealth Electoral Act 1918*) is an allowable deduction for the year of income in which the contribution was made if:

- (a) the contribution is:
 - (i) money; or
 - (ii) property that was purchased by the taxpayer during the 12 months before the contribution was made; and
- (b) the value of the contribution is \$2 or more; and
- (c) the taxpayer is not a company; and
- (d) the contribution is not a testamentary contribution.

\$100 annual limit for deductions for contributions to political parties

“(10) The total deductions allowable to a taxpayer under subsection (9) in respect of a year of income must not exceed \$100.

Deductions for pensions, gratuities or retiring allowances to ex-employees etc.

“(11) An amount paid by a taxpayer as a pension, gratuity or retiring allowance to a person who is or was an employee or a dependant of an employee is an allowable deduction for the year of income in which it was paid. However:

- (a) it is an allowable deduction under this subsection only to the extent that, in the Commissioner’s opinion, it is paid in good faith in consideration of the past services of the employee in any business operations that were carried on by the taxpayer for the purpose of gaining or producing assessable income; and
- (b) it is not an allowable deduction under this subsection if it is an allowable deduction under any other provision of this Act.

Value of property for the purposes of subsections (4) and (5)

“(12) For the purposes of subsections (4) and (5), the value of a gift of property is:

- (a) if:
 - (i) the property is trading stock of the taxpayer to which subsection 36(1) applies; and
 - (ii) the taxpayer has not made, and does not make, an election under subsection 36(3) or section 36AAA in relation to the property;the value of the property that is, because of subsection 36(1), included in the taxpayer's assessable income; or
- (b) in any other case—whichever is the lesser of:
 - (i) the value of the property at the time of the making of the gift; or
 - (ii) the amount paid by the taxpayer for the property.

Gifts of property covered by subsections (6), (7) and (8)—special valuation conditions

“(13) For the purposes of subsections (6), (7) and (8), a taxpayer complies with the special valuation conditions in relation to a gift of property if:

- (a) both:
 - (i) assuming that the taxpayer had sold the property instead of making the gift, any profits or proceeds from the sale would have been included in the taxpayer's assessable income; and
 - (ii) the making of the gift does not result in an amount being included in the taxpayer's assessable income; or
- (b) all of the following conditions are satisfied:
 - (i) the taxpayer gives the Commissioner 2 or more written valuations stating the amount that, in the opinion of the person making the valuation, was:
 - (A) the value of the property at the time when the gift was made; or
 - (B) if the valuation was made not earlier than 90 days (or such longer period as the Commissioner allows) before, and not later than 90 days (or such longer period as the Commissioner allows) after, the day on which the gift was made—the value of the property at the time when the valuation was made;
 - (ii) the valuations are by persons each of whom was, at the time of making the valuation, an approved valuer in relation to property of the kind concerned;
 - (iii) the written valuations are given to the Commissioner:
 - (A) with the taxpayer's return of income for the year of income in which the gift was made; or

- (B) if more than one such return is given—with the first return; or
- (C) within such further period as the Commissioner allows.

Value of gift—subsections (6), (7) and (8)

“(14) Subject to subsection (15) (which deals with conditional gifts), for the purposes of subsections (6), (7) and (8), the value of a gift of property is as follows:

(a) if both:

- (i) assuming that the taxpayer had sold the property instead of making the gift, any profits or proceeds from the sale would have been included in the taxpayer’s assessable income; and
- (ii) the making of the gift does not result in an amount being included in the taxpayer’s assessable income;

the value of the gift is:

- (iii) if the taxpayer purchased the property—the amount paid by the taxpayer for the property; or
- (iv) if the taxpayer created or produced the property—the amount equal to so much of the cost of creating or producing the property as would have been allowed as a deduction to the taxpayer if the property had been sold by the taxpayer;

(b) if paragraph (a) does not apply and the taxpayer:

- (i) acquired the property within 12 months before the making of the gift otherwise than as a result of:
 - (A) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
 - (B) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who died intestate; or
- (ii) acquired the property for the purpose of making a gift of the property to, or subject to an eligible agreement that the property would be gifted to:
 - (A) a Fund, authority or institution mentioned in subsection (6) for inclusion in its collection, or any of its collections; or
 - (B) the Commonwealth for inclusion in the collection, or any of the collections, of Artbank; or
 - (C) a body mentioned in subsection (8);

the value of the gift is whichever is the lesser of:

- (iii) the amount (if any) paid by the taxpayer for the property; or
 - (iv) the amount that, assuming that this paragraph and subsection (15) had not been enacted, would be the value of the gift;
- (c) if neither paragraph (a) nor paragraph (b) applies:
- (i) if the Commissioner is of the opinion that an amount equal to the average of the values specified in the valuations given to the Commissioner under subsection (13) in relation to the property fairly represents the value of the property as at the time when the gift was made—the value of the gift is that amount; or
 - (ii) in any other case—the value of the gift is the amount that the Commissioner considers was the value of the property as at the time when the gift was made.

Value of conditional gift—subsections (6), (7) and (8)

“(15) For the purposes of subsections (6), (7) and (8), if:

- (a) the terms and conditions on which a gift of property is made are such that the recipient does not:
- (i) receive immediate custody and control of the property; or
 - (ii) have the unconditional right to retain custody and control of the property in perpetuity; or
 - (iii) obtain an immediate, indefeasible and unencumbered legal and equitable title to the property; or
- (b) the Commissioner is satisfied that the custody, control or use of the property by the recipient is affected by an eligible agreement entered into in association with the making or receipt of the gift;

the value of the gift is the value worked out under subsection (14), reduced by such amount as the Commissioner considers reasonable having regard to the effect on the value of the gift of those terms and conditions or of that eligible agreement.

Apportionment of deduction under subsection (6), (7) or (8)—joint ownership

“(16) If:

- (a) a taxpayer (the ‘**first taxpayer**’) owns property jointly with one or more other taxpayers; and
- (b) the owners make a gift of the property; and
- (c) assuming that:
 - (i) the property had been owned by the first taxpayer alone; and
 - (ii) the gift had been made by the first taxpayer;

the gift would have been an allowable deduction under subsection (6), (7) or (8);

the first taxpayer is entitled to an allowable deduction of so much of the amount of the deduction that would have been allowable as mentioned in paragraph (c) as the Commissioner considers reasonable having regard to the interest of the taxpayer in the property.

Value of property for the purposes of subsection (9)

“(17) For the purposes of subsection (9), the value of a contribution of property is whichever is the lesser of:

- (a) the value of the property at the time of the contribution; or
- (b) the amount paid by the taxpayer for the property.

Approval of valuer

“(18) The Secretary to the Department of the Arts and Administrative Services may, by signed instrument, approve a person as a valuer in relation to a particular kind of property. In deciding whether to give an approval, the Secretary to that Department must have regard to:

- (a) the person’s qualifications, experience and knowledge in relation to the valuation of property of that kind; and
- (b) the person’s knowledge of current market values of property of that kind; and
- (c) the person’s standing in the professional community; and
- (d) any other matters that the Secretary to that Department considers relevant.

Approval of organisations for the purposes of eligible funds declaration

“(19) The Minister for Foreign Affairs may, by signed instrument, approve an organisation as an approved organisation for the purposes of subsection (21).

Certification of country for the purposes of eligible funds declaration

“(20) The Minister for Foreign Affairs may, by signed instrument, certify a country to be a developing country for the purposes of subsection (21).

Declaration of eligible funds

“(21) If the Treasurer is satisfied that a fund:

- (a) is a fund established by an approved organisation (whether or not the organisation was an approved organisation at the time when the fund was established); and
- (b) is exclusively for the relief of persons in a certified country or certified countries (whether or not that country was a certified country, or those countries were certified countries, at the time when the fund was established);

the Treasurer may, by notice in the *Gazette*, declare it to be an eligible fund for the purposes of item 9.1.1 of table 9 in subsection (4).

Eligible funds declaration—effective date

“(22) A notice under subsection (21) must specify the date on which the notice has effect. The date must not be earlier than the date on which the notice is published in the *Gazette*.

Revocation of eligible funds declaration

“(23) The Treasurer may, by notice in the *Gazette*, revoke a declaration under subsection (21). The notice of revocation must specify the date on which it has effect. The date of effect must not be earlier than the date on which the notice of revocation is published in the *Gazette*.

Approval of marriage guidance organisations

“(24) If the Attorney-General is satisfied that:

- (a) an organisation, or a branch or a section of an organisation, is willing and able to engage in marriage guidance; and
- (b) marriage guidance constitutes, or will constitute, the whole or the major part of the activities of the organisation, branch or section, as the case may be;

the Attorney-General may, by signed instrument, approve the organisation, branch or section, as the case may be, for the purposes of item 8.1.1 of table 8 in subsection (4).

Special conditions applicable to gifts made to certain environmental bodies

“(25) The following are the special conditions mentioned in various items in table 6 in subsection (4):

- (a) at the time the gift is made, the institution must have agreed to give to the Department of the Environment, Sport and Territories, within a reasonable period after the end of the financial year in which the gift was made, statistical data about gifts made to the institution during the financial year;
- (b) at the time the gift is made, the institution must have a policy of not acting as a mere conduit for the donation of money or property to other institutions, bodies or persons.

Definitions

“(26) In this section:

‘approved organisation’ means an organisation approved under subsection (19);

‘approved valuer’, in relation to a particular kind of property, means a person in respect of whom there is in force under subsection (18) an approval of the person as a valuer in relation to that kind of property;

‘certified country’ means a country certified under subsection (20) to be a developing country for the purposes of this section;

‘certified facilities’, in relation to a college or institution, means facilities (including residential accommodation) in respect of which the Minister for Employment, Education and Training has certified, by signed instrument, that he or she is satisfied are, or are to be, used wholly or principally for certified purposes of the college or institution;

‘certified purposes’, in relation to a college or institution, means purposes of the college or institution that have been certified by the Minister for Employment, Education and Training, by signed instrument, to relate exclusively to tertiary education;

‘eligible agreement’ means an agreement, arrangement or understanding:

- (a) whether formal or informal; and
- (b) whether express or implied; and
- (c) whether or not enforceable by legal proceedings (whether or not the agreement, arrangement or understanding was intended to be so enforceable);

‘eligible rural school hostel building’ means a building where:

- (a) the building is used, or to be used, solely or principally as a residential accommodation for students whose usual place of residence is in a rural area and who are undertaking:
 - (i) primary or secondary education courses; or
 - (ii) special education programs for children with disabilities;at a school or schools in the same locality as the residential accommodation; and
- (b) the capital or recurrent costs of the school or schools are funded (in whole or in part) by the Commonwealth, a State or a Territory; and
- (c) the residential accommodation is provided by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a public authority; or
 - (iii) a company that:
 - (A) is not carried on for the purposes of profit or gain to its individual members; and
 - (B) is, by the terms of the company’s constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members;

‘property’ does not include money;

‘value’, in relation to money, means the amount of money.”.

Subdivision B—Consequential amendments

Interpretation

9. Section 6 of the Principal Act is amended:

- (a) by omitting “or paragraph 78(1)(a)” from paragraph (a) of the definition of “apportionable deductions” in subsection (1);
- (b) by inserting after paragraph (a) of the definition of “apportionable deductions” in subsection (1) the following paragraph:

“(aa) deductions allowed or allowable under subsection 78(4) or (5) (other than deductions allowed or allowable for gifts of property that is trading stock of the taxpayer to which subsection 36(1) applies, where the taxpayer has not made, and does not make, an election under subsection 36(3) or section 36AAA in relation to the property); or”.

Certain gifts not to be allowable deductions

10. Section 78A of the Principal Act is amended:

- (a) by omitting from subsection (5) “paragraph 78(1)(aa), (ab) or (ac)” and substituting “subsection 78(6), (7) or (8)”;
- (b) by omitting from subsection (5) “78(6F)” and substituting “78(15)”.

Non-resident family trusts

11. Section 102AAH of the Principal Act is amended by omitting from subsection (5) “paragraph 78(1)(a)” and substituting “subsection 78(4) or (5)”.

Non-resident family trusts

12. Section 328 of the Principal Act is amended by omitting from subsection (5) “paragraph 78(1)(a)” and substituting “subsection 78(4) or (5)”.

Subdivision C—Application of amendments

Application

13.(1) The amendments made by this Division (other than the amendments of sections 102AAH and 328 of the Principal Act) apply in relation to:

- (a) gifts and contributions made on or after 1 July 1993; and
- (b) pensions, gratuities and retiring allowances paid on or after 1 July 1993.

(2) The amendments of sections 102AAH and 328 of the Principal Act made by this Division apply in relation to the characterisation of a trust as at a time on or after 1 July 1993.

Transitional—approvals and declarations etc.

14. An approval, declaration or other instrument in force immediately before the commencement of this section for the purposes of a provision of section 78 of the Principal Act has effect, after that commencement, as if it had been made for the purposes of the corresponding provision of section 78 of the Principal Act as amended by this Division.

Division 3—Amendment relating to migration information

Officers to observe secrecy

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

“(hd) the Secretary to the Department of Immigration and Ethnic Affairs, for the purpose of assisting in locating persons who are unlawfully in Australia;”.

Division 4—Amendments relating to service with UN forces and other bodies

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

16. Section 23AB of the Principal Act is amended:

(a) by inserting after subsection (6) the following subsection:

“(6A) For the purposes of subsection (6), United Nations service does not include any period of service in respect of which an exemption from income tax applies under section 23ADA.”;

(b) by inserting in subsection (7) “, (8A)” after “subsections (8)”;

(c) by inserting in subsection (8) “, but subject to subsection (8A)” after “subsection (7)”;

(d) by inserting after subsection (8) the following subsection:

“(8A) For the purposes of subsection (7), United Nations service does not include any period of service of the taxpayer in respect of which an exemption from income tax applies under section 23ADA.”.

Exemption of pay and allowances of members of Defence Force serving in operational areas

17. Section 23AC of the Principal Act is amended:

(a) by inserting after paragraph (2)(cb) the following paragraphs:

“(cc) if the operational area is the former Yugoslavia—there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in respect of the member’s service as part of a United Nations peacekeeping force;

- (cd) if the operational area is Somalia—there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in respect of the member's service as part of:
 - (i) the operation called Operation Restore Hope; or
 - (ii) the operation called the United Nations Operation in Somalia;”;
- (b) by inserting in subsection (2A) “, (cc) or (cd)” after “(2)(cb)”;
- (c) by inserting in subsection (3) “allotted for duty in an operational area covered by subsection (6), (6A) or (6B)” after “Defence Force”;
- (d) by omitting from subparagraphs (3)(a)(i) and (ii) “an operational area” and substituting “the operational area”;
- (e) by omitting from subparagraphs (3)(a)(iii) and (iv) “an area” and substituting “the area”;
- (f) by inserting after subsection (3) the following subsection:

“(3A) For the purposes of this section, the operational service of a member of the Defence Force allotted for duty in an operational area to which subsection (6C) or (6D) applies:

 - (a) is taken to have begun at the later of:
 - (i) the time when the member arrived in the operational area; and
 - (ii) the time when the member's allotment for the duty in the operational area began; and
 - (b) is taken to have ended at the earliest of:
 - (i) the time when the member departed from the operational area; and
 - (ii) the time when the member's allotment for the duty in the operational area ended; and
 - (iii) the end of any termination date (defined in subsection (7)) applicable to the operational area; and
 - (c) is taken to include a period of hospital treatment resulting from an illness contracted, or injuries sustained, during the member's operational service.”;
- (g) by omitting from subsections (4) and (5) “or (cb)” and substituting “, (cb), (cc) or (cd)”;
- (h) by inserting after subsection (6B) the following subsections:

“(6C) For the purposes of this section, the area comprising the former Yugoslavia is taken to have become an operational area on 12 January 1992.

“(6D) For the purposes of this section, the area comprising Somalia is taken to have become an operational area on 20 October 1992.”;

- (i) by omitting “or (6B)” from the definition of “operational area” in subsection (7) and substituting “, (6B), (6C) or (6D)”;
- (j) by omitting from subsection (7) the definition of “termination date” and substituting the following definition:

“ ‘**termination date**’ means:

- (a) in relation to an operational area covered by subsection (6) or (6A)—9 June 1991; or
- (b) in relation to an operational area covered by subsection (6B), (6C) or (6D)—the date prescribed by regulations (which may be a date before the commencement of the regulations) for the purposes of this definition as the termination date in respect of the operational area covered by that subsection.”.

18. After section 23AC of the Principal Act the following sections are inserted:

Exemption of pay and allowances of Defence Force members performing certain overseas duty

[Requirements for exemption]

“23AD.(1) The pay and allowances earned by a person serving as a member of the Defence Force are exempt from tax if:

- (a) they are earned while there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the person is on eligible duty with a specified organisation in a specified area outside Australia; and
- (b) the eligible duty is not as, or under, an attache at an Australian embassy or legation.

[Eligible duty]

“(2) The regulations may declare that duty with a specified organisation, in a specified area outside Australia and after a specified day, is eligible duty for the purposes of this section.

[Where paragraph (1)(a) certificate in force]

“(3) A certificate under paragraph (1)(a):

- (a) comes into force at the later of:
 - (i) the time specified in the certificate (which may be before the time when it is issued, but not before the end of the specified day under the regulations); and

- (ii) the time when the person arrives for duty in the specified area concerned; and
- (b) subject to paragraph (c), continues in force until the earliest of:
 - (i) the time of the person's departure from the specified area; and
 - (ii) the time when, in accordance with a certificate of revocation signed by the Chief of the Defence Force, it ceases to be in force; and
 - (iii) any time prescribed by the regulations in relation to the eligible duty for the purposes of this subparagraph; and
- (c) is in force during any period of hospital treatment resulting from an illness contracted, or injuries sustained, during the person's eligible duty.

[Review of paragraph (1)(a) certificate]

“(4) An application may be made to the Tribunal for review of a decision of the Chief of the Defence Force under paragraph (1)(a).

[Delegation of paragraph (1)(a) power]

“(5) The Chief of the Defence Force may, by signed instrument, delegate to an officer of the Defence Force the power conferred by paragraph (1)(a).

[Revocation certificate is disallowable instrument]

“(6) A certificate of revocation referred to in subparagraph (3)(b)(ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Exemption of pay and allowances of AFP members serving with the United Nations Transitional Authority in Cambodia
[Requirements for exemption]

“23ADA.(1) The pay and allowances earned by a person serving as a member of the Australian Federal Police are exempt from income tax if they are earned while there is in force a certificate in writing issued by the Commissioner of Police of the Australian Federal Police to the effect that the person is on duty with the group called the United Nations Transitional Authority in Cambodia ('UNTAC').

[When subsection (1) certificate in force]

“(2) A certificate under subsection (1):

(a) comes into force at the later of:

- (i) the time specified in the certificate (which may be before the time when it is issued, but not before 18 May 1992); and
- (ii) the time when the member arrives in Cambodia for duty with UNTAC; and

- (b) subject to paragraph (c), continues in force until the earliest of:
 - (i) the time of the person's departure from Cambodia; and
 - (ii) the time when, in accordance with a certificate of revocation signed by the Commissioner of Police, it ceases to be in force; and
 - (iii) any time prescribed by the regulations for the purposes of this subparagraph; and
- (c) is in force during any period of hospital treatment resulting from an illness contracted, or injuries sustained, during the person's duty with UNTAC.

[Review of subsection (1) certificate]

“(3) An application may be made to the Tribunal for review of a decision of the Commissioner of Police under subsection (1).

[Delegation of subsection (1) power]

“(4) The Commissioner of Police may, by signed instrument, delegate to a member of the Australian Federal Police the power to issue a certificate under subsection (1).

[Revocation certificate is disallowable instrument]

“(5) A certificate of revocation referred to in subparagraph (2)(b)(ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Rebates for members of Defence Force serving overseas

19. Section 79B of the Principal Act is amended by omitting from subsection (3A) “operational service of the taxpayer for the purposes of section 23AC” and substituting “service of the taxpayer in respect of which an exemption from income tax applies under section 23AC or 23AD”.

Division 5—Development allowance

Subdivision not to apply to certain other property

20. Section 82AF of the Principal Act is amended by inserting in subparagraph (2)(a)(i) “, other than panel vans or utility trucks designed to carry loads of 1 tonne or more” after “vehicles”.

Assets to which Part applies

21. Section 160A of the Principal Act is amended by omitting “mentioned in” and substituting “covered by”.

Application

22.(1) The amendment made by section 20 applies to expenditure incurred by a taxpayer:

- (a) in respect of the acquisition of a unit of property under a contract entered into after 26 February 1992; or
- (b) in respect of the construction of a unit of property where the construction commenced after 26 February 1992.

(2) The amendment made by section 20 applies in relation to assets acquired after 26 May 1993. For that purpose, subparagraph 82AF(2)(a)(i) of the Principal Act is taken always to have been as amended by section 20.

Division 6—General investment allowance

Subdivision A—Insertion of new Subdivision

23. After Subdivision B of Division 3 of Part III of the Principal Act the following Subdivision is inserted:

“Subdivision BA—General investment allowance

Object

[Object to provide tax incentive]

“82AR.(1) The object of this Subdivision is to provide a tax incentive for investment in plant or articles before 1 July 1994.

[Incentive called general investment allowance]

“(2) The tax incentive takes the form of an allowable deduction, which may be referred to as general investment allowance.

How to work out entitlement etc. to general investment allowance

“82AS. The entitlement to general investment allowance, and other features of the new tax incentive, are worked out by applying the provisions of Subdivision B with some changes, which are set out below.

Change to main deduction provision

“82AT. The most important change is that, for the purposes of this Subdivision, subsection 82AB(1) (which is the main deduction provision) is to be replaced by the following:

- ‘(1) Subject to this Subdivision, if:
 - (a) after 8 February 1993, a taxpayer incurs expenditure of a capital nature in respect of the acquisition or construction by the taxpayer of a new unit of eligible property to which this Subdivision applies; and
 - (b) the expenditure was \$3,000 or more; and
 - (c) the expenditure was incurred:
 - (i) in respect of a unit of property acquired by the taxpayer under a contract entered into after 8 February 1993 and before 1 July 1994; or

- (ii) in respect of a unit of property that was constructed by the taxpayer, where the construction commenced after 8 February 1993 and before 1 July 1994; and
- (d) the unit of property was first used or installed ready for use before 1 July 1995;

a deduction equal to 10% of the expenditure is allowable to the taxpayer for the first year of income during which that unit was either used for the purpose of producing assessable income or installed ready for use for that purpose.’.

Changes to dates

[2 dates to be changed]

“82AU.(1) For the purposes of this Subdivision, references in provisions of Subdivision B to dates must also be changed as follows:

- (a) references to 26 February 1992 become references to 8 February 1993;
- (b) references to 27 February 1992 become references to 9 February 1993.

[Location of 26 February 1992 references]

“(2) The references to 26 February 1992 are in paragraphs 82AHA(3)(a), (4)(a), (5)(d) and (6)(d).

[Location of 27 February 1992 references]

“(3) The references to 27 February 1992 are in the following provisions:

- (a) paragraph 82AA(1)(b);
- (b) paragraph 82AB(7)(d);
- (c) subsection 82AB(8);
- (d) subsection 82AF(4);
- (e) paragraphs 82AL(1)(a) and (2)(a).

Change to section 82AC (limitation of deduction in case of leased property)

“82AV.(1) Paragraph 82AC(a) refers to ‘deductions allowable under this Subdivision or Subdivision BA’.

“(2) For the purposes of this Subdivision, the paragraph must be taken to refer to deductions allowable under either Subdivision B or Subdivision BA.

Changes to section 82AD (transfer of deductions)

[Section sets out changes to s. 82AD]

“82AW.(1) Section 82AD allows a lessor to transfer the benefit of a deduction to a lessee by lodging a declaration and statement with the Commissioner. The section is to be changed as follows for the purposes of this Subdivision.

[Declaration to be lodged with lessee instead of Commissioner]

“(2) The declaration and statement must be lodged with the lessee instead of with the Commissioner.

[Different paragraph 82AD(2)(a) date]

“(3) For the purpose of working out under section 82AD the prescribed date before which the declaration and statement must be lodged, paragraph 82AD(2)(a) is to be replaced by the following:

‘(a) if the agreement for the lease was entered into before 5 May 1993—
8 June 1993; or’.

Subdivision B object not applicable

“82AX. Section 82AAAA (which states the object of Subdivision B) does not apply for the purposes of this Subdivision.”.

Subdivision B—Consequential amendments

Calculation of taxable income

24. Section 50C of the Principal Act is amended by inserting in subparagraph (3)(d)(ii) “or BA” after “Subdivision B”.

Full-year deductions and partnership deductions

25. Section 50F of the Principal Act is amended by inserting in paragraph (1)(b) “or BA” after “Subdivision B”.

Calculation of depreciation

26. Section 56 of the Principal Act is amended by inserting in subsection (3) “or BA” after “Subdivision B”.

Limitation of deduction in case of leased property

27. Section 82AC of the Principal Act is amended by inserting in paragraph (a) “or Subdivision BA” after “this Subdivision”.

Effect of application of Division on certain deductions etc.

28. Section 159GJ of the Principal Act is amended:

- (a) by inserting in subparagraph (1)(a)(i) “or BA” after “Subdivision B”;
- (b) by inserting in paragraph (1)(a) “or BA, as the case may be,” before “of Division 3 does not apply”.

Amendment of assessments

29. Section 170 of the Principal Act is amended by inserting in subsection (10) “or BA” before “of Division 3 of Part III”.

Division 7—Amendments relating to foreign investment

Subdivision A—Overriding subsection 96A(1)

Certain provisions not to apply in respect of interests in non-resident trust estates to which Part XI applies

30. Section 96A of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The amount that, because of subsection (1), is not included under section 97 in assessable income is nevertheless taken to have been so included for the purposes of applying sections 99, 99A and 102AAU.”.

Subdivision B—Capital gains tax references to section 23AK

Capital gains and capital losses

31. Section 160Z of the Principal Act is amended by omitting “or 23AJ” from the definition of “eligible exempt income” in subsection (10) and substituting “, 23AJ or 23AK”.

Subdivision C—FIF attribution account payments and CFCs

Interpretation

32. Section 317 of the Principal Act is amended:

(a) by omitting the definition of “grossed-up amount” and substituting the following definition:

“ ‘**grossed-up amount**’:

(a) in relation to an attribution debit—has the meaning given by section 373; and

(b) in relation to a FIF attribution debit—has the meaning given by section 607A;”;

(b) by inserting the following definitions:

“ ‘**FIF attribution account entity**’ has the meaning given by section 601;

‘**FIF attribution account payment**’ has the meaning given by section 603;

‘**FIF attribution debit**’ has the meaning given by section 606;”.

Additional notional exempt income—unlisted or listed country CFC

33. Section 402 of the Principal Act is amended by adding at the end the following subsection:

“(4) If:

- (a) a FIF attribution account entity makes a FIF attribution account payment to the eligible CFC in the eligible period; and
- (b) apart from this subsection, the whole or part of the FIF attribution account payment would be included in the notional assessable income of the eligible CFC in relation to the eligible taxpayer for the eligible period; and
- (c) on the making of the FIF attribution account payment, a FIF attribution debit arises for the FIF attribution account entity in relation to the eligible taxpayer;

so much (if any) of the whole or the part of the FIF attribution account payment as does not exceed the grossed-up amount of the FIF attribution debit is notional exempt income of the eligible CFC for the eligible period.”.

34. After section 607 of the Principal Act the following section is inserted in Division 19 of Part XI:

Grossed-up amount of a FIF attribution debit

“607A. The grossed-up amount in relation to a FIF attribution debit is:

- (a) where subparagraph 606(2)(b)(i) applied in relation to the debit—the amount of the debit; or
- (b) where subparagraph 606(2)(b)(ii) applied in relation to the debit—the amount of the debit, divided by the FIF attribution account percentage referred to in that subparagraph.”.

Subdivision D—Trading stock

Definitions

35. Section 470 of the Principal Act is amended by omitting the definition of “trading stock”.

Notional deductions—expenditure in acquiring trading stock

36. Section 568 of the Principal Act is amended by inserting “(not being securities within the meaning of the Corporations Law)” after “stock”.

Subdivision E—Exclusion of dual residents

Taxpayers to whose interests in FIFs and FLPs this Part applies

37. Section 485 of the Principal Act is amended:

- (a) by inserting in paragraphs (3)(c) and (4)(c) “Part XI Australian” before “resident”;
- (b) by inserting in subsection (6) “Part XI Australian” before “resident at” (wherever occurring).

Subdivision F—Net income of partnerships and trusts

Taxpayers to whose interests in FIFs and FLPs this Part applies

38. Section 485 of the Principal Act is amended by adding at the end of subsection (1) the following sentence:

“Section 485A also has effect when the operative provision is applied to work out the net income of a partnership or trust estate.”.

39. After section 485 of the Principal Act the following section is inserted:

Applying operative provision in working out net income of partnership or trust estate

“485A.(1) For the purpose of working out the net income of a partnership or of a trust estate, the operative provision applies as mentioned in section 485, subject to the following provisions.

“(2) The requirement in the definition of ‘net income’ in sections 90 and 95 for assessable income to be calculated as if the partnership or trust estate concerned were a taxpayer who is a resident is, in applying the operative provision, to be taken to be a requirement to calculate that assessable income as if the taxpayer were a Part XI Australian resident.

“(3) The operative provision does not apply in calculating the net income of a foreign trust estate that is named:

- (a) in regulations made for the purpose of section 513; or
- (b) until regulations are so made—in Schedule 6.”.

Subdivision G—Exempt non-portfolio dividends received by CFC

Reduction of foreign investment fund income because of interim dividend or interim distribution of trust income

40. Section 530 of the Principal Act is amended by omitting paragraph (1)(d) and substituting the following paragraph:

“(d) is a non-portfolio dividend (as defined in section 317) that is:

- (i) exempt from income tax under section 23AJ; or
- (ii) notional exempt income of the taxpayer under paragraph 402(2)(c) or 403(b) or section 404;”.

Subdivision H— Calculation method elections

Methods applicable in relation to a FIF

41. Section 535 of the Principal Act is amended:

- (a) by omitting from subsection (3) “subsection (5)” and substituting “subsections (4) and (5)”;

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

“(4) The taxpayer is not entitled to make an election under subsection (3) in relation to a FIF in relation to a notional accounting period (**‘the current notional accounting period’**) if:

- (a) the taxpayer has made an election under that subsection in relation to the FIF in relation to a previous notional accounting period ending after the day on which the *Taxation Laws Amendment Act (No. 2) 1993* receives the Royal Assent; and
- (b) the taxpayer has not made an election under that subsection in relation to the FIF in relation to every notional accounting period (if any) in respect of which the operative provision applied that has occurred after the previous notional accounting period and before the current notional accounting period.”.

Procedure to be followed

42. Section 580 of the Principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) If:

- (a) because of the taxpayer’s election under subsection 486(3), the relevant period ends at the same time as a period (**‘the real accounting period’**) in respect of which the accounts of the company are made out; and
- (b) because of paragraph 486(5)(b) or subparagraph 486(7)(a)(i), the relevant period does not begin at the same time as the real accounting period;

then, for the purposes of this section:

- (c) the relevant period is taken to begin when the real accounting period does; and
- (d) any interest or interests that the taxpayer had in the company immediately before the time when the relevant period began (disregarding its extension under paragraph (c)) are taken to have been acquired by the taxpayer at that time.”.

Procedure to be followed

43. Section 582 of the Principal Act is amended by inserting after subsection (7) the following subsection:

“(7A) If:

- (a) because of the taxpayer’s election under subsection 486(3), the relevant period ends at the same time as a period (**‘the real accounting period’**) in respect of which the accounts of the trust are made out; and

- (b) because of paragraph 486(5)(b) or subparagraph 486(7)(b)(i), the relevant period does not begin at the same time as the real accounting period;

then, for the purposes of this section:

- (c) the relevant period is taken to begin when the real accounting period does; and
- (d) any interest or interests that the taxpayer had in the trust immediately before the time when the relevant period began (disregarding its extension under paragraph (c)) are taken to have been acquired by the taxpayer at that time.”.

Subdivision I—Certain foreign investment fund amount amendments

Step 1—calculation of foreign investment fund amount

44. Section 538 of the Principal Act is amended by omitting paragraphs (2)(b) to (e) (inclusive) and substituting the following paragraphs:

- “(b) secondly, add the amount or value of each distribution (if any) in respect of the interest, or any of the interests, held on that day that was made by the FIF to the taxpayer during the period;
- (c) thirdly, if the taxpayer had that interest or any of those interests on the day immediately before the first day of the period, deduct:
 - (i) if subparagraph (ii) does not apply—the market value of the interest or interests on that day; or
 - (ii) if the deemed rate of return method was applied, in respect of the taxpayer’s interest or interests in the FIF, in respect of the notional accounting period immediately before the relevant period—the value, determined under section 551 in accordance with that method, of the group or groups of interests of the taxpayer in the FIF on that day;
- (d) fourthly, if the taxpayer acquired that interest or any of those interests during the period, deduct the amount or value of the consideration paid or given by the taxpayer in respect of the acquisition;
- (e) fifthly, if the taxpayer disposed of any interest or interests in the relevant class or classes during the period, add the amount or value of each distribution (if any) in respect of that interest or those interests made by the FIF to the taxpayer during the period.”.

Step 1—calculation of foreign investment fund amount

45. Section 596 of the Principal Act is amended by omitting paragraph (2)(d) and substituting the following paragraph:

- “(d) fourthly, if the taxpayer had an interest in the FLP on the day immediately before the first day of the period, deduct:

- (i) if subparagraph (ii) does not apply—the cash surrender value of the interest on that day; or
- (ii) if the deemed rate of return method was applied, in respect of the taxpayer's interest in the FLP, in respect of the notional accounting period immediately before the relevant period—the value, determined under Subdivision E in accordance with that method, of the interest on that day;”.

Subdivision J—Foreign currency gains and losses

Step 1—calculation of foreign investment fund amount

46. Section 538 of the Principal Act is amended:

- (a) by omitting from subsection (3) “Each” and substituting “Unless the taxpayer has made an election under subsection (4) in relation to the FIF, each”;
- (b) by adding at the end the following subsections:

“(4) The taxpayer may elect that each amount required to be calculated under any paragraph of subsection (2) is to be expressed in Australian currency at the exchange rate applicable:

- (a) in the case of paragraph (2)(a)—on the day referred to in that paragraph; and
- (b) in the case of paragraph (2)(b) or (e)—at the time of each distribution referred to in that paragraph; and
- (c) in the case of paragraph (2)(c)—on the day when the taxpayer had the interests as mentioned in that paragraph; and
- (d) in the case of paragraph (2)(d)—at the time when the consideration referred to in that paragraph is paid or given.

“(5) If the taxpayer makes the election:

- (a) it applies in relation to all of the taxpayer's interests in the FIF in relation to the relevant period and all later relevant periods; and
- (b) it is irrevocable.”.

Step 2—calculation of foreign investment fund income

47. Section 542 of the Principal Act is amended by omitting from subsection (3) “The” and substituting “If no election is made under subsection 538(4) in relation to the FIF, the”.

Subdivision K—Redemption price

How market value is ascertained

48. Section 539 of the Principal Act is amended:

- (a) by inserting in paragraph (3)(a) “company or” before “trust”;
- (b) by omitting paragraph (3)(b) and substituting the following paragraph:
 - “(b) the interest is included in a class of interests for which, at intervals of not more than 12 months:
 - (i) the company, or the trustee or manager of the trust, offered a buy-back or redemption price; or
 - (ii) an associate of the company, or of the trustee or manager, offered a purchase price; and”;
- (c) by omitting from paragraph (3)(c) “or redemption” and substituting “, redemption or purchase”;
- (d) by inserting in subparagraph (3)(c)(ii) “company or” before “trust”;
- (e) by omitting from subsection (4) all the words after paragraph (b) and substituting:
 - “(c) neither subsection (2) nor (3) applies to the class of interests in which the interest is included; and
 - (d) subsection (2) or (3) would apply to the class of interests in both of the following cases:
 - (i) if the relevant day were instead the last reporting day for the FIF before 1 January 1993;
 - (ii) if the relevant day were instead the next reporting day for the FIF on or after 1 January 1993, being a reporting day that is not more than 12 months after the one referred to in subparagraph (i);the market value of the interest on the relevant day is the average of the 2 market values that would be applicable under paragraph (d) on the reporting days referred to in subparagraphs (d)(i) and (ii).”.

Subdivision L—Recalculation of notional deduction for certain prescribed classes of property

Notional deductions—amortisation of expenditure in acquiring property

49. Section 570 of the Principal Act is amended:

- (a) by omitting from subsection (1) “If” and substituting “Subject to subsection (1A), if”;
- (b) by inserting after subsection (1) the following subsection:
 - “(1A) If:
 - (a) the accounts of the FIF in respect of one or more accounting periods include an amount in respect of the amortisation of the expenditure incurred in the acquisition of a class of property prescribed for the purposes of subparagraph (1)(a)(iii); and

(b) the regulations prescribing the class also prescribe a percentage as the annual amortisation percentage in relation to the class, or a category of property included in the class; then subsection (1) must be applied, in relation to each notional accounting period that is appropriate, as if the accounts had amortised the expenditure in relation to the class or the category on the basis of the prescribed annual amortisation percentage.”.

Subdivision M—Reduction of FIF attribution debits

FIF attribution debit

50. Section 606 of the Principal Act is amended by omitting paragraph (2)(b) and substituting the following paragraph:

“(b) whichever of the following is applicable:

- (i) if the attribution account payment is made to the taxpayer—the FIF attribution account payment;
- (ii) in any other case—the taxpayer’s FIF attribution account percentage (for the FIF attribution account entity to which the payment is made) of the FIF attribution account payment; reduced by any attribution debit that arises under section 372 for the entity in relation to the taxpayer as a result of the making of the payment.”.

Subdivision N—Correction of sundry errors

Foreign tax if CFC has interest in FIF

51. Section 160AFCK of the Principal Act is amended by omitting from paragraph (2)(b) “notional”.

Exemption

52. Section 509 of the Principal Act is amended by omitting “subparagraph (a)(i)” and substituting “paragraph (a)”.

Exemption

53. Section 523 of the Principal Act is amended by omitting paragraph (c) and substituting the following:

“(c) having regard to all the activities in which the company engaged in that period or that part of that period, it would be concluded that any 2 or more of the activities referred to in subparagraph (b)(ii), taken together, were the activities in which the company was principally engaged throughout that period or that part of that period, as the case may be;

then the taxpayer’s interest is disregarded for the purposes of the application of the operative provision to the taxpayer in relation to the foreign company in respect of the notional accounting period.”.

Division 8—Amendments relating to the payment of instalments by companies and certain trustees

Subdivision A—Insertion of new Division

Insertion of new Division

54. After Division 1B of Part VI of the Principal Act the following Division is inserted:

“Division 1C—Payment of instalments by companies and certain trustees

“Subdivision A—Interpretation

Interpretation

“221AZH. In this Division, unless the contrary intention appears:

‘amount’, in relation to an estimate, includes a nil amount;

‘current year’ means the year of income for which instalments are being calculated;

‘due date’, in relation to a particular instalment, means the due date specified in Table 1 in section 221AZK, whether or not the taxpayer is actually required to pay that instalment;

‘estimate’ means an estimate under section 221AZO;

‘final instalment’ means:

(a) for a small taxpayer—the single instalment specified in Table 1 in section 221AZK;

(b) for any other taxpayer—the 4th instalment specified in that table;

‘instalment’ means an instalment under section 221AZK;

‘instalment taxpayer’ means a taxpayer specified in subsection 221AZK(1);

‘large taxpayer’ means a taxpayer who is classified as large in accordance with Table 1 in section 221AZK;

‘likely tax’ means the likely tax calculated under Subdivision C;

‘medium taxpayer’ means a taxpayer who is classified as medium in accordance with Table 1 in section 221AZK;

‘small taxpayer’ means a taxpayer who is classified as small in accordance with Table 1 in section 221AZK;

‘taxable income’, in relation to a taxpayer in the capacity of trustee of a fund or trust, means the taxable income or net income, as appropriate, of the fund or trust.

References to tax payable modified for years in which taxpayer had net capital gain

“221AZI.(1) This section applies if:

- (a) the taxpayer's assessable income of a year of income (**'the gain year'**) included a net capital gain; and
- (b) the amount of the tax assessed or payable by the taxpayer for the gain year is relevant for either of the following purposes:
 - (i) calculating the likely tax for the current year;
 - (ii) determining whether a penalty is payable under section 221AZP in respect of an estimate made for the current year; and
- (c) the taxpayer is:
 - (i) a company; or
 - (ii) the trustee of a trust that is a corporate unit trust in relation to the current year for the purposes of Division 6B of Part III; or
 - (iii) the trustee of a trust that is a public trading trust in relation to the current year for the purposes of Division 6C of Part III.

“(2) References in this Division to the tax assessed or payable for the gain year are to be read as references to that tax, as recalculated in accordance with this section. The recalculated amount applies only for the purposes mentioned in paragraph (1)(b).

“(3) If the taxpayer is a life assurance company or registered organisation, the tax is to be recalculated as the sum of:

- (a) the tax on the CS/RA component of the taxable income; and
- (b) the tax on the other components, recalculated on the basis that the assessable income to which the components relate did not include any net capital gain.

“(4) In all other cases, the tax is to be recalculated on the basis that the assessable income did not include any net capital gain.

“(5) In this section:

'CS/RA component' has the same meaning as in Division 8 or 8A of Part III, as the case requires;

'life assurance company' has the same meaning as in Division 8 of Part III;

'net capital gain' means a net capital gain within the meaning of Part IIIA;

'registered organisation' has the same meaning as in Division 8A of Part III.

“Subdivision B—General rules for payment of instalments

Object of Division

“221AZJ. The object of this Division is to ensure the efficient collection of tax payable by instalment taxpayers.

Liability to pay instalments

“221AZK.(1) The following taxpayers are instalment taxpayers in relation to a year of income (**‘the current year’**):

- (a) a company;
- (b) the trustee of a trust that is a corporate unit trust in relation to the current year for the purposes of Division 6B of Part III;
- (c) the trustee of a trust that is a public trading trust in relation to the current year for the purposes of Division 6C of Part III;
- (d) the trustee of a fund that is an eligible ADF (as defined in section 267) in relation to the current year;
- (e) the trustee of a fund that is an eligible superannuation fund (as defined in section 267) in relation to the current year;
- (f) the trustee of a fund that is a pooled superannuation trust (as defined in section 267) in relation to the current year.

“(2) An instalment taxpayer is liable to pay instalments for the current year in accordance with the following table:

Table 1: Instalments

Class of taxpayer	Likely tax on first day of month 9	Instalment(s) due on first day of:	Instalment amount(s)
Small	less than \$8,000	month 18	100% of assessed tax for current year
Medium	\$8,000 to \$300,000	month 12	25% of likely tax for current year
		month 15	25% of likely tax for current year
		month 18	25% of likely tax for current year
		month 21	assessed tax for current year, less previous instalments for current year
Large	more than \$300,000	month 9	25% of likely tax for current year
		month 12	25% of likely tax for current year
		month 15	25% of likely tax for current year
		month 18	assessed tax for current year, less previous instalments for current year

“(3) For the purposes of Table 1:

- (a) a taxpayer is classified as small, medium or large according to the taxpayer’s likely tax for the current year, calculated on the first day of month 9;

(b) months are reckoned from the start of the current year;

[For example, if the current year starts on 1 July 1995 then month 12 will be June 1996 and month 15 will be September 1996.]

(c) **‘assessed tax’** means the tax payable for the current year, as shown in the taxpayer’s return for the current year.

“(4) Instalments are to be calculated to the nearest dollar.

“(5) Instalments are to be treated as tax for the purposes of sections 206, 207, 207A, 208, 209, 214, 254, 255, 258 and 259. However, in applying sections 207 and 207A in relation to the final instalment, the credits and offsets specified in paragraph 221AZP(1)(b) are to be deducted from that instalment.

Commissioner may waive or reduce instalment

15 “221AZL.(1) The Commissioner may determine that a particular instalment is not payable, or is reduced, if the Commissioner is satisfied that it is appropriate to do so having regard to the object of this Division and the particular circumstances of the taxpayer.

“(2) If the amount of an instalment paid by a taxpayer turns out to be excessive because of a determination later made under subsection (1), the Commissioner must refund the excess.

Instalments to be credited against current year’s tax etc.

“221AZM.(1) The Commissioner must credit an instalment in payment of the following, in order:

- (a) tax payable for the current year;
- (b) tax payable under section 160AQJ;
- (c) any other liability of the taxpayer to the Commonwealth that arises under an Act of which the Commissioner has the general administration.

“(2) The Commissioner must refund any excess to the taxpayer.

“(3) An amount credited under this section is taken to be credited on the day on which section 166A deems an assessment to have been made for the taxpayer for the current year.

“Subdivision C—Calculating likely tax for current year

General rule for calculating likely tax

“221AZN.(1) The taxpayer’s likely tax at any particular time is worked out using the following table:

Table 2: Likely tax

	Situation existing at the particular time	Likely tax
Case 1	The taxpayer has lodged an estimate	The estimated amount (or the last estimated amount if 2 estimates have been lodged)
Case 2	The taxpayer has not lodged an estimate, but there is a previous year's tax amount	The previous year's tax amount
Case 3	The taxpayer has not lodged an estimate and there is not a previous year's tax amount, but there is an earlier year's tax amount	The earlier year's tax amount (or the earlier year's tax amount for the most recent year of income if there are 2 or more such amounts)
Case 4	None of the above applies	Nil

“(2) For the purposes of Table 2:

‘**previous year's tax amount**’ means the amount assessed as the tax payable for the year of income before the current year;

‘**earlier year's tax amount**’ means the amount assessed as the tax payable for a year of income 2 or more years before the current year.

“(3) For the purposes of this section, a return lodged by the taxpayer stating that no tax is payable is treated as an assessment of a nil amount of tax.

“(4) The ascertainment of likely tax is not an assessment for the purposes of this Act.

“Subdivision D—Estimates of current year's tax

Taxpayer may lodge estimates of current year's tax

“221AZO.(1) A taxpayer is entitled to lodge with the Commissioner up to 2 estimates of the tax (if any) that the taxpayer will be liable to pay for the current year.

“(2) An estimate cannot be revoked.

Penalty applies if estimate is too low

“221AZP.(1) A taxpayer is liable to pay a penalty under this section in respect of an estimate lodged by the taxpayer for the current year if the estimated amount turns out to be more than 10% below the base amount. The base amount is the lesser of the following amounts:

- (a) the likely tax for the current year, immediately before the taxpayer lodged the estimate;
- (b) the tax payable by the taxpayer for the current year, reduced by the following amounts:

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- (i) credits under subsection 98A(2), Division 18 of Part III or Division 3A of this Part, or under the *Income Tax (International Agreements) Act 1953*;
- (ii) offsets under section 160AQK.

“(2) The penalty applies to the difference between the estimated amount and the base amount.

“(3) The penalty is calculated at the rate of 16% per year for the period that:

- (a) starts on the later of the following dates:
 - (i) the date on which the taxpayer lodged the estimate;
 - (ii) the earliest date on which the taxpayer would have had to pay an instalment for the current year if the estimate had not been lodged; and
- (b) ends on the earlier of the following dates:
 - (i) the date on which the taxpayer lodges another estimate for the current year;
 - (ii) the due date for the last instalment.

“(4) The Commissioner may remit some or all of the penalty if the Commissioner is satisfied that there are special circumstances that make it fair and reasonable to do so.

“(5) Penalty under this section is to be treated as tax for the purposes of sections 208, 209, 214, 254, 255, 258 and 259.

Refund of excessive instalment on downwards estimate

“221AZQ.(1) If a medium or large taxpayer lodges an estimate after paying an instalment, and the amount paid was more than it would have been if it had been calculated on the basis of the estimate, the Commissioner must refund the difference.

“(2) The refund is to be treated as reducing the amount of the instalment concerned for all purposes of this Act (other than Part IIIAA).

“(3) No refund is payable under this section if the estimate is lodged after the due date for the 3rd instalment.

Liability to pay an additional amount on upwards estimate

“221AZR.(1) If a medium or large taxpayer lodges an estimate after paying an instalment, and the amount paid was less than it would have been if it had been calculated on the basis of the estimate, the taxpayer must pay the difference to the Commissioner at the time of lodging the estimate.

“(2) The taxpayer’s additional payment is to be treated as being part of the instalment concerned for all purposes of this Act (other than Part IIIAA).

“(3) This section does not apply if the estimate is lodged after the due date for the 3rd instalment.

“Subdivision E—Miscellaneous

Taxpayer must specify taxable income etc. in return

“221AZS. In its return for the current year, an instalment taxpayer must specify:

- (a) its taxable income for the current year; and
- (b) the amount (if any) of the tax payable on that taxable income.

Due date for payment of tax

“221AZT. The tax payable by an instalment taxpayer for the current year becomes due and payable as follows:

- (a) on the due date for the final instalment, if taxpayer lodges the taxpayer’s return for the current year on or before the due date for the final instalment; or
- (b) on the date on which the taxpayer lodges the taxpayer’s return for the current year, if the taxpayer lodges the return after the due date for the final instalment.

Avoidance schemes

“221AZU. Part IVA and the related provisions of this Act apply for the purposes of this Division as if references in that Part to a taxpayer obtaining a tax benefit included references to a taxpayer obtaining a benefit in relation to the operation of this Division.”.

Subdivision B—Application and transitional

Interpretation

55. In this Subdivision:

“**amended Act**” means the Principal Act as amended by this Act.

Application of new Division 1C

56.(1) For small and medium taxpayers, the new Division 1C applies for the 1994-95 year of income and all later years of income.

(2) For large taxpayers, the new Division 1C applies for the 1995-96 year of income and all later years of income. However, for the 1995-96 year of income, a large taxpayer is not required to pay the first instalment.

(3) In this section:

“**new Division 1C**” means Division 1C of Part VI of the amended Act.

Penalty if taxpayer classified as large for 1994-95 year on basis of excessive estimate

57.(1) A taxpayer is liable to pay a penalty under this section in respect of an estimate lodged by the taxpayer for the 1994-95 year of income if:

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- (a) the taxpayer is classified as large for the 1994-95 year of income only because of the estimate; and
- (b) the estimated amount turns out to be more than 10% above the taxpayer's net tax for the 1994-95 year of income.

(2) The amount of the penalty is 16% of the difference between the estimated amount and the net tax.

(3) Section 221AZI of the amended Act applies for the purposes of this section.

(4) Penalty under this section is to be treated as tax for the purposes of sections 208, 209, 214, 254, 255, 258 and 259 of the amended Act.

(5) In this section:

“net tax” means the tax payable after deducting the following amounts:

- (a) credits under subsection 98A(2), Division 18 of Part III or Division 3A of Part VI of the amended Act, or under the *Income Tax (International Agreements) Act 1953*;
- (b) offsets under section 160AQK of the amended Act.

Subdivision C—Consequential amendments

Consequential amendments

58. The Acts specified in the Schedule are amended as set out in the Schedule.

Division 9—Amendment of assessments

Amendment of assessments

59. Section 170 of the Principal Act does not prevent the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Act.

**PART 4—AMENDMENT OF THE INCOME TAX ASSESSMENT
AMENDMENT (FOREIGN INVESTMENT) ACT 1992**

Division 1—Principal Act

Principal Act

60. In this Part, **“Principal Act”** means the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*³.

Division 2—Amendment relating to passive income

Passive income

61. Section 14 of the Principal Act is amended by adding at the end the following subsection:

“(2) The amendment made by paragraph (1)(c) applies to assessments in respect of income of the 1992-93 year of income and in respect of income of all later years of income.”.

PART 5—AMENDMENT OF THE INCOME TAX RATES ACT 1986

Division 1—Principal Act

Principal Act

62. In this Part, “**Principal Act**” means the *Income Tax Rates Act 1986*⁴.

Division 2—Tax cuts for companies etc.— 1993-94 and later years

Rates of tax payable by companies

63. Section 23 of the Principal Act is amended:

- (a) by omitting from subsections (2), (3) and (4C) “39%” and substituting “33%”;
- (b) by omitting paragraph (4A)(c) and substituting the following paragraph:
 - “(c) in respect of the non-fund component:
 - (i) if the company is a mutual life assurance company (within the meaning of section 110 of the Assessment Act) at the end of the year of income—39%; or
 - (ii) in any other case—33%; and”;
- (c) by omitting from paragraph (4C)(a) and subsection (4D) “30%” and substituting “25%”;
- (d) by omitting from subsection (5) “\$1,429” and substituting “\$1,039”.

Rate of tax payable by trustees of corporate unit trusts

64. Section 24 of the Principal Act is amended by omitting “39%” and substituting “33%”.

Rate of tax payable by trustees of public trading trusts

65. Section 25 of the Principal Act is amended by omitting “39%” and substituting “33%”.

Rate of tax payable by trustee to whom subsection 98(3) of the Assessment Act applies

66. Section 28 of the Principal Act is amended by omitting “39%” and substituting “33%”.

Application

67. The amendments made by this Division apply to assessments in respect of income of the 1993-94 year of income and of all later years of income.

**PART 6—AMENDMENT OF THE SALES TAX ASSESSMENT
ACT 1992**

Division 1—Principal Act

Principal Act

68. In this Part, “**Principal Act**” means the *Sales Tax Assessment Act 1992*⁵.

Division 2—Amendments relating to contents of containers

Taxable dealing with goods that are the contents of a container

69. Section 35 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) This section does not apply if the container is a shipping container covered by exemption Item 60.”.

Schedule 1

70. Schedule 1 to the Principal Act is amended:

(a) by omitting all the words in column [3] of Table 3 in relation to CR7 and substituting:

“Claimant is the taxpayer for an assessable dealing with goods (**‘the output goods’**) that is not taxable (for any reason except section 29). Claimant has borne tax on other goods (**‘the input goods’**) that have a sufficient link (as defined by section 52) with the output goods. The input goods are not covered by exemption Item 27(3).”;

(b) by inserting after credit ground CR8 in Table 3 the following credit ground:

“ CR8A	Ensuring no double tax in respect of containers	Claimant is the taxpayer for an assessable dealing (other than one that is not taxable because of section 29) with goods that are the contents of a container. Container is not covered by exemption Item 27(3). Claimant has borne tax on the container.	the tax borne on the container	time of the assessable dealing	”.
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Application

71.(1) The amendment made by section 69 applies to taxable dealings with goods taking place after 26 May 1993.

(2) The amendments made by section 70 apply to assessable dealings with goods taking place after 26 May 1993.

SCHEDULE

Section 58

AMENDMENT OF ACTS

Crimes (Taxation Offences) Act 1980

Subsection 3(1) (definition of “income tax”):

After paragraph (ca) insert:

“(cb) any amount payable to the Commissioner under Division 1C of Part VI of the Income Tax Assessment Act;”.

Income Tax Assessment Act 1936

Section 94Y:

Add at the end:

“(2) A corporate limited partnership is not liable to pay instalments under Division 1C of Part VI for a year of income unless it was also a corporate limited partnership in relation to the immediately preceding year of income.”.

Section 166A:

Add at the end:

“(2) If Subdivision 1C of Part VI applies to the taxpayer for a year of income and the taxpayer lodges a return for that year, the following provisions apply:

- (a) the Commissioner is deemed to have made an assessment of the taxable income or net income, and the tax payable on that income, equal to those respective amounts specified in the return;
- (b) the assessment is deemed to have been made on the due date that applies under section 221AZT;
- (c) on and after the day on which the Commissioner is deemed to have made the assessment, the return is deemed to be a notice of the deemed assessment:
 - (i) under the hand of the Commissioner; and
 - (ii) served on the taxpayer on the day on which the Commissioner is deemed to have made the assessment.”.

After subsection 170AA(7):

Insert:

“(7A) If Division 1C of Part VI applies to the taxpayer for a year of income and, on the basis of the taxpayer’s return, the taxable income was nil or no tax was payable on the taxable income, the following provisions apply for the purposes of subsection (6):

SCHEDULE—continued

- (a) the Commissioner is taken to have served a notice of the kind specified in paragraph (6)(a); and
- (b) the reference in paragraph (6)(c) to the end of 30 days after the date of service of the notice is to be read as a reference to the due date that applies under section 221AZT.”.

Subsection 218(6B) (definition of “tax”):

After “1B,” (wherever occurring) insert “1C,”.

Subsection 218(6B) (definition of “taxpayer”):

After “1B,” insert “1C,”.

After section 221AK:

Insert:

Termination of operation of this Division

“221AKA.(1) This Division does not apply to a taxpayer in relation to a year of income if Division 1C applies to the taxpayer for that year of income.

“(2) If this Division ceases to apply to a taxpayer because of subsection (1), the taxpayer is no longer to be regarded as a relevant entity within the meaning of this Division for any purpose of this Act.”.

Subsection 221YB(1):

Omit “(other than a relevant entity within the meaning of Division 1B)”.

After subsection 221YB(1A):

Insert:

“(1B) A taxpayer is not liable to pay provisional tax if Division 1B or 1C applies to the taxpayer in relation to the year of income concerned.”.

Subsection 222A(1) (definition of “taxation officer statement”):

After “section 221AZD” insert “or 221AZS”.

After subsection 222(1A):

Insert:

“(1B) A taxpayer is liable to pay additional tax by way of penalty under this subsection if the taxpayer:

SCHEDULE—continued

- (a) fails to keep a record containing particulars of the basis of the calculation of the amounts that the taxpayer specified under section 221AZS in a return for a year of income; or
- (b) refuses or fails to produce to the Commissioner, when and as required by the Commissioner under this Act, a document containing particulars of the basis of the calculation of the amounts that the taxpayer specified under section 221AZS in a return for a year of income.

The penalty is double the amount of tax payable by the taxpayer for that year of income.”.

NOTES

- 1. No. 39, 1986, as amended. For previous amendments, see Nos. 48 and 112, 1986; Nos. 23 and 145, 1987; No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 6, 78, 95, 97 and 153, 1988; Nos. 2, 11, 97 and 107, 1989; Nos. 37, 58, 60 and 135, 1990; Nos. 48, 100 and 216, 1991; Nos. 35, 92, 101, 118, 191, 210, 223 and 237, 1992; and No. 17, 1993.
- 2. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 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; Nos. 3, 35, 69, 70, 80, 81, 92, 98, 101, 118, 138, 167, 190, 191, 208, 223, 224, 227, 237 and 238, 1992; and No. 17, 1993.
- 3. No. 190, 1992.

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NOTES—continued

4. No. 107, 1986, as amended. For previous amendments, see Nos. 60 and 138, 1987; Nos. 11, 78 and 118, 1988; Nos. 70, 98 and 106, 1989; No. 87, 1990; Nos. 48, 100 and 216, 1991; and No. 98, 1992.
5. No. 114, 1992, as amended. For previous amendments, see Nos. 150, 191 and 224, 1992.

*[Minister's second reading speech made in—
House of Representatives on 5 May 1993
Senate on 18 May 1993]*