

**Taxation Laws Amendment**

**(Infrastructure Borrowings) Act 1994**

**No. 163 of 1994**

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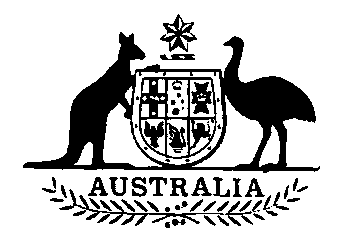
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**Taxation Laws Amendment (Infrastructure**

**Borrowings) Act 1994**

**No. 163 of 1994**

**An Act to amend the law relating to infrastructure borrowings**

The Parliament of Australia enacts:

[*Assented to 16 December 1994*]

**PART 1—PRELIMINARY**

**Short title**

**1.** This Act may be cited as the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1994.*

**Commencement**

**2.** This Act commences on the day on which it receives the Royal Assent.

**PART 2—AMENDMENT OF THE DEVELOPMENT ALLOWANCE AUTHORITY ACT 1992**

**Principal Act**

**3.** In this Part, **"Principal Act"** means the *Development Allowance Authority Act 1992*1.

**Omission of heading and substitution of new heading**

**4.** The Heading to Part 1 of the Principal Act is omitted and the following heading is substituted:

"**CHAPTER 1—PRELIMINARY**".

**Insertion of new headings**

**5.** After section 2 of the Principal Act the following headings are inserted:

"**CHAPTER 2—DEVELOPMENT ALLOWANCE**"**PART 1—PRELIMINARY**".

**Interpretation**

**6.** Section 6 of the Principal Act is amended by omitting the definitions of "AAT", "document certification provision", "prosecution provisions", "reviewable decision" and "State taxation officer disclosure provision".

**Insertion of new Chapter**

**7.** After Part 10 of the Principal Act the following Chapter is inserted:

"**CHAPTER 3—INFRASTRUCTURE BORROWINGS**"**PART 1—PRELIMINARY**

**Object**

"93A. The object of this Chapter and the infrastructure borrowings provisions of the *Income Tax Assessment Act 1936* is to provide tax incentives for genuine private sector investment in publicly accessible infrastructure facilities and related facilities.

**Simplified outline of scheme of Chapter**

"93B. The following is a simplified outline of the scheme of this Chapter:

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

(b) the DAA will issue the certificate if it is satisfied that the borrowing is an infrastructure borrowing and that certain other criteria are met;

(c) it is a condition of the issue of the certificate that the holder must use the money borrowed in the way proposed in the person's application and must comply with certain other requirements;

(d) if the certificate holder wishes to transfer to another person all of its interests and liabilities in relation to the borrowing or any facilities acquired or constructed with the money borrowed and certain criteria are met, the DAA must agree to transfer the certificate;

(e) the DAA may cancel the certificate if the conditions applying to it are contravened, or if the holder fails to comply with certain other requirements of the Chapter. In such a case, the holder will be liable to pay an amount that recoups some or all of the tax benefits of the certificate.

**Example of how this Chapter works**

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

"93C.(1) This section sets out an example of how this Chapter works in a typical case involving a borrowing to construct a tollway.

**[Step 1—proposal]**

"(2) By December 1994, a non-exempt public company has developed a proposal to construct a tollway in Australia that it intends to operate for at least 25 years after it becomes income-producing. The estimated cost of the tollway is $600 million, of which the company intends to borrow $400 million by a public bond issue at 8% per annum over 10 years. The company intends to build the tollway in 2 stages:

• stage 1, commencing in November 1995 and continuing until November 1998, involving the major earthworks

• stage 2, commencing in February 1999 and ending at the end of 2001, involving construction of bridges, road pavement, stabilisation of embankments and construction of related facilities for toll collection and other staff.

**[Step 2—application to DAA]**

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

**[Step 3—action by DAA]**

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

**[Step 4—issue of certificate]**

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

**[Step 5—the bond issue]**

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

**[Completion and operation of tollway]**

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

"**PART 2—INTERPRETATION: INFRASTRUCTURE BORROWINGS ETC.**

**Interpretation**

**[List of terms]**

"93D.(1) In this Chapter:

**'application'** means an application under Part 3;

**'approved'** means approved in writing by the DAA;

**'assessable income'** has the same meaning as in the Tax Act;

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

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

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

(a) in a case to which subsection 93K(2) applies—the end of the 25 year period mentioned in that subsection; or

(b) in a case to which subsection 93K(3) or (4) applies—the time of the transfer mentioned in that subsection;

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

**'certificate'** means a certificate issued under Part 3;

**'certificate holder requirement period'**,in relation to the holder of a certificate that applies either to a direct infrastructure borrowing or to a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing, means:

(a) if the holder is the person to whom the certificate was issued—the borrower requirement period; or

(b) if the holder is a person to whom the certificate was transferred under section 93V and:

(i) subsection 93K(2) applied to the direct infrastructure borrowing; or

(ii) subsection 93K(3) or (4) applied to the direct infrastructure borrowing, where the transfer mentioned in that subsection has not yet taken place;

so much of the borrower requirement period as occurs after the transfer of the certificate to the holder; or

(c) if:

(i) the holder is a person to whom the certificate was transferred under section 93V; and

(ii) subsection 93K(3) or (4) applied to the direct infrastructure borrowing; and

(iii) the transfer mentioned in that subsection has taken place;

so much of the period of 25 years, following the first use of any of the facilities concerned after their construction or acquisition under the borrowing, as occurs after the transfer of the certificate to the holder;

**'construct'** includes extend, improve or up-grade;

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

**'Crown lease'** means:

(a) a lease of land; or

(b) an easement in connection with land; or

(c) any other right, power or privilege over, or in connection with, land; if the lease, easement, right, power or privilege was granted by:

(d) the Commonwealth, a State or a Territory; or

(e) an authority of the Commonwealth, a State or a Territory, where, assuming that the authority derived income at the time of the grant, that income would be exempt from income tax under the Tax Act because of a relevant exempting provision (within the meaning of section 160K of that Act);

**'DAA'** means the Development Allowance Authority appointed under Chapter 4;

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

**'government body'** means the Commonwealth, a State, a Territory or a body to which paragraph 23(d) of the Tax Act applies;

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

**'infrastructure borrowing'** means a direct infrastructure borrowing, an indirect infrastructure borrowing or a refinancing infrastructure borrowing;

**'infrastructure facility'** has the meaning given by section 93L;

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

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

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

**'related facility'** has the meaning given by section 93M;

**'Tax Act'** means the *Income Tax Assessment Act 1936*;

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

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

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

**[Ownership where Crown lease]**

"(3) For the purposes of references in sections 93K, 93R and 93S to a borrower or holder of a certificate intending at a particular time (the **'intention time'**) to own facilities at or until a particular time, the borrower or holder is taken to intend at the intention time to own, at or until the particular time, facilities that are intended to be, or that are, a fixture on land that is the subject of a Crown lease if:

(a) if the Crown lease is a lease of land granted under a statutory law of the Commonwealth, a State or a Territory—it can reasonably be expected, at the intention time, that the Crown lease will run, or (because of law, custom or otherwise) be extended or renewed to run, until at least the end of the period of 25 years following the first use of any of the facilities concerned after their construction or acquisition under the borrowing; or

(b) in any other case—at the time (the **'relevant time'**)that is the later of the intention time and the time when the first of the facilities begins to be constructed under the borrowing:

(i) if the term of the lease will not end before the end of the period of 25 years following the first use of any of the facilities concerned after their construction or acquisition under the borrowing—both the lessor and the lessee intend that the

lessee or, where subsection 93K(3) or (4) applies and the transfer to the other person mentioned in that subsection has not yet occurred, the other person will continue to hold the lease throughout the whole of that period on the same terms and conditions as those on which the lease is held at the relevant time; or

(ii) if the term of the lease will end before the end of the period of 25 years following the first use of any of the facilities concerned after their construction or acquisition under the borrowing:

(A) the lessee has an option that, where subsection 93K(3) or (4) applies and the transfer to the other person mentioned in that subsection has not yet occurred, is transferable to the other person mentioned in that subsection, to renew the lease on the terms and conditions referred to in subparagraph (i) for a period that will not end, or has successive options to renew the lease on those terms and conditions for periods the last of which will not end, before the end of the period of 25 years; and

(B) both the lessor and the lessee intend that the lessee or, where subsection 93K(3) or (4) applies and the transfer to the other person mentioned in that subsection has not yet occurred, the other person mentioned in that subsection, will continue to hold the lease throughout the whole of the 25 year period on the same terms and conditions as those on which the lease is held at the relevant time.

**Kinds of infrastructure borrowing**

"93E. There are 3 kinds of infrastructure borrowing:

(a) a direct infrastructure borrowing (see section 93F); and

(b) an indirect infrastructure borrowing (see section 93G); and

(c) a refinancing infrastructure borrowing (see section 93H).

**Direct infrastructure borrowing**

"93F. A direct infrastructure borrowing is a borrowing of money where:

(a) the borrower requirements set out in section 931 are met; and

(b) the requirement relating to the use of the borrowed money, set out in section 93J, is met; and

(c) the requirement relating to the use of facilities on which the borrowed money is spent, set out in section 93K, is met.

**Indirect infrastructure borrowing**

"93G. An indirect infrastructure borrowing is a borrowing of money by an incorporated body where:

(a) the borrower requirements set out in section 931 are met; and

(b) the body intends, at the time of the borrowing, to use the borrowed money only:

(i) by lending it to another person where that loan will constitute the whole or part of a direct infrastructure borrowing by that other person in relation to which a certificate is in force; and

(ii) if it is not able to be lent to the other person immediately after it is borrowed—by investing it in a prescribed investment until it is.

**Refinancing infrastructure borrowing**

**[Meaning of "refinancing infrastructure borrowing"]**

"93H.(1) A refinancing infrastructure borrowing is a borrowing of money where:

(a) the borrower requirements set out in section 931 are met; and

(b) the borrower intends, at the time of the borrowing, to use the money borrowed only:

(i) to repay the whole or part of any of the following borrowings:

(A) a direct infrastructure borrowing; or

(B) an indirect infrastructure borrowing; or

(C) a borrowing that is a refinancing infrastructure borrowing because of another application of this subsection;

where a certificate held by the borrower is in force in relation to the borrowing to be wholly or partly repaid; and

(ii) if the money is not able to be used to make the repayment immediately after it is borrowed—by investing it in a prescribed investment until it is.

**[Interpretive provision]**

"(2) For the purposes of references in this Chapter, a refinancing infrastructure borrowing relates to a direct infrastructure borrowing or to an indirect infrastructure borrowing if the repayment mentioned in subparagraph (1)(b)(i) is of:

(a) the direct infrastructure borrowing or the indirect infrastructure borrowing, as the case may be; or

(b) another refinancing infrastructure borrowing that, under a previous application of this subsection, relates to the direct infrastructure borrowing or the indirect infrastructure borrowing, as the case may be.

**Infrastructure borrowings—borrower requirements**

**[Borrower requirements]**

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

**[Basic requirements]**

"(2) The borrower must:

(a) be:

(i) in any case—an incorporated body (not in the capacity of trustee) at the time of the borrowing or a corporate limited partnership (not in the capacity of trustee) in relation to the year of income in which the borrowing takes place; or

(ii) in the case of a direct infrastructure borrowing or a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing—a corporate unit trust (within the meaning of section 102J of the Tax Act), or a public trading trust (within the meaning of section 102R of the Tax Act), in relation to the year of income in which the borrowing takes place; and

(b) where the borrower is an incorporated body or a corporate limited partnership and the borrowing is a direct infrastructure borrowing or a refinancing infrastructure borrowing that relates to such a direct infrastructure borrowing—at the time of the borrowing, intend to be an incorporated body (not in the capacity of trustee) throughout the borrower requirement period, or a corporate limited partnership (not in the capacity of trustee) throughout each year of income in which any part of the borrower requirement period occurs; and

(c) where the borrower is a trust to which subparagraph (a)(ii) applies—at the time of the borrowing, intend to be such a trust in relation to each year of income in which any part of the borrower requirement period occurs; and

(d) where the borrower is an incorporated body or a trust to which subparagraph (a)(ii) applies—not be making the borrowing in partnership with anyone else; and

(e) in any case—subject to subsection (4), not be a government body or government owned (see subsection (3)) at the time of the borrowing.

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

"(3) For the purposes of paragraph (2)(e):

(a) an incorporated body is government owned if:

(i) it is limited by shares; and

(ii) a government body is the beneficial owner of at least 50% of the total rights:

(A) to dividends paid by the body; or

(B) to distributions of capital of the body on winding-up or otherwise; or

(C) to vote at meetings of shareholders of the body; and

(b) a corporate limited partnership is government owned if a government body is the beneficial owner of more than 50% of the interests in profits or capital of the partnership; and

(c) a trust is government owned if a government body is the beneficial owner of more than 50% of the interests in income or corpus of the trust.

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

"(4) Paragraph (2)(e) does nof apply to a borrower if the borrower is, in accordance with criteria published in the *Gazette* by the Minister for the purposes of this subsection, a body that operates on a commercial basis.

**[Direct infrastructure borrowings by listed companies]**

"(5) If:

(a) the infrastructure borrowing is:

(i) a direct infrastructure borrowing; or

(ii) a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing;

by an incorporated body limited by shares; and

(b) the incorporated body is a listed company; and

(c) at the time of the borrowing, a person is the beneficial owner of shares carrying more than half the voting rights in the incorporated body;

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

**[Direct infrastructure borrowings by unlisted companies]**

"(6) If:

(a) the infrastructure borrowing is:

(i) a direct infrastructure borrowing; or

(ii) a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing;

by an incorporated body limited by shares; and

(b) the incorporated body is not a listed company; and

(c) at the time of the borrowing, a person either alone or together with an associate or associates is the beneficial owner of shares carrying more than half the voting rights in the incorporated body;

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

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

**[Spending requirement]**

"93J.(1) For a borrowing to be a direct infrastructure borrowing, the borrower must, at the time of the borrowing, intend to use the borrowed money only:

(a) by spending it on:

(i) the construction of one or more infrastructure facilities; or

(ii) subject to subsection (2), the construction or acquisition of one or more related facilities; or

(iii) subject to subsection (3), the payment of interest, or of amounts in the nature of interest, on a direct infrastructure borrowing; and

(b) if it is unable to be spent immediately after it is borrowed—by investing it in a prescribed investment until it is.

**[Spending on related facilities]**

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

(a) the borrower also intends to spend some of the borrowed money as mentioned in paragraph (1)(a) on one or more of the infrastructure facilities to which the related facility relates; or

(b) the following conditions are satisfied:

(i) the borrower already owns the infrastructure facility or facilities to which the related facility relates; and

(ii) the requirements of section 93K are satisfied in relation to that infrastructure facility or those infrastructure facilities (assuming the money were also to be spent on them) as well as the related facility at the time of the borrowing; and

(iii) the borrower intends to begin the construction, or make the acquisition of the related facility, not later than 10 years after:

(A) if the borrower constructed the infrastructure facility or facilities to which it relates—the beginning of construction of the infrastructure facility, or the first of the infrastructure facilities, to which it relates; or

(B) if the borrower acquired the infrastructure facility or facilities to which it relates—the time of acquisition of the infrastructure facility, or the first of the infrastructure facilities, to which it relates.

**[Spending on the payment of interest]**

"(3) Spending money on the payment of interest, or of amounts in the nature of interest, only qualifies under subsection (1):

(a) to the extent that the interest or those amounts relate to that part of the period of the borrowing that occurs during the period (the **'construction period'**)in which any of the facilities referred to in paragraph (1)(a), or any of the facilities referred to in paragraph (1)(b) that are being constructed, are under construction; and

(b) if the payment is made during the construction period.

**[Exclusions]**

"(4) A borrowing does not qualify for the purposes of subsection (1) if the borrower intends to spend the money borrowed:

(a) on entering into or acquiring a lease; or

(b) on acquiring land on which there is a building or structure that is to form part of the infrastructure facility or the related facility concerned; or

(c) on refinancing a loan.

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

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

**["acquisition" includes dismantling etc.]**

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

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

**[3 kinds of intention qualify]**

"93K.(1) For the borrowing to be a direct infrastructure borrowing, it is also necessary that, at the time of the borrowing, the borrower has an intention of the kind set out in subsection (2), (3) or (4).

**[Intention to use]**

"(2) One intention that the borrower may have for the purposes of subsection (1) is that:

(a) it will own, use principally for gaining or producing assessable income and effectively control the use of, the facilities on which the money will be spent (other than by leasing them); and

(b) the ownership, use for gaining or producing assessable income and effective control will continue for at least 25 years after the first such use by the borrower of any of the facilities concerned after their construction or acquisition; and

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

**[Intention to sell]**

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

(a) it will own the facilities on which the money will be spent; and

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

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

**[Intention to use before selling]**

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

(a) it will, after constructing or acquiring the facilities on which the money will be spent, own, use principally for gaining or producing assessable income and effectively control the use of, those facilities (other than by leasing them) for a period less than 25 years after the first such use by the borrower of any of those facilities after their construction or acquisition; and

(b) it will then transfer all of its rights, interests and obligations in respect of the facilities to another person who will be able to satisfy the requirements of section 93V for the transfer of the borrower's certificate; and

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

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

**Infrastructure facilities**

**[7 kinds of facility]**

"93L.(1) There are 7 kinds of infrastructure facility.

**[Land transport facility]**

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

**[Air transport facility]**

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

**[Seaport facility]**

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

**[Electricity generation, transmission or distribution facility]**

"(5) Another kind of infrastructure facility is an electricity generation, transmission or distribution facility, that is to say, any one, or combination of 2 or more, of the following facilities:

(a) an electricity generation facility on land in Australia;

(b) an electricity transmission facility, where the electricity generation facility concerned is on land in Australia;

(c) an electricity distribution facility on land in Australia;

where the electricity generated, transmitted or distributed is to be principally for sale to the public either directly by the operator of the facility or indirectly through other persons.

**[Gas pipeline facility]**

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

**[Water supply facility]**

"(7) Another kind of infrastructure facility is a water supply facility, that is to say, any one, or combination of 2 or more, of the following:

(a) dams, weirs, reservoirs or tanks that are to be used for storing, and regulating the flow of, water for public consumption, or other use by the public, at a charge to them;

(b) bores that are to be used for extracting water for public consumption, or other use by the public, at a charge to them;

(c) channels or pipelines that are to be used:

(i) for supplying water for public consumption, or other use by the public, at a charge to them; or

(ii) for carrying water between dams or other storage places from which it is to be supplied through channels or pipelines for public consumption, or other use by the public, at a charge to them;

(d) pumps and associated structures that are to be used:

(i) in extracting water from bores covered by paragraph (b); or

(ii) for pumping water along channels or pipelines covered by paragraph (c);

(e) equipment and structures that are to be used for treating water that is to be supplied to the public through pipelines at a charge to them, to make it fit for the public to drink.

**[Sewage or wastewater facility]**

"(8) Another kind of infrastructure facility is a sewage or wastewater facility, that is to say:

(a) equipment, excavations and structures that are to be used for treating, at a charge to the public, sewage, or other wastes in water, produced by the public:

(i) to reduce the damage caused by its disposal in the natural environment; or

(ii) to make any component of the things treated suitable for re-use; or

(b) channels, drains or pipelines for carrying sewage, or other wastes in water, produced by the public to or from the equipment and structures covered by paragraph (a); or

(c) both of these.

**Related facilities**

**[Basic test]**

"93M.(1) Related facilities are facilities in Australia that are reasonably necessary for an infrastructure facility to be able to operate for the purpose for which it was constructed.

**[Examples]**

"(2) The following are examples of facilities that are related facilities in respect of an infrastructure facility, provided that they pass the test in subsection (1):

(a) plant and other equipment (for example, rolling stock in the case of a railway) for use in operating the infrastructure facility;

(b) buildings or other structures from which staff are to operate the infrastructure facility;

(c) buildings or other structures for storing freight, cargo, plant, fuel, stores or equipment;

(d) stations or passenger or freight terminals;

(e) subject to paragraphs (4)(a) and (6)(a), maintenance facilities.

**[Access roads etc. excluded]**

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

**[Dry-docks etc. excluded]**

"(4) In the case of a seaport facility, the following are not related facilities (or part of the infrastructure facility itself):

(a) a dry-dock or other facility for repair or maintenance of vessels;

(b) a vessel.

**[Dams etc. excluded]**

"(5) In the case of an electricity generation, transmission or distribution facility, the following are not related facilities (or part of the infrastructure facility itself):

(a) a dam or coal mine;

(b) facilities for transporting fuel or water to the site at which the electricity generation, transmission or distribution takes place.

**[Hangars etc. excluded]**

"(6) In the case of an air transport facility, the following are not related facilities (or part of the infrastructure facility itself):

(a) a hangar or other facility for storage, repair or maintenance of aircraft;

(b) an aircraft.

**[Processing plant etc. excluded]**

"(7) In the case of a gas pipeline facility, the following are not related facilities (or part of the infrastructure facility itself):

(a) the processing plant from which the gas pipeline transports the gas;

(b) any drilling, extraction, processing or other plant or equipment for use in obtaining the gas, processing it or transporting it to the processing plant in paragraph (a).

"**PART 3—CERTIFICATES**

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

**Application for certificate**

**[Application to DAA]**

"93N.(1) A person who proposes to borrow money, where the person considers the borrowing to be an infrastructure borrowing, may apply to the DAA for a certificate under this Chapter in relation to the borrowing.

**[Details in application]**

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

**[Dates in application]**

"(3) The application must also specify dates by which the person intends to do the following:

(a) in any case—borrow the money;

(b) in the case of a direct infrastructure borrowing:

(i) spend the borrowed money in constructing or acquiring any facility concerned; and

(ii) complete specified stages in the construction of any facility that is intended to be constructed;

(c) in the case of an indirect infrastructure borrowing—lend the borrowed money as mentioned in section 93G;

(d) in the case of a refinancing infrastructure borrowing—use the borrowed money to repay the other infrastructure borrowing mentioned in subparagraph 93H(1)(b)(i).

**[Indirect infrastructure borrowing—additional requirement]**

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

(a) a copy of the certificate in relation to the other borrowing mentioned in subparagraph 93G(b)(i); or

(b) an application for such a certificate in relation to the other borrowing.

**[Refinancing infrastructure borrowing—additional requirement]**

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

**[Variation of application]**

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

**Criteria for issuing certificate**

**[Criteria]**

"93O.(1) Subject to subsection (2) and section 93P, the DAA must issue the certificate if:

(a) in any case—the DAA is satisfied that:

(i) the proposed borrowing is an infrastructure borrowing; and

(ii) the dates specified in the application in accordance with subsection 93N(3) are reasonable; and

(b) in the case of an indirect infrastructure borrowing where a certificate is not in force in relation to the other borrowing mentioned in subparagraph 93G(b)(i)—the DAA decides to issue such a certificate at the same time as it issues the certificate in relation to the indirect infrastructure borrowing.

**[Laws restricting competition]**

"(2) If:

(a) the borrowing is a direct infrastructure borrowing; and

(b) there is in force, at the time at which the DAA proposes to issue the certificate in relation to the borrowing, a law that the DAA is satisfied will prohibit or restrict the operation of other facilities in competition with the infrastructure facilities concerned;

the DAA must not issue the certificate.

**Undertaking to comply with certificate conditions**

**[DAA to request undertaking]**

"93P.(1) If the DAA is satisfied of the matters required for the issue of a certificate under section 930, the DAA must advise the applicant that it will issue the certificate if the applicant gives the DAA an undertaking to the effect that, if the certificate is issued, the applicant will comply with the conditions applying to the certificate under section 93R.

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

**[Form of undertaking]**

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

(a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;

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

**[Undertaking required before certificate issued]**

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

**Form of certificate etc.**

**[Form etc.]**

"93Q.(1) If an application for a certificate is granted, the certificate must:

(a) be in writing in the approved form; and

(b) be in the name of the applicant; and

(c) contain details of the borrowing of money to which it relates and a statement whether the borrowing is a direct infrastructure borrowing, an indirect infrastructure borrowing or a refinancing infrastructure borrowing.

**[Cancellation etc.]**

"(2) The certificate:

(a) may not be varied or revoked, but may be cancelled in accordance with this Part; and

(b) remains in force at all times after its issue until it is cancelled in accordance with this Part.

**Conditions applying to certificate**

"93R. The following conditions apply to the certificate:

(a) if the certificate applies to a direct infrastructure borrowing or to a refinancing infrastructure borrowing that relates to a direct infrastructure borrowing—that the holder will be:

(i) an incorporated body throughout the certificate holder requirement period; or

(ii) a corporate limited partnership, or a trust of a kind mentioned in subparagraph 93I(2)(a)(ii), in relation to each year of income in which any part of the certificate holder requirement period occurs;

(b) if the holder is:

(i) the person to whom the certificate was issued; or

(ii) a person to whom the certificate was transferred, where subsection 93K(2) applies; or

(iii) a person to whom the certificate was transferred, where subsection 93K(3) or (4) applies and the transfer mentioned in that subsection has not yet occurred;

that the holder will:

(iv) in any case—do, if applicable by the date specified in the application, all the things that were specified in the application as things the applicant intended to do in relation to:

(A) the borrowing; and

(B) the spending, lending or investing of the borrowed money; and

(C) the construction or acquisition of any facility; and

(D) the ownership, use and control of any facility; and

(E) any transfer of the holder's rights, interests and obligations in respect of any facility; and

(F) any other matter; and

(v) if the certificate applies to a direct infrastructure borrowing—not do anything that will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; and

(vi) in any case—keep proper records in respect of all dealings by the holder with the borrowed money and the doing of all other things specified in the application (for example, in respect of things done in constructing any facility);

(c) if the holder is a person to whom the certificate was transferred, where subsection 93K(3) or (4) applies and the transfer mentioned in that subsection has occurred—that the holder will:

(i) own, use principally for gaining or producing assessable income and effectively control the use of, the facilities concerned (other than by leasing them) until at least 25 years after the first use of any of the facilities concerned after their construction or acquisition under the borrowing; and

(ii) not do anything that will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; and

(iii) keep proper records in respect of the ownership, use and control of the facilities concerned.

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

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

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

"93T. If the DAA is satisfied that:

(a) assuming that the things specified in the application for the issue of the certificate had originally been as proposed to be varied, the DAA would still have issued the certificate; and

(b) it is reasonable to do so;

the DAA must, in writing, vary the conditions.

**Transfer of certificate**

"93U. If the holder of a certificate proposes to transfer the certificate to another person, the holder and the other person may jointly apply to the DAA for the transfer of the certificate on a specified date.

**Criteria for transfer of certificate**

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

(a) by the specified date, all rights, interests and obligations of the certificate holder in relation to:

(i) if subparagraph (ii) does not apply:

(A) the spending, lending or other use of the borrowed money; and

(B) the acquisition, construction, ownership, use and control of any facility covered by the conditions applying to the certificate; or

(ii) if the transfer of the certificate to the transferee will enable effect to be given to a requirement, in a condition applying to the certificate as a result of subsection 93K(3) or (4), for the holder to transfer to another person all of the holder's rights, interests and obligations in relation to facilities—those facilities;

will be transferred to the transferee; and

(b) the rights, interests and obligations will not be transferred to the transferee in partnership with anyone else; and

(c) the requirements of section 931 would be satisfied in relation to the transferee if the transferee had been the person who proposed to borrow the money and the borrower requirement period in section 931 were the certificate holder requirement period; and

(d) if the transfer is approved, the transferee intends to comply with the conditions that will apply to the certificate.

**Undertaking to comply with certificate conditions**

**[DAA to request undertaking]**

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

**[Form of undertaking]**

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

(a) if the transferee is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;

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

**[Undertaking required before transfer]**

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

**Provisions relating to applications under this Division**

**[Approved form]**

"93X.(1) An application must be in writing in the approved form.

**[Information in form]**

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

**[Accompanying reports etc.]**

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

**[Signing of application etc.]**

"(4) The application, and any accompanying report or other document created by an applicant, must be signed by the applicant if the applicant is a natural person. If the applicant is not a natural person, they must be signed on behalf of the applicant by whichever of the following natural persons is applicable:

(a) if the applicant is an incorporated body that has a board of directors (however described)—the chairperson (however described) of the board;

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

**[Power to refuse to consider application]**

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

**[Rejection under section 93Y]**

"(6) The DAA must not accept an application if to do so would contravene a direction under subsection 93Y(2).

**[Decision on application]**

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

(a) to grant the application; or

(b) to refuse the application.

**[Notice of decision]**

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

**[Reasons for refusal]**

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

**Limit on costs of borrowings to Commonwealth**

**[Cost limit in regulations]**

"93Y.(1) A regulation, whether made before or during a financial year, may specify an amount as the intended maximum cost to the Commonwealth for the financial year of the taxation consequences of the issue of certificates.

**[Ministerial direction to give effect to limit]**

"(2) For the purpose of ensuring that the amount in respect of the financial year is not exceeded, the Minister may, in writing, direct the DAA not to accept applications for certificates during a specified period (whether or not to any extent in the financial year). In deciding whether to give the direction, the Minister must have regard to any details or estimate provided by the DAA under subsection (3) and any other information of relevance otherwise provided by the DAA.

**[Information to assist in determining application limit]**

"(3) To assist in determining whether to give such a direction, the Minister may request the DAA to provide to the Minister any one or more of the following:

(a) details of amounts and terms of borrowings covered by applications for certificates;

(b) details of certificates issued;

(c) an estimate of the likely costs to the Commonwealth of the taxation effects of certificates issued.

Subject to subsection (4), the DAA must comply with the request.

**[Anonymity of applicant etc. to be preserved]**

"(4) The DAA must not comply with the request if, or to the extent that, to do so would cause the DAA to disclose to the Minister any information:

(a) that identifies a particular applicant or certificate holder; or

(b) that, under Part 4 of Chapter 4, is commercial-in-confidence information.

"***Division 2***—***Cancellation***

**Cancellation or termination—failure to comply with request to give information or provide report**

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

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

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

"93ZA.(1) If a certificate holder, in connection with the operation of this Chapter (other than Part 4):

(a) makes a statement, either orally or in writing, to the DAA or to an officer of the Department that is false or misleading in a material particular; or

(b) omits from a statement made, either orally or in writing, to the DAA or to an officer of the Department any matter or thing without which the statement is misleading in a material particular; or

(c) gives or produces a document or copy to the DAA or to an officer of the Department that contains information that is false or misleading in a material particular;

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

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

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

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

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

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

"(4) Subsection (3) does not apply to a certificate holder who produces a document, or gives a copy of a document, that, to the knowledge of the holder, is false or misleading in a material particular if the document or copy is accompanied by a written statement:

(a) stating that the document or copy is, to the knowledge of the holder, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the holder, false or misleading.

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

"(5) For the purposes of subsections (3) and (4):

(a) an incorporated body is taken to know anything known by any of its directors or employees; and

(b) a corporate limited partnership is taken to know anything known by:

(i) if any of the partners is a natural person—that partner; and

(ii) if any of the partners is an incorporated body—any of the directors or employees of that partner; and

(c) a natural person is taken to know anything known by an employee of the natural person.

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

**[Cancellation of certificate]**

"93ZB.(1) The DAA may, by written notice to the holder, cancel a certificate if the DAA is satisfied that the holder has not complied with the conditions applying to the certificate.

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

"(2) If the DAA cancels the certificate that applies to a direct infrastructure borrowing, it must also cancel any certificate applying to:

(a) an indirect infrastructure borrowing, where the direct infrastructure borrowing is the one mentioned in subparagraph 93G(b)(i); and

(b) a refinancing infrastructure borrowing that relates to the direct infrastructure borrowing.

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

"(3) If the DAA cancels (whether under subsection (2) or otherwise) the certificate that applies to an indirect infrastructure borrowing, it must also cancel any certificate that applies to a refinancing infrastructure borrowing that relates to the indirect infrastructure borrowing.

"**PART 4—PROVISION OF INFORMATION TO DAA**

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

**[Making of request]**

"93ZC.(1) For the purposes of this Chapter, the DAA may, by written notice given to a person who has made an application or who is a certificate holder, request the person:

(a) to give information to the DAA within the time and in the manner specified in the notice; or

(b) to produce documents to the DAA within the time and in the manner specified in the notice; or

(c) to give certified copies of documents to the DAA within the time and in the manner specified in the notice.

**[Contravention not an offence]**

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

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

**[Inspection, copies etc.]**

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

**[Retention of certified copy]**

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

**[Retention of document]**

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

**[Copy of retained document]**

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

**[Evidence]**

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

**[Access to document]**

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

**Certificate holder to provide annual progress reports**

"93ZE. The holder of a certificate that was issued or transferred to the holder must:

(a) within one month after the end of the first 12 month period (the **'reporting year'**) after the issue of the certificate; and

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

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

"**PART 5—PROVISION OF INFORMATION BY DAA TO COMMISSIONER OF TAXATION**

**Provision of information to Commissioner of Taxation**

"93ZF. The DAA must advise the Commissioner of Taxation in writing of particulars of:

(a) all certificates issued; and

(b) all certificates transferred; and

(c) all certificates cancelled; and

(d) all other matters relevant to the operation of Division 16L of Part III of the Tax Act.

"**PART 6—DAA'S POWER TO FACILITATE ISSUE OR TRANSFER OF CERTIFICATE**

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

"93ZG. If the DAA considers that any action or inaction of a person or body is likely to have the effect of preventing the D.AA from issuing or transferring a certificate under this Chapter, the DAA may, with the consent of each applicant, notify the person or body accordingly.".

**Omission of heading and substitution of new headings and section**

8. The heading to Part 11 of the Principal Act is omitted and the following headings and section are substituted:

"**CHAPTER 4—GENERAL**

"**PART 1—INTERPRETATION**

**Interpretation**

"93AA. In this Chapter, unless the contrary intention appears:

**'AAT'** means the Administrative Appeals Tribunal;

**'DAA'** means the Development Allowance Authority appointed under this Chapter;

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

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

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

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

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

"**PART 2—DEVELOPMENT ALLOWANCE AUTHORITY".**

**Repeal of section**

**9.** Section 98 of the Principal Act is repealed.

**Acting DAA**

**10.** Section 106 of the Principal Act is amended by omitting subsections (2), (3) and (4).

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

**11.** Section 111 of the Principal Act is amended:

**(a)** by inserting in subsection (1) "of Chapter 2 or Part 3 of Chapter 3" after "or 6";

**(b)** by omitting from subsection (2) "or Part 7" and substituting ", Part 7 of Chapter 2 or Part 4 of Chapter 3".

**DAA may revoke declaration**

**12.** Section 113 of the Principal Act is amended:

**(a)** by omitting from paragraph (1)(a) "an entity" and substituting "a person";

**(b)** by omitting "the entity" (wherever occurring) and substituting "the person".

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

**13.** Section 114 of the Principal Act is amended by omitting from paragraph (1)(g) "the entity" and substituting "the person".

**Quarterly reports by DAA**

**14.** Section 115 of the Principal Act is amended:

**(a)** by inserting in paragraph (1)(a) "under Chapter 2" after "granted";

**(b)** by inserting in paragraph (1)(b) "under this Act" after "granted";

**(c)** by omitting paragraph (2)(a).

**Annual report**

**15.** Section 117 of the Principal Act is amended by omitting subsection (3).

**Reconsideration of reviewable decisions**

**16.** Section 119 of the Principal Act is amended:

**(a)** by omitting from subsection (1) "An entity" and substituting "A person";

**(b)** by omitting from paragraph (1)(a) "entity" and substituting "person".

**Statements to accompany notification of decisions**

**17.** Section 121 of the Principal Act is amended:

**(a)** by omitting "an entity" and substituting "a person";

**(b)** by omitting "the entity" (wherever occurring) and substituting "the person".

**Further amendments**

**18.** The Principal Act is further amended as set out in the Schedule to this Act.

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

**Principal Act**

**19.** In this Part, **"Principal Act"** means the *Income Tax Assessment Act 1936*2.

**Officers to observe secrecy**

**20.** Section 16 of the Principal Act is amended by inserting in paragraph (4)(hba) "Chapter 4 of" before "that Act".

**Repeal of Subdivision**

**21.** Subdivision A of Division 16L of Part III of the Principal Act is repealed.

**Omission of heading**

**22.** The heading to Subdivision B of Division 16L of Part III of the Principal Act is omitted.

**Insertion of new section**

**23.** Before section 159GZZZZE of the Principal Act the following section is inserted in Division 16L of Part III:

**Interpretation**

"159GZZZZD. In this Division:

**'certificate'** has the same meaning as in Chapter 3 of the DAA Act;

**'DAA'** means the Development Allowance Authority appointed under Chapter 4 of the DAA Act;

**'DAA Act'** means the *Development Allowance Authority Act 1992*;

**'direct infrastructure borrowing'** has the same meaning as in Chapter 3 of the DAA Act;

**'exemption period'**,in relation to an infrastructure borrowing, means:

(a) in the case of a direct infrastructure borrowing or an indirect infrastructure borrowing—the period of 15 years beginning at the time of the borrowing; or

(b) in the case of a refinancing infrastructure borrowing—so much of the period that under paragraph (a) is the exemption period in respect of the direct infrastructure borrowing, or the indirect infrastructure borrowing, to which the refinancing infrastructure borrowing relates as remains at the time of the refinancing infrastructure borrowing;

**'IB amount'**,in relation to a taxpayer, means:

(a) a payment of interest, or in the nature of interest, made or liable to be made to the taxpayer under an infrastructure borrowing; or

(b) an amount included in the assessable income of the taxpayer under section 159GQ in relation to an infrastructure borrowing;

**'indirect infrastructure borrowing'** has the same meaning as in Chapter 3 of the DAA Act;

**'infrastructure borrowing'** has the same meaning as in Chapter 3 of the DAA Act;

**'infrastructure period'**,in relation to a certificate that is cancelled, means the period from the time of the borrowing to which the certificate applied until the conditions under section 93R of the DAA Act would, if the certificate had not been cancelled, have ceased to apply to the holder;

**'refinancing infrastructure borrowing'** has the same meaning as in Chapter 3 of the DAA Act;

**'tax benefit amount'**,in relation to a certificate that is cancelled, in relation to a year of income (being the year of income in which the cancellation occurs or any earlier or later year of income), means:

(a) a payment of interest, or in the nature of interest, that, because of paragraph 159GZZZZE(1)(a), is not allowable as a deduction from the assessable income of the year of income of a taxpayer in respect of the borrowing to which the certificate applies; or

(b) an amount that, because of paragraph 159GZZZZE(2)(d), is not allowable as a deduction under section 159GT from the assessable income of the year of income of a taxpayer in respect of the borrowing to which the certificate applies.".

**Infrastructure borrowings to be non-assessable and non-deductible**

**24.** Section 159GZZZZE of the Principal Act is amended:

**(a)** by inserting before subsection (1) the following subsection;

"(1A) This section applies to an infrastructure borrowing if a certificate is issued in relation to the borrowing, regardless of whether the certificate is later cancelled.";

**(b)** by omitting from subsections (1) and (2) "No amount" and substituting "Subject to section 159GZZZZG, no amount";

**(c)** by omitting from subsections (1), (2) and (3) "an infrastructure" (wherever occurring) and substituting "the infrastructure";

**(d)** by omitting from paragraph (3)(b) "any infrastructure" and substituting "the infrastructure".

**Insertion of new sections**

**25.** After section 159GZZZZF of the Principal Act the following sections are inserted in Division 16L of Part III:

**Rebate election**

*Basic case*

"159GZZZZG.(1) If:

(a) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts, the assessable income of a year of income of a taxpayer who is:

(i) a company or a natural person (other than a company or natural person in the capacity of a trustee); or

(ii) a corporate unit trust within the meaning of Division 6B in relation to the year of income; or

(iii) a public trading trust within the meaning of Division 6C in relation to the year of income; or

(iv) an eligible entity within the meaning of Part IX in relation to the year of income;

would include one or more IB amounts; and

(b) the taxpayer's return of income of the year of income includes all of the IB amounts;

then:

(c) all of the IB amounts are included in the taxpayer's assessable income of the year of income; and

(d) the taxpayer is entitled to a rebate in the taxpayer's assessment for that year of an amount equal to 33% of the IB amounts.

*Beneficiary assessment*

"(2) If:

(a) apart from this subsection, a share of the net income of a trust estate of a year of income is included in a taxpayer's assessable income under section 97; and

(b) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts included in the assessable income of the trust estate, or of any other trust estate or partnership, that share of the net income would be increased by an amount (the **'IB attributable amount'**);and

(c) the taxpayer's return of income of the year of income is prepared on the basis that all of the IB amounts are included in the assessable income of the trust estate, or of the other trust estate or partnership;

then:

(d) for the purposes only of working out the share of the net income to be included in the taxpayer's assessable income, the assessable income of the trust estate, or of the other trust estate or partnership, includes all of the IB amounts; and

(e) the taxpayer is entitled to a rebate in the taxpayer's assessment for the year of income of an amount equal to 33% of the IB attributable amount.

*Trustee assessment*

"(3) If:

(a) apart from this subsection, the trustee of a trust estate is assessed and liable to pay tax:

(i) in respect of a share of the net income of the trust estate of a year of income under section 98; or

(ii) in respect of the whole or part of the net income of the trust estate under section 99 or 99A; and

(b) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts included in the assessable income of the trust estate, or of any other trust estate or partnership, of the year of income, the amount of the share, or of the whole or the part, of the net income would be increased by an amount (the **'IB attributable amount'**); and

(c) the trustee's return of income in respect of the share, or the whole or the part of the net income, of the year of income is prepared on the basis that all of the IB amounts are included in the assessable income of the trust estate, or of the other trust estate or partnership;

then:

(d) for the purposes only of working out the amount of:

(i) the share, or of the whole or the part, of the net income; and

(ii) the individual interest of a beneficiary in the net income of the trust estate that is to be included in the beneficiary's assessable income under section 100, where the share of the net income to which subparagraph (a)(i) of this subsection applies is that of the beneficiary;

the assessable income of the trust estate, or of the other trust estate or partnership, includes all of the IB amounts; and

(e) the trustee is entitled to a rebate in the trustee's assessment in respect of the share, or of the whole or the part, of the net income of the year of income to an amount equal to 33% of the IB attributable amount.

*Partner assessment*

"(4) If:

(a) apart from this subsection, a share of the net income of a partnership of a year of income is included in a taxpayer's assessable income under section 92; and

(b) if subsections 159GZZZZE(1) and (2) did not apply to IB amounts included in the assessable income of the partnership, or of any other

partnership or trust estate, that share of the net income would be increased by an amount (the **'IB attributable amount'**);and

(c) the taxpayer's return of income of the year of income is prepared on the basis that all of the IB amounts are included in the assessable income of the partnership, or of the other partnership or trust estate;

then:

(d) for the purposes only of working out the share of the net income included in the taxpayer's assessable income, the assessable income of the partnership, or of the other partnership or trust estate, includes all of the IB amounts; and

(e) the taxpayer is entitled to a rebate in the taxpayer's assessment for the year of income of an amount equal to 33% of the IB attributable amount.

"(5) The inclusion of an IB amount in the assessable income of a person under this section does not affect the denial of allowability of a deduction to another person in respect of the same amount under subsection 159GZZZZE(1) or (2).

**Tax payable where infrastructure borrowing certificate cancelled**

*Tax payable*

"159GZZZZH.(1) If:

(a) the DAA cancels a certificate in relation to an infrastructure borrowing; and

(b) for any year of income (whether the one in which the cancellation takes place or an earlier or later one), there is a tax benefit amount in relation to the certificate;

the holder of the certificate at the time of the cancellation is liable to pay tax on an amount (an **'infrastructure certificate cancellation amount'**) worked out using the formula:

**15% × Tax benefit amount ×** **Factor**

where

**'Factor'** means:

(a) if the year of income to which the tax benefit amount relates is:

(i) the year of income in which the act or omission that was the ground, or the first act or omission that was a ground, relied on by the DAA for cancelling the certificate occurred; or

(ii) an earlier year of income;

the fraction worked out using the formula:

|  |
| --- |
| **Part of infrastructure period occurring after the act or omission** |
| **Infrastructure period** |

; or

(b) in any other case—the number 1.

*Assessment of amount*

"(2) The Commissioner may make an assessment of the tax payable by a taxpayer under this section. In making or amending the assessment, and in dealing with any objection, appeal or review in relation to the assessment or amended assessment, the Commissioner may rely in whole or in part on advice given by the DAA under section 93ZF of the DAA Act.

*Incorporation in other notices*

"(3) This Act does not prevent notice of the assessment being incorporated in a notice of any other assessment made in respect of the taxpayer under this Act.

*References in other provisions*

"(4) Unless the contrary intention appears, in sections 170, 172, 174, 204, 205, 206, 207, 207A, 208, 209, 214, 215, 216, 254, 255, 258, 259 and 265, but not in any other section of this Act, **'income tax'** or **'tax'** includes tax payable under this section.".

**Application**

**26.(1)** Subject to this section, the amendments made by this Part apply to infrastructure borrowings made on or after the day on which this Act receives the Royal Assent.

**(2)** The amendments made by this Part do not apply to a refinancing infrastructure borrowing, within the meaning of Division 16Lof Part III of the Principal Act as in force immediately before the commencement of this Part, where the direct infrastructure borrowing or indirect infrastructure borrowing (within the meaning of that Division) to which the refinancing infrastructure borrowing relates was made before the day on which this Act receives the Royal Assent.

**(3)** The amendments made by this Part do not apply to an infrastructure borrowing made on or after the day on which this Act receives the Royal Assent if subscriptions to the borrowing were invited by a prospectus issued before the day on which this Act receives the Royal Assent.

**PART 4—AMENDMENT OF THE TAXATION ADMINISTRATION ACT 1953**

**Principal Act**

**27.** In this Part, **"Principal Act"** means the *Taxation Administration Act 1953*3.

**Interpretation**

**28.** Section 8J of the Principal Act is amended by inserting in paragraph (2)(ga) "or 93ZC(1)(b) or (c)" after "79(1)(b) or (c)".

**Court may order payment of amount in addition to penalty**

**29.** Section 8W of the Principal Act is amended by inserting in subsection (IB) "of Chapter **2,** or Division 1 of Part 3 of Chapter 3," before "of the *Development Allowance Authority Act 1992*".

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**SCHEDULE** Section 18

FURTHER AMENDMENTS OF THE DEVELOPMENT ALLOWANCE AUTHORITY ACT 1992

**Amendments to renumber Part headings**

1. The heading to Part 12 of the Principal Act is amended by omitting " 12" and substituting "3".

2. The heading to Part 13 of the Principal Act is amended by omitting " 13" and substituting "4".

3. The heading to Part 14 of the Principal Act is amended by omitting " 14" and substituting "5".

4. The heading to Part 15 of the Principal Act is amended by omitting " 15" and substituting "6".

5. The heading to Part 16 of the Principal Act is amended by omitting " 16" and substituting "7".

**Amendments to replace references to "this Act"**

6. The expression "this Act" is omitted from the following provisions and "this Chapter" is substituted:

Sections 3 and 4, subsection 5(1), section 6 (first occurrence of the expression), sections 7, 8, 9, 10, 11 and 12, subsections 13(1) and (2), 13A(1), 14(1) and (3) and 14A(1), section 15, subsection 16(1), sections 17 and 18, subsection 19(1), sections 21 and 22, subsection 24(1), section 25 and subsections 25A(2) and (3) and 25B(1).

**NOTES**

*Development Allowance Authority Act 1992*

1. No. 99,1992, as amended. For previous amendments, see Nos. 129 and 167,1992; and No. 2, 1994.

*Income Tax Assessment Act 1936*

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

**NOTES—**continued

(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 (as amended by No. 82, 1994), 237 and 238, 1992; Nos. 7, 17, 18, 27 and 32, 1993; and Nos. 56, 82 and 138, 1994.

*Taxation Administration Act 1953*

3. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 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); Nos. 95 and 97, 1988; Nos. 97, 105, 107, 124, 163 and 167, 1989; Nos. 20, 60, 61, 110, 119 and 136, 1990; Nos. 5, 6, 48, 100, 122 and 216, 1991; Nos. 47, 92, 98, 101, 118, 138, 208, 210 and 224, 1992; and No. 7, 1993.

NOTE ABOUT SECTION HEADING IN THE DEVELOPMENT  
ALLOWANCE AUTHORITY ACT 1992

1. On the commencement of this Act, the heading to section 5 of the *Development Allowance Authority Act 1992* is altered by omitting "**Act**"and substituting "**Chapter**".

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

*House of Representatives on 5 December 1994*

*Senate on 7 December 1994*]