



Taxation Laws Amendment Act (No. 1) 1995

No. 120 of 1995

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Taxation Laws Amendment Act (No. 1) 1995

No. 120 of 1995

An Act to amend the law relating to taxation

[Assented to 25 October 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Taxation Laws Amendment Act (No. 1) 1995*.

Taxation Laws Amendment (No. 1) No. 120, 1995

Commencement

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

(2) Part 8 of Schedule 1 is taken to have commenced on the day on which the State Bank (Privatisation) Act 1994 of New South Wales commenced.

(3) Part 2 of Schedule 2 is taken to have commenced on 1 July 1994.

Schedules

3. The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

SCHEDULE 1

Section 3

**VARIOUS AMENDMENTS OF THE INCOME TAX ASSESSMENT
ACT 1936**

**PART 1—BONUS SHARES AND LIFE ASSURANCE
COMPANIES**

1. Subsection 6BA(2):

After “subsections (4),” insert “(4A),”.

2. After subsection 6BA(4):

Insert:

“(4A) If:

(a) the taxpayer is a life assurance company; and

(b) the whole or part of the relevant amount is included in the fund assessable income of the life assurance company of a year of income;

subsection (2) does not apply in relation to the whole or the part of the relevant amount.”.

3. Paragraph 6BA(6)(d):

Omit the paragraph, substitute:

“(d) an amount attributable to the dividend is included, through the taxpayer or through the taxpayer and any interposed partnerships or trusts, in:

(i) the assessable income, other than the fund assessable income, of a life assurance company of any year of income (the ‘relevant year of income’); or

(ii) the assessable income of a company that is a resident, but neither a trustee of a trust estate nor a life assurance company, of any year of income (also the ‘relevant year of income’);”.

4. Subsection 6BA(7):

After “(6),” insert “but subject to subsection (8),”.

5. Section 6BA:

Add at the end:

“(8) For the purposes of subsections (4A) and (6), if an amount that is payable to a life assurance company in respect of shares in another company has been or will be taken into account in determining an amount of any profit arising or loss incurred on the disposal by the life assurance company of those shares, or other shares, in the other company:

SCHEDULE 1—continued

14. Section 24AB (Table—entry for Special needs disability support pension):

Omit “, 24ABRA”.

15. Subsection 24ABA(1) (Table—after the entry for Disability support pension):

Insert:

“Disability wage supplement”.

16. Sections 24ABD and 24ABDAA:

Repeal the sections, substitute:

Disability support pension

“24ABD.(1) The treatment of payments of disability support pension under Part 2.3 of the *Social Security Act 1991* is as follows:

Item	Category	Supplementary amounts	Balance of payment
1	Taxpayer not under pension age	Exempt	Not exempt
2	Taxpayer under pension age	Exempt	Exempt

“(2) Subsection (1) has effect subject to subsection (4) (which deals with taxpayers who derive bereavement lump sum payments under section 146H of the *Social Security Act 1991*) and subsection (5) (which deals with certain payments after the death of a taxpayer’s partner).

“(3) Payments under sections 146G, 146K and 146Q of the *Social Security Act 1991* (which deal with bereavement payments) are exempt.

“(4) If a taxpayer derives a payment under section 146H of the *Social Security Act 1991*:

- (a) so much of the sum of that payment and other payments under the *Social Security Act 1991* derived by the taxpayer on pension paydays that occurred during the bereavement lump sum period as does not exceed the tax-free amount calculated using the exempt bereavement payment calculator A in section 24ABZB is exempt; and
- (b) the balance of the sum is not exempt.

“(5) If:

- (a) a taxpayer’s partner died; and
- (b) the taxpayer is not under pension age; and
- (c) the taxpayer would have been qualified for payments under a bereavement Subdivision but for an exclusion provision (taxpayer’s pension or allowance increased on partner’s death to such an extent that no bereavement payments); and

SCHEDULE 1—continued

- (d) the taxpayer derives payments of disability support pension under Part 2.3 of the *Social Security Act 1991* on one or more of the 7 pension paydays after the death;
 then those payments on that payday or each of those paydays are not treated under subsection (1) but are treated as follows:
- (e) the supplementary amounts are exempt;
 - (f) so much of the balance as exceeds what would have been the balance (payments less supplementary amounts) if the partner had not died is exempt;
 - (g) the rest of the balance is not exempt.”.

17. After section 24ABI:

Insert:

Disability wage supplement

“24ABJA.(1) The treatment of payments of disability wage supplement under Part 2.9 of the *Social Security Act 1991* is as follows:

Item	Category	Supplementary amounts	Balance of payment
1	Taxpayer not under pension age	Exempt	Not exempt
2	Taxpayer under pension age	Exempt	Exempt

“(2) Subsection (1) has effect subject to subsection (4) (which deals with taxpayers who derive bereavement lump sum payments under section 471 of the *Social Security Act 1991*) and subsection (5) (which deals with certain payments after the death of a taxpayer’s partner).

“(3) Payments under sections 470, 473, 475 and 476 of the *Social Security Act 1991* (which deal with bereavement payments) are exempt.

“(4) If a taxpayer derives a payment under section 471 of the *Social Security Act 1991*:

- (a) so much of the sum of that payment and other payments under the *Social Security Act 1991* derived by the taxpayer on pension paydays that occurred during the bereavement lump sum period as does not exceed the tax-free amount calculated using the exempt bereavement payment calculator A in section 24ABZB is exempt; and
- (b) the balance of the sum is not exempt.

“(5) If:

- (a) a taxpayer’s partner died; and

SCHEDULE 1—continued

- (b) the taxpayer is not under pension age; and
- (c) the taxpayer would have been qualified for payments under a bereavement Subdivision but for an exclusion provision (taxpayer's pension or allowance increased on partner's death to such an extent that no bereavement payments); and
- (d) the taxpayer derives payments of disability wage supplement under Part 2.9 of the *Social Security Act 1991* on one or more of the 7 pension paydays after the death;

then those payments on that payday or each of those paydays are not treated under subsection (1) but are treated as follows:

- (e) the supplementary amounts are exempt;
- (f) so much of the balance as exceeds what would have been the balance (payments less supplementary amounts) if the partner had not died is exempt;
- (g) the rest of the balance is not exempt.”.

18. Section 24ABR:

Repeal the section, substitute:

Special needs disability support pension

“24ABR.(1) The treatment of payments of special needs disability support pension under section 773 of the *Social Security Act 1991* is as follows:

Item	Category	Supplementary amounts	Balance of payment
1	Taxpayer not under pension age	Exempt	Not exempt
2	Taxpayer under pension age	Exempt	Exempt

“(2) Subsection (1) has effect subject to section 24ABV (which deals with bereavement payments) and subsection (3) of this section (which deals with certain payments after the death of the taxpayer's partner).

“(3) If:

- (a) a taxpayer's partner died; and
- (b) the taxpayer is not under pension age; and
- (c) the taxpayer would have been qualified for payments under a bereavement Subdivision but for an exclusion provision (taxpayer's pension or allowance increased on partner's death to such an extent that no bereavement payments); and

SCHEDULE 1—continued

(d) the taxpayer derives payments of special needs disability support pension under section 773 of the *Social Security Act 1991* on one or more of the 7 pension paydays after the death;
then those payments on that payday or each of those paydays are not treated under subsection (1) but are treated as follows:

- (e) the supplementary amounts are exempt;
- (f) so much of the balance as exceeds what would have been the balance (payments less supplementary amounts) if the partner had not died is exempt;
- (g) the rest of the balance is not exempt.”.

19. Section 24ABRA:

Repeal the section.

20. Application of amendments

The amendments made by this Part apply in respect of amounts paid to a taxpayer on or after the date set out in the following table in relation to the item concerned:

Item	Date
9, 10, 12, 14, 16, 19	12 November 1991
8, 11, 13, 15, 17, 18	1 July 1994

PART 3—COST PRICE OF NATURAL INCREASE OF LIVE STOCK

21. Object

The object of this Part is to provide that the cost price of natural increase of live stock for which no minimum amount is prescribed is to be its actual cost price.

22. Subsection 34(1):

Omit “The cost price per head of natural increase of any class of live stock of a taxpayer shall be”, substitute “If a minimum cost price is prescribed in respect of live stock, the cost price per head of natural increase of that class of live stock of a taxpayer is”.

23. After subsection 34(2A):

Insert:

“(2B) If no minimum cost price is prescribed in respect of live stock of a class, the cost price per head of natural increase of that class of live stock of a taxpayer is the actual cost price per head of natural increase of that class.”.

SCHEDULE 1—continued

24. Application

The amendments made by this Part apply in respect of natural increase of live stock occurring after 30 June 1994.

PART 4—DIVIDEND REBATES AND LIFE ASSURANCE COMPANIES

25. Subsection 46(1):

Insert:

“ ‘**life assurance company**’ has the same meaning as in Division 8; ‘**non-fund component**’ has the same meaning as in Division 8; ‘**the insurance funds**’ has the same meaning as in Division 8.”.

26. After subsection 46(1):

Insert:

“(1A) A reference in this section to the taxable income of a shareholder that is a life assurance company is a reference to the non-fund component of the life assurance company’s taxable income.”.

27. Subsection 46(6):

After “subsection (3),” insert “but subject to subsection (6AA),”.

28. After subsection 46(6):

Insert:

“(6AA) For the purposes of subsection (2) and subsection (3), the average rate of tax payable for a year of tax by a shareholder that is a life assurance company is the rate of tax applicable under paragraph 23(4A)(c) of the *Income Tax Rates Act 1986* in respect of the non-fund component of the life assurance company’s taxable income.”.

29. Subsection 46(11):

Omit the subsection.

30. Subsection 46A(1):

Insert:

“ ‘**life assurance company**’ has the same meaning as in Division 8; ‘**non-fund component**’ has the same meaning as in Division 8; ‘**the insurance funds**’ has the same meaning as in Division 8.”.

31. After subsection 46A(6):

Insert:

SCHEDULE 1—continued

“(6A) If:

- (a) the shareholder mentioned in subsection (5) or (6) is a life assurance company; and
- (b) the sum mentioned in paragraph (5)(a), or the net income derived from dividends mentioned in paragraph (5)(b) or subsection (6), is greater than the non-fund component of the life assurance company’s taxable income for the year of income concerned;

the reference to the sum or the net income is taken instead to be a reference to the amount of the non-fund component.”.

32. Subsection 46A(8):

After “and (6),” insert “but subject to subsection (8AA),”.

33. After subsection 46A(8):

Insert:

“(8AA) For the purposes of subsection (5) and subsection (6), the average rate of tax payable for a year of tax by a shareholder that is a life assurance company is the rate of tax applicable under paragraph 23(4A)(c) of the *Income Tax Rates Act 1986* in respect of the non-fund component of the life assurance company’s taxable income.”.

34. Subsection 46A(18):

Omit the subsection.

35. Application

The amendments made by this Part apply to assessments in respect of income of the 1994-95 year of income and of all later years of income.

PART 5—PANEL VANS AND UTILITY TRUCKS

36. Subsection 55(9) (paragraph (a) of definition of “eligible motor vehicle”):

After “similar vehicle” insert “, other than a panel van or utility truck designed to carry a load of one tonne or more”.

37. Subsection 58(8):

Omit “mentioned in”, substitute “covered by”.

38. Subsection 73E(12):

Omit “mentioned in”, substitute “covered by”.

39. Subsection 122JAA(23):

Omit “mentioned in”, substitute “covered by”.

SCHEDULE 1—continued

40. Subsection 122JG(13):

Omit “mentioned in”, substitute “covered by”.

41. Subsection 124AMAA(19):

Omit “mentioned in”, substitute “covered by”.

42. Subsection 160MA(3):

Omit “mentioned in”, substitute “covered by”.

43. Application

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

PART 6—DEDUCTIONS FOR GIFTS

44. Object

The object of this Part is to allow deductions for gifts made to the following:

- (a) the Ararat War Memorial Restoration Trust Fund;
- (b) the Australian and New Zealand College of Anaesthetists;
- (c) The Brisbane RAAF Memorial Fund;
- (d) the Constitutional Centenary Foundation Incorporated;
- (e) the Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust.

45. Subsection 78(3) (after the entry relating to approved research institutes—section 73A):

Insert:

“Ararat War Memorial Restoration
Trust Fund (4)-Table 5, item 5.2.4”.

46. Subsection 78(3) (after the entry relating to Australian and New Zealand Association for the Advancement of Science):

Insert:

“Australian and New Zealand College
of Anaesthetists (4)-Table 1, item 1.2.13”.

47. Subsection 78(3) (after the entry relating to Australian Sports Foundation):

Insert:

“Brisbane RAAF Memorial Fund (4)-Table 5, item 5.2.5”.

SCHEDULE 1—continued

48. Subsection 78(3) (after the entry relating to conservation bodies):

Insert:

“Constitutional Centenary Foundation
Incorporated (4)-Table 2, item 2.2.15”.

49. Subsection 78(3) (after the entry relating to medical research):

Insert:

“Mount Macedon Memorial Cross
Restoration, Development and
Maintenance Trust (4)-Table 5, item 5.2.6”.

50. Subsection 78(4) (after item 1.2.12 of Table 1):

Insert:

“

1.2.13	the Australian and New Zealand College of Anaesthetists	the gift must be made after 26 October 1994
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”.

51. Subsection 78(4) (after item 2.2.14 of Table 2):

Insert:

“

2.2.15	the Constitutional Centenary Foundation Incorporated	the gift must be made after 27 June 1994
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”.

52. Subsection 78(4) (after item 5.2.3 of Table 5):

Insert:

“

5.2.4	the Ararat War Memorial Restoration Trust Fund	the gift must be made after 3 April 1994 and before 4 April 1996
5.2.5	The Brisbane RAAF Memorial Fund	the gift must be made after 16 June 1994 and before 17 June 1996
5.2.6	the Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust	the gift must be made after 23 April 1994 and before 25 April 1996

”.

SCHEDULE 1—continued

PART 7—ELIGIBLE INVESTMENT INCOME OF REGISTERED ORGANISATIONS

53. Object

The object of this Part is:

- (a) to include income derived from eligible investment assets in the assessable income of registered organisations other than friendly societies; and
- (b) to include income derived from eligible investment assets that are not in benefit funds in the assessable income of registered organisations that are friendly societies.

54. Subsection 116E(1) (definitions of “EIB assessable income” and “EIB asset”):

Omit the definitions, substitute the following definitions:

“**‘EIB assessable income’**, in relation to a registered organisation in relation to a year of income, means so much of the total income (other than premiums) of the organisation of the year of income as is derived from:

- (a) in any case—eligible insurance business of the organisation; or
- (b) if paragraph (c) does not apply—eligible investment assets of the organisation; or
- (c) if the registered organisation is a friendly society—eligible investment assets that are not included in a benefit fund of the friendly society;

‘EIB asset’, in relation to a registered organisation, means:

- (a) in any case—an asset of the organisation that relates to its eligible insurance business; or
- (b) if paragraph (c) does not apply—an eligible investment asset of the organisation; or
- (c) if the registered organisation is a friendly society—an eligible investment asset of the friendly society that is not included in a benefit fund of the friendly society;”.

55. Subsection 116E(1):

Insert:

“**‘eligible investment asset’**, in relation to a registered organisation, means:

- (a) a premium or other amount derived in carrying on eligible insurance business of the organisation; or
- (b) income or profit derived from assets that are eligible investment assets of the organisation (including because of this paragraph); or

SCHEDULE 1—continued

- (c) any other asset purchased out of assets that are eligible investment assets of the organisation (including because of this paragraph);”.

56. Subsection 116GA(4):

Omit “the business of”.

57. Application

The amendments made by this Part apply to eligible investment assets derived or purchased on or after 1 July 1994.

PART 8—PRIVATISED STATE BANK OF NEW SOUTH WALES

58. After Division 9A of Part III:

Insert:

“Division 9B—State Bank of NSW

Interpretation

“121EM. In this Division:

‘asset’ means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any asset within the meaning of Part IIIA;

‘authorised actuary’ means a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

‘first taxing time’ means the time when the NSW State Bank ceases to be a public authority within the meaning of paragraph 23(d);

‘liability’ includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective);

‘NSW State Bank’ means the State Bank of New South Wales Limited.

Deemed disposal and re-acquisition of assets

“121EN.(1) Subject to subsection (2), for the purposes of the application of this Act (other than the excluded provisions mentioned in subsection (2)) to the NSW State Bank, the Bank is taken to have sold,

SCHEDULE 1—continued

immediately before the first taxing time, all of its assets and to have purchased each of the assets at the first taxing time for consideration equal to its market value at that time.

“(2) For the purposes of subsection (1), the excluded provisions are sections 54 to 62AAV and Divisions 10 to 10D.

“(3) To avoid doubt, an effect of subsection (1) is that the sum of all allowable deductions (if any) in respect of the writing off as bad of the whole or any part or parts of a debt to which that subsection applies will not exceed the market value of the debt at the first taxing time.

Deemed cessation and re-assumption of liabilities

“121EO.(1) For the purposes of the application of this Act to the NSW State Bank, the Bank is taken to have ceased immediately before the first taxing time to have any liabilities, and to have assumed each of the liabilities again at the first taxing time in return for consideration equal to the market value at that time of the right or other asset, corresponding to the liability, that is held by the person to whom the liability is owed.

“(2) An example for the purposes of subsection (1) is a liability under a security, issued by the NSW State Bank before the first taxing time, to pay an amount of \$1,000 after that time. If the market value of the holders’ right to receive the \$1,000 under the security was \$950 at the first taxing time, the NSW State Bank is taken to have received, at the first taxing time, \$950 by way of consideration for assuming the liability under the security to pay the \$1,000.

Effect of unfunded pre-first taxing time superannuation liabilities

“121EP.(1) This section applies to a deduction under section 82AAC in respect of a contribution made in relation to a person who was an employee of the NSW State Bank at the first taxing time.

“(2) A deduction to which this section applies is not allowable to the NSW State Bank for any year of income unless the requirements of subsections (3) and (4) are complied with.

“(3) For the deduction to be allowable, the NSW State Bank must obtain a certificate by an authorised actuary stating the actuarial value, as at the first taxing time, of liabilities of the NSW State Bank to provide superannuation benefits for, or for dependants of, employees of the Bank, where the liabilities:

- (a) had accrued as at the first taxing time; and
- (b) were, according to actuarial principles, unfunded at that time.

“(4) The certificate must be in a form approved in writing by the Commissioner. The NSW State Bank must obtain the certificate:

SCHEDULE 1—continued

- (a) before the date of lodgment of its return of income of the year of income in which the first taxing time occurs; or
- (b) within such further time as the Commissioner allows.

“(5) If the NSW State Bank obtains the certificate, a deduction to which this section applies is nevertheless not allowable for a year of income if the sum of all deductions to which this section applies for the year of income is less than or equal to the unfunded liability limit (see subsection (7)) for the year of income.

“(6) If the sum is greater than that limit, so much of the deduction as is worked out using the following formula is not allowable:

$$\frac{\text{Amount of deduction}}{\text{Sum of all deductions to which this section applies for the year of income}} \times \text{Unfunded liability limit for the year of income}$$

“(7) The ‘**unfunded liability limit**’ for a year of income is:

- (a) if the year of income is the one in which the first taxing time occurs—the actuarial value of the liabilities set out in the actuary’s certificate; or
- (b) in any other case—that actuarial value as reduced by the total amount of deductions to which this section applies that, because of subsection (5), have not been allowable to the NSW State Bank for all previous years of income.

“(8) Expressions used in this Division that are also used in section 82AAC have the same respective meanings as in that section.

Effect of pre-first taxing time provision for bad debts

“121EQ.(1) This section applies to a debt owing to the NSW State Bank that existed immediately before the first taxing time if at that time there was, in the accounting records of the Bank, a doubtful debt provision in respect of the debt described as a ‘specific provision’.

“(2) If this section applies to a debt, a deduction under this Act that, apart from this subsection, would be allowable to the NSW State Bank for the writing off of the whole or part of the debt as bad is not allowable to the extent that the amount written off equals the doubtful debt provision limit (see subsection (3)) in respect of the debt immediately before the writing off occurs.

“(3) The ‘**doubtful debt provision limit**’, in respect of a debt at a particular time, is:

SCHEDULE 1—continued

- (a) if subsection (2) has not applied in relation to any previous writing off of part of the debt—the amount of the specific provision in respect of the debt mentioned in subsection (1); or
- (b) in any other case—the amount of the specific provision in respect of the debt mentioned in subsection (1), reduced by the sum of the amounts of deductions that, because of a previous application of subsection (2) in respect of the writing off of one or more parts of the debt as bad, have not been allowable to the Bank.

“(4) If:

- (a) this section does not apply to a debt that existed immediately before the first taxing time; and
- (b) the debt is included in a class of debts existing immediately before that time where, at that time, there was, in the accounting records of the NSW State Bank, a doubtful debt provision in respect of the class described as a ‘specific provision’;

this section applies to the debt as if there were a specific provision in respect of the debt of the kind mentioned in subsection (1) of an amount worked out using the formula:

$$\text{Amount of specific provision for the class} \times \frac{\text{Amount of the debt}}{\text{Sum of the amounts of debts included in the class}} .”$$

PART 9—CAPITAL GAINS TAX

59. Object

The object of this Part is to amend the capital gains tax provisions of the *Income Tax Assessment Act 1936* in relation to the assignment of non-corporeal interests.

60. After subsection 160M(6B):

Insert:

“(6BA) Subject to this Part (other than subsection (7) of this section), subsection (6BB) applies if:

- (a) a person creates an asset that is not a form of corporeal property; and
- (b) on its creation, the asset is held by the person in the person’s capacity as trustee of a trust estate; and
- (c) at the time of that creation, no beneficial interest in the asset is held by a person in the person’s capacity as a beneficiary of the trust estate; and

SCHEDULE 1—continued

(d) the person has received consideration in respect of the creation of the asset.

“(6BB) If this subsection applies:

- (a) the person creating the asset is taken to have acquired, and to have commenced to own, the asset at the time applicable under subparagraph 160U(6)(a)(ii) or (b)(iv); and
- (b) that person is taken not to have paid or given any consideration, or incurred any costs or expenditure, referred to in paragraphs 160ZH(1)(a) to (d) (inclusive), (2)(a) to (d) (inclusive) and (3)(a) to (d) (inclusive) in respect of the creation of the asset; and
- (c) that person is taken to have disposed of the asset at the time applicable under subparagraph 160U(6)(a)(iii) or (b)(iv) and to have immediately re-acquired it; and
- (d) the person is taken to have received in respect of the disposal of the asset, and to have paid in respect of the re-acquisition, the market value of the asset at the time of the disposal.”.

61. Subsection 160M(6C):

Omit “Subsection (6) applies”, substitute “Subsections (6) and (6BA) apply”.

62. Paragraph 160T(1)(l):

After “paragraph 160M(6A)(b)” insert “or subsection 160M(6BB)”.

63. Subsection 160U(6):

After “(b) or 160M(6B)(a)” insert “or subsection 160M(6BB)”.

64. Subparagraph 160U(6)(a)(ii):

After “160M(6A)(a)” insert “or subsection 160M(6BB)”.

65. Subparagraph 160U(6)(a)(ii):

After “that paragraph” insert “or subsection”.

66. Subparagraph 160U(6)(a)(iii):

After “160M(6A)(b)” insert “or subsection 160M(6BB)”.

67. Subparagraph 160U(6)(a)(iii):

After “that paragraph” insert “or subsection”.

68. Paragraph 160U(6)(b):

Add at the end:

SCHEDULE 1—continued

“; and (iv) in a subsection 160M(6BB) case—to have been acquired as mentioned in paragraph 160M(6BB)(a) at the time of the creation referred to in paragraph 160M(6BA)(b), and to have been disposed of as mentioned in paragraph 160M(6BB)(c) immediately after that time.”.

69. Subsection 160ZH(7A):

After “paragraph 160M(6A)(b)” insert “or subsection 160M(6BB)”.

70. Subsection 160ZH(7A):

After “subsection 160M(6)” insert “or (6BA)”.

71. Application

The amendments made by this Part apply to assets created after 12 noon, by legal time in the Australian Capital Territory, on 12 January 1994.

PART 10—PAYMENT OF INSTALMENTS BY COMPANIES ETC.

72. Paragraph 166A(1)(a):

Omit the paragraph, substitute:

“(a) the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the relevant taxable income or net income, as the case may be, and of the tax payable on that taxable income or net income, being those respective amounts as specified in the return; and”.

73. Paragraph 166A(2)(b):

Omit “due date that applies under section 221AZT”, substitute “day on which the return is lodged”.

74. Subparagraph 170AA(4)(a)(i):

After “Part VI” insert “or an instalment taxpayer within the meaning of Division 1C of Part VI”.

75. After subparagraph 170AA(4)(a)(ia):

Insert:

“(ib) if subsection (1) or (1A) applies and the taxpayer is an instalment taxpayer within the meaning of Division 1C of Part VI—the day specified in Table 1 in subsection 221AZK(2) as the day on which the final instalment for the relevant year of income was required to be paid by taxpayers of the same classification as the taxpayer (whether or not the taxpayer is required to pay such an instalment); or”.

SCHEDULE 1—continued

76. After subsection 207(1AA):

Insert:

“(1AB) For the purposes of this section:

- (a) despite section 221AZT, the final instalment under section 221AZK is taken to become due and payable on the day on which it is required to be paid under that section; and
- (b) the tax specified under section 221AZS in a return is taken to be reduced by any credits or offsets within the meaning of paragraph 221AZP(1)(b) in determining the amount of the final instalment, if any, under section 221AZK.”.

77. After subsection 207A(2):

Insert:

“(2A) For the purposes of this section, the tax specified under section 221AZS in a return is taken to be reduced by any credits or offsets, within the meaning of paragraph 221AZP(1)(b), in determining the amount of the final instalment, if any, under section 221AZK.”.

78. Paragraph 221AZK(3)(a):

Omit “section 221AZMA”, substitute “sections 221AZKA and 221AZMA”.

79. Paragraph 221AZK(3)(a):

Omit “on”, substitute “at the end of”.

80. After section 221AZK:

Insert:

Classification and likely tax in certain cases

“221AZKA.(1) This section operates to alter the classification of taxpayers in certain circumstances. It applies where a taxpayer makes an estimate under section 221AZO (the ‘first estimate’) before the end of the first day of month 9 and also makes an estimate under that section (the ‘later estimate’) after the first day of month 9 and before the first day of month 11.

“(2) If columns 1, 2 and 3 of a row in the following table apply to a taxpayer for the current year, the classification of the taxpayer for the current year is taken to be the classification in column 4 of that row:

SCHEDULE 1—continued

	Column 1	Column 2	Column 3	Column 4
Row	Classification but for this section and section 221AZMA	Classification on the basis of assumption 1 in subsection (3)	Classification on the basis of assumption 2 in subsection (3)	Classification as a result of this section
1	Small	Medium	Medium	Medium
2	Small	Medium	Large	Large
3	Small	Large	Medium	Medium
4	Small	Large	Large	Large
5	Medium	Large	Large	Large

“(3) The following table sets out the assumptions referred to in subsection (2):

Assumption 1	Assumption 1 is that the first estimate was never lodged.
Assumption 2	Assumption 2 is that the later estimate was lodged immediately before the end of the first day of month 9.

“(4) If this section operates, then, for the purposes of the calculation of the taxpayer’s likely tax, the later estimate is taken to have been made immediately before the end of the first day of month 9.

“(5) The classification of a taxpayer as a result of this section is subject to section 221AZMA.

Note: Section 221AZMA may change the classification of a company from medium to large after this section has changed the classification from small to medium.”.

81. Paragraph 221AZMA(b):

Omit “beginning”, substitute “end”.

82. After subsection 221AZN(3):

Insert:

“(3A) The regulations may vary, for the purposes of this section, the previous year’s tax amount and the earlier year’s tax amount of taxpayers in a class of instalment taxpayers for specified years of income to take account of a change in the rates of income tax payable by that class.”.

83. Subsection 221AZR(3):

Omit the subsection.

SCHEDULE 1—continued

84. Section 221AZU:

Repeal the section, substitute:

Additional tax if income or deduction transferred under avoidance scheme

“221AZU.(1) This section applies in relation to an instalment taxpayer in respect of a year of income to which this Division applies (the ‘**current year**’) if:

- (a) the taxpayer has entered into or carried out an arrangement; and
- (b) the taxpayer has a qualifying increase in taxable income for the current year (see subsections (2) and (3)); and
- (c) the sum of the instalments, other than the final instalment, payable under this Division in respect of the current year by the taxpayer and one or more other taxpayers is less than the sum that would have been so payable, or might reasonably be expected to have been so payable, if the arrangement had not been entered into or carried out; and
- (d) income tax has become due and payable by the taxpayer in respect of its taxable income of the current year.

“(2) A taxpayer that is a company (other than a company in the capacity of trustee) has a qualifying increase in taxable income for the current year if:

- (a) an amount has been included in the assessable income of the taxpayer of the current year, being an amount that would not have been so included, or might reasonably be expected not to have been so included, if the arrangement had not been entered into or carried out; or
- (b) a deduction is not allowable to the taxpayer in relation to the current year where the whole or a part of that deduction would have been so allowable, or might reasonably be expected to have been so allowable, if the arrangement had not been entered into or carried out.

“(3) A taxpayer that is a trustee of a fund or unit trust has a qualifying increase in taxable income for the current year if:

- (a) an amount has been included in the assessable income of the relevant fund or unit trust of the current year, being an amount that would not have been so included, or might reasonably be expected not to have been so included, if the arrangement had not been entered into or carried out; or

SCHEDULE 1—continued

- (b) a deduction is not allowable to the relevant fund or unit trust in relation to the current year where the whole or a part of that deduction would have been so allowable, or might reasonably be expected to have been so allowable, if the arrangement had not been entered into or carried out.

“(4) Additional tax, by way of penalty, is due and payable by the taxpayer, equal to 12% of the amount by which:

- (a) the sum of the instalments, other than the final instalment, payable under this Division in respect of the current year by the taxpayer and the other taxpayer, or taxpayers, referred to in paragraph (1)(c);

is exceeded by:

- (b) the greatest sum that would have been so payable, or might reasonably be expected to have been so payable, if the arrangement had not been entered into or carried out.

“(5) If the taxpayer received a refund in respect of an amount paid as an instalment of tax in respect of its taxable income of the current year under this Division, the amount, or the total of the amounts, paid by the taxpayer in respect of that instalment of tax is taken, for the purposes of this section, to have been reduced by the amount of the refund.

“(6) If the Commissioner is satisfied that there are special circumstances because of which it would be fair and reasonable to do so, the Commissioner may remit the whole or any part of any additional tax payable by the taxpayer under subsection (4).

“(7) For the purposes of this section, the income tax that is payable by the taxpayer in respect of its taxable income of the current year is the income tax that is so payable after deducting:

- (a) any credits to which the taxpayer is or will be entitled under subsection 98A(2), Division 18 of Part III or Division 3A of this Part or the *Income Tax (International Agreements) Act 1953*; and
- (b) offsets under section 160AQK.

“(8) To avoid doubt, a reference in subsections (2) and (3) to a deduction that is not allowable to a taxpayer includes a reference to a deduction that is not allowable to that taxpayer because a loss, or part of a loss, that would have given rise to the entitlement to the deduction is taken, under section 80G, to be a loss incurred by another taxpayer.

SCHEDULE 1—continued

“(9) In this section:

‘arrangement’ means:

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

“(10) A reference in this section to the entering into or carrying out of an arrangement by a taxpayer includes a reference to the entering into or carrying out of an arrangement by a taxpayer together with any other person or persons.”.

85. Application

(1) The amendments made by items 72 and 73 apply to assessments in respect of income of the 1994-95 year of income, and of all later years of income, where the return concerned is furnished or lodged after the commencement of this item.

(2) The amendments made by items 74 and 75 apply in relation to interest payable under section 170AA of the *Income Tax Assessment Act 1936* where the current amended assessment, or amended determination, referred to in subsection (4) of that section is made after the commencement of this item.

(3) The amendments made by items 76 and 77 apply in relation to instalments for the 1994-95 year of income and for all later years of income.

(4) The amendments made by items 78, 80, 82, 83 and 84 have the same application as they would have had if they had been included in Division 1C of Part VI of the *Income Tax Assessment Act 1936* as originally inserted by section 54 of the *Taxation Laws Amendment Act (No. 2) 1993*.

PART 11—PASSIVE INCOME OF CFCs**86. Object**

The object of this Part is to replace definitions of “Tainted calculated liabilities” and “Calculated liabilities” in section 446 of the *Income Tax Assessment Act 1936* in relation to general insurance companies.

87. Subsection 446(4):

Omit the subsection, substitute:

“(4) In spite of anything in subsection (1), the passive income of a general insurance company of a statutory accounting period is calculated using the formula:

SCHEDULE 1—continued

$$\text{Adjusted passive income} \times \frac{\text{Tainted outstanding claims}}{\text{Outstanding claims}}$$

where:

Adjusted passive income means the amount that, apart from this subsection, would be the passive income of the company of the statutory accounting period;

Tainted outstanding claims means so much of the outstanding claims of the company at the end of the statutory accounting period as is referable to general insurance policies that give rise to tainted services income of the company of any statutory accounting period;

Outstanding claims means the amount that the company would, at the end of the statutory accounting period, based on proper and reasonable estimates, need to set aside and invest in order to meet liabilities of the company that have arisen or will arise:

- (a) under general insurance policies; and
- (b) in respect of events that occurred during or before the period.”.

88. Subsection 446(5) (definition of “calculated liabilities”):

Omit the definition.

89. Application

The amendments made by this Part apply to passive income in respect of statutory accounting periods beginning on or after 7 December 1994.

PART 12—ASSESSMENTS

90. Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this item for the purpose of giving effect to this Act.

SCHEDULE 2

Section 3

OTHER AMENDMENTS

PART 1—CIVIL PENALTIES AND TAXATION OFFENCES

Division 1—Object

1. Object

The object of this Part is to ensure that a person cannot be prosecuted for a taxation offence and also be required to pay a civil penalty for the same act or omission.

Division 2—Taxation Administration Act 1953

2. Section 8ZE:

Repeal the section, substitute:

Civil penalty not payable if prosecution instituted

“8ZE. If:

(a) a person is liable to pay by way of penalty (other than for an offence) an amount under a taxation law because of an act or omission of the person; and

(b) a prosecution is instituted against the person for a taxation offence constituted by the act or omission;

then (whether or not the prosecution is withdrawn):

(c) the person is not liable to pay the amount; and

(d) any amount paid, or applied by the Commissioner, in total or partial discharge of that liability is to be refunded to the person, or applied by the Commissioner in total or partial discharge of another tax liability of the person.

Note: An example of a penalty referred to in paragraph (a) is a penalty payable under section 226G of the *Income Tax Assessment Act 1936*.”.

Division 3—Other Acts

Subdivision A—Income Tax Assessment Act 1936

3. Sections 220AW, 221NB, 221YHLB, 221YHZG, 221ZDB and 221ZQB:

Repeal the sections.

4. Subsections 221YN(8), (9) and (10):

Omit the subsections.

SCHEDULE 2—continued

Subdivision B—Fringe Benefits Tax Assessment Act 1986

5. Paragraph 93(2)(c):

Omit “subsection 8ZE(1)”, substitute “section 8ZE”.

Subdivision C—Training Guarantee (Administration) Act 1990

6. Paragraph 75(2)(c):

Omit “subsection 8ZE(1)”, substitute “section 8ZE”.

7. Application

The amendments made by this Part apply where:

- (a) a prosecution is instituted on or after the day on which this Act receives the Royal Assent; or
- (b) a prosecution is instituted before that day and is withdrawn on or after that day.

**PART 2—SUPERANNUATION GUARANTEE
(ADMINISTRATION) ACT 1992**

8. Subsection 23(2):

Omit “subsections (6) and (7)”, substitute “subsections (6), (6A) and (7)”.

9. Subsection 23(3):

Omit “subsections (6) and (7)”, substitute “subsections (6), (6A) and (7)”.

10. Subsection 23(4):

Omit “subsections (6) and (7)”, substitute “subsections (6), (6A) and (7)”.

11. Subsection 23(5):

Omit “subsections (6) and (7)”, substitute “subsections (6), (6A) and (7)”.

12. Subsection 23(6A):

Omit the subsection, substitute:

**[Certain contributions may be taken into account
for any of several periods]**

“(6A) A contribution to a complying superannuation fund made by an employer for the benefit of an employee in the period starting on the first day of a year and ending on the twenty-eighth day after the end of the year may be taken into account under this section as if it had been made in any of the contribution periods in the year.

SCHEDULE 2—continued

“(6B) Subsection (6A) applies in relation to the year that began on 1 July 1993 and all later years.”.

13. Subsection 23(7):

Omit all words after “30 June 1993”, substitute “if the contribution is made not more than 12 months before the beginning of the contribution period.”.

Note: The following heading to subsection 23(7) is inserted: “[Certain contributions made before a period may be taken into account for the period]”.

PART 3—TAXATION ADMINISTRATION ACT 1953

Division 1—Notice etc. of rulings

14. Subsection 14ZAAI(1):

Add at the end “, and publishing notice of it in the *Gazette*.”.

15. Subsection 14ZAAI(2):

Omit the subsection, substitute:

“(2) A public ruling must:

- (a) state that it is a public ruling for the purposes of this Part; and
- (b) include a number and a subject heading by which it can be identified.

“(3) The notice in the *Gazette* must include:

- (a) the number and subject heading by which the public ruling is identified (see subsection 14ZAAI(2)); and
- (b) a brief description of the public ruling.”.

16. Section 14ZAAJ:

Omit all the words after “made”, substitute “at the later of the time when it is published and the time when the notice of it is published in the *Gazette*.”.

17. Subsection 14ZAAK(1):

Add at the end “in the *Gazette*”.

18. Application

The amendments made by this Division apply to rulings published after 30 June 1995.

Division 2—Rounding down of tax liabilities

19. After section 16A:

Insert:

SCHEDULE 2—continued

Tax liability to be decreased to nearest multiple of 5 cents

“16B.(1) If the amount of a tax liability is not a multiple of 5 cents at the time the liability arises, the amount is to be decreased to the nearest multiple of 5 cents.

“(2) In subsection (1):

‘**tax liability**’ means a liability to the Commonwealth arising under, or by virtue of, any of the following:

- (a) this Act;
- (b) any other Act of which the Commissioner has the general administration;
- (c) regulations under an Act covered by paragraph (a) or (b).”.

20. Application

The amendment made by this Division applies to tax liabilities arising on or after 1 July 1995.

PART 4—OMBUDSMAN ACT 1976

21. Section 4:

Add at the end:

“(3) The Commonwealth Ombudsman, in performing his or her functions in relation to the Australian Taxation Office, may, if he or she so chooses, be called the Taxation Ombudsman.”.

[*Minister's second reading speech made in—
House of Representatives on 7 February 1995
Senate on 27 February 1995*]