



# **Taxation Laws Amendment (Self Assessment) Act 1992**

**No. 101 of 1992**

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**An Act to amend the law relating to taxation so as to  
improve arrangements for the self assessment of tax,  
and for related purposes**

*[Assented to 30 June 1992]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

- 5      1. This Act may be cited as the *Taxation Laws Amendment (Self Assessment) Act 1992*.

### **Commencement**

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

**PART 2—AMENDMENT OF THE TAXATION  
ADMINISTRATION ACT 1953**

**Principal Act**

3. In this Part, “**Principal Act**” means the *Taxation Administration Act 1953*<sup>1</sup>.

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4. After Part IVA of the Principal Act the following Parts are inserted:

**“PART IVAAA—PUBLIC RULINGS**

**Interpretation**

“14ZAAA. In this Part, unless the contrary intention appears: 10

‘**arrangement**’ includes:

(a) scheme, plan, action, proposal, course of action, course of conduct, transaction, agreement, understanding, promise or undertaking; or

(b) part of an arrangement; 15

‘**fringe benefits tax law**’ means a law under which the extent of liability for tax imposed by the *Fringe Benefits Tax Act 1986* is worked out;

‘**income tax law**’ means a law under which is worked out the extent of liability for:

(a) income tax, withholding tax, mining withholding tax, or Medicare levy, within the meaning of the *Income Tax Assessment Act 1936*; or 20

(b) franking deficit tax within the meaning of Part IIIAA of that Act;

‘**law**’ means: 25

(a) a section or other provision of an Act; or

(b) a regulation under an Act;

‘**public ruling**’ means a ruling under section 14ZAAE, 14ZAAF or 14ZAAG;

‘**tax law**’ means: 30

(a) an income tax law; or

(b) a fringe benefits tax law;

‘**year of income**’ means:

(a) in relation to an income tax law about franking deficit tax, a franking year; or 35

(b) in relation to a fringe benefits tax law, a year of tax within the meaning of the *Fringe Benefits Tax Assessment Act 1986*.

**Contracts for arrangements**

“14ZAAB. For the purposes of this Part, if a contract requiring an arrangement is entered into, the arrangement is taken to begin to be carried out.

**5 Discretion of Commissioner**

“14ZAAC. For the purposes of this Part, the Commissioner exercises a discretion if the Commissioner:

- (a) forms an opinion; or
- (b) refuses or fails to form an opinion; or
- 10 (c) attains a state of mind; or
- (d) refuses or fails to attain a state of mind; or
- (e) makes a determination; or
- (f) refuses or fails to make a determination; or
- (g) exercises a power; or
- 15 (h) refuses or fails to exercise a power.

**Public ruling on discretions**

“14ZAAD. A public ruling on the way in which a tax law applies may be a ruling on the way in which a discretion of the Commissioner under that law would be exercised.

**20 Public rulings—class of arrangements**

“14ZAAE. The Commissioner may make a public ruling on the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to any person in relation to a class of arrangements.

**Public rulings—class of persons**

- 25 “14ZAAF. The Commissioner may make a public ruling on the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to a class of persons in relation to an arrangement.

**Public rulings—class of persons and class of arrangements**

- 30 “14ZAAG. The Commissioner may make a public ruling on the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to a class of persons in relation to a class of arrangements.

**Arrangements to which public ruling applies**

- 35 “14ZAAH.(1) Subject to subsection (2), a public ruling about a class of arrangements applies to all arrangements in the class, whether past, present or future.

“(2) If a public ruling states that it is to apply only to arrangements begun to be carried out after a specified date, the ruling only applies to those arrangements.

**Making of public ruling**

“14ZAAI.(1) The Commissioner makes a public ruling by publishing it.

“(2) A public ruling must state that it is a public ruling for the purposes of this Part.

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**When public ruling made**

“14ZAAJ. A public ruling is made when it is published.

**Withdrawal of public ruling**

“14ZAAK.(1) The Commissioner may withdraw a public ruling, either wholly or to an extent, by publishing notice of the withdrawal.

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“(2) If the Commissioner makes a public ruling that is inconsistent with an existing public ruling, the existing ruling is taken to have been withdrawn to the extent of the inconsistency.

**Effect of withdrawal of public ruling**

“14ZAAL.(1) A public ruling that is wholly withdrawn:

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- (a) continues to apply to arrangements begun to be carried out before the withdrawal; and
- (b) does not apply to arrangements begun to be carried out after the withdrawal.

“(2) A public ruling that is withdrawn to an extent:

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- (a) continues to apply wholly to arrangements begun to be carried out before the withdrawal; and
- (b) does not apply to that extent to arrangements begun to be carried out after the withdrawal.

**“PART IVAA—PRIVATE RULINGS**

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**Interpretation**

“14ZAA.(1) In this Part, unless the contrary intention appears:

‘applicant’, in relation to a private ruling made under section 14ZAP because of another ruling, means the applicant for that other ruling;

‘application’ means an application for a private ruling;

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‘Commissioner assessment’ means an assessment of tax other than a self assessment;

‘information’, in relation to a private ruling that has been applied for, includes particulars of the arrangement to which the ruling would relate that would enable the arrangement to be identified and distinguished from other arrangements;

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‘private ruling’ means a ruling applied for under section 14ZAF or 14ZAG and includes a ruling made under section 14ZAP;

**'rulee'**, in relation to a private ruling, means the person the application to whom of a tax law is the subject of the ruling;

**'self assessment'** means an assessment of tax:

- 5 (a) for the making of which the Commissioner wholly accepts statements of the taxpayer; or
- (b) that, under section 166A of the *Income Tax Assessment Act 1936* or another law, is taken to have been made by the Commissioner;

10 **'tax audit'** means an examination of a person's financial affairs by the Commissioner for the purposes of a tax law.

"(2) Expressions used in this Part have the same meanings as in Part IVAAA.

**Related arrangements**

15 "14ZAB. For the purposes of this Part, 2 arrangements are related if:

- (a) they are both parts of the same arrangement; or
- (b) one is a part of the other; or
- (c) a person's tax is affected by both of them; or
- (d) they are both related to the same arrangement.

20 **Contracts for arrangements**

"14ZAC. For the purposes of this Part, if a contract requiring an arrangement is entered into, the arrangement is taken to begin to be carried out.

**Discretion of Commissioner**

25 "14ZAD. For the purposes of this Part, the Commissioner exercises a discretion if the Commissioner:

- (a) forms an opinion; or
- (b) refuses or fails to form an opinion; or
- (c) attains a state of mind; or
- 30 (d) refuses or fails to attain a state of mind; or
- (e) makes a determination; or
- (f) refuses or fails to make a determination; or
- (g) exercises a power; or
- (h) refuses or fails to exercise a power.

35 **Private ruling on discretions**

"14ZAE. A private ruling on the way in which a tax law applies may be a ruling on the way in which a discretion of the Commissioner under that law would be exercised.

**Application for private ruling about own tax**

“14ZAF. A person may apply to the Commissioner for a ruling on the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to the person in respect of a year of income in relation to an arrangement. 5

**Application for private ruling about another’s tax**

“14ZAG. A person may, with the written consent of another person, apply to the Commissioner for a ruling on the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to the other person in respect of a year of income in relation to an arrangement. 10

**Years of income to which application may apply**

“14ZAH. A year of income to which an application applies may be:

- (a) a past year of income; or
- (b) the current year of income; or 15
- (c) a future year of income.

**Arrangements to which application may apply**

“14ZAI. An arrangement to which an application applies may be:

- (a) an arrangement that has been carried out; or
- (b) an arrangement that is being carried out; or 20
- (c) a proposed arrangement.

**Form of application**

“14ZAJ. An application for a private ruling must:

- (a) be made in a form approved by the Commissioner; and
  - (b) give such information, and be accompanied by such documents, 25
- relating to the ruling as are required by the Commissioner.

**Withdrawal of application**

“14ZAK. An applicant for a private ruling may, by written notice to the Commissioner, withdraw the application at any time before it is made. 30

**Dealing with application**

“14ZAL.(1) Subject to section 14ZAQ, the Commissioner must comply with an application unless not required to do so because of section 14ZAN.

“(2) The Commissioner may comply with an application even 35

though not required to do so because of section 14ZAN, not being an application to which paragraph 14ZAN(f) applies.

**Further information may be sought**

“14ZAM. If the Commissioner considers that:

- (a) a private ruling cannot be made without further information; and
- 5 (b) if that information were given, there would be no reason for the Commissioner not to comply with the application for the ruling;

the Commissioner must request the applicant to give that information to the Commissioner.

10 **Applications that do not have to be dealt with**

“14ZAN. The Commissioner is not required to comply with an application for a private ruling if:

- (a) there is already a private ruling on the matter sought to be ruled on; or
- 15 (b) the matter sought to be ruled on has been decided for the purposes of a Commissioner assessment; or
- (c) the ruling would relate to withholding tax which has become due and payable; or
- (d) there is being carried out a tax audit:
  - 20 (i) of which the rulee has been informed; and
  - (ii) that, in the opinion of the Commissioner, will require the Commissioner to decide the matter sought to be ruled on; or
- (e) the matter sought to be ruled on is the subject of an objection against a self assessment; or
- 25 (f) the application is made later than 4 years after the last day allowed to the rulee for lodging a return in relation to the rulee's income for the year of income to which the application relates; or
- 30 (g) the application is frivolous or vexatious; or
- (h) the arrangement to which the application relates has neither been, nor is being, carried out and is not seriously contemplated by the rulee; or
- (i) in the opinion of the Commissioner, the applicant has not given sufficient information, in spite of a request under section 14ZAM, to enable the ruling to be made; or
- 35 (j) in the opinion of the Commissioner, it would be unreasonable to comply, or continue to attempt to comply, having regard to:
  - (i) the extent of the Commissioner's resources that would be required to comply; or
  - 40 (ii) any other matters that the Commissioner considers relevant.

**Applicants to be given reasons for delays**

“14ZAO.(1). If at the end of:

- (a) if paragraph (b) does not apply—3 months after an application is made; or
- (b) if, within those 3 months, the applicant was requested under section 14ZAM to give information—3 months after the information is given; 5

the Commissioner has neither:

- (c) made the ruling; nor
- (d) told the applicant that the application will not be complied with; 10

the applicant may ask the Commissioner, in writing, for a written statement of the reasons why the consideration of the application has been delayed.

“(2) The Commissioner is to give that statement as soon as practicable after it is requested unless he or she makes the ruling. 15

“(3) Until the Commissioner:

- (a) makes the ruling; or
- (b) tells the applicant that the application will not be complied with; 20

the Commissioner must, at 3 monthly intervals after giving the statement, give the applicant written reasons for continued delay in the consideration of the application.

“(4) If, during a 3 monthly interval, the Commissioner asks for information under section 14ZAM, that interval does not end, and the next 3 monthly interval does not begin, until 3 months after that information is given. 25

**Commissioner may make related rulings**

“14ZAP. If the Commissioner is making a private ruling sought by an applicant on the way in which, in the Commissioner’s opinion, a tax law or tax laws would apply to a person in respect of a year of income in relation to an arrangement, the Commissioner may also: 30

- (a) make the private ruling a ruling on the way in which another tax law would so apply; or
- (b) make an additional private ruling on the way in which: 35
  - (i) another tax law would so apply; or
  - (ii) a tax law would apply to the person in respect of another year of income in relation to the arrangement; or
  - (iii) a tax law would apply to the person in relation to a related arrangement. 40



**Assumptions in making private ruling**

“14ZAQ. If the Commissioner considers that the correctness of a private ruling would depend on which assumptions were made about a future event or other matter, the Commissioner may:

- 5       (a) decline to make the ruling; or  
      (b) make such of the assumptions as the Commissioner considers to be most appropriate.

**Making of private rulings**

“14ZAR.(1) The Commissioner makes a private ruling by:

- 10       (a) preparing a written notice of it; and  
      (b) serving the notice on the applicant.

“2) If 2 or more private rulings sought by an applicant relate to an arrangement or related arrangements, then one notice may be given of all or some of them.

- 15       “3) For the purposes of subsection (2), a private ruling made under section 14ZAP is taken to have been sought by its applicant.

“4) A private ruling must state that it is a private ruling for the purposes of this Part.

**Particulars in private rulings**

- 20       “14ZAS.(1) A notice of a private ruling must set out the matter ruled on and, in doing so, identify the person, tax law, year of income and arrangement to which the ruling relates.

- “2) If the correctness of a private ruling depends on an assumption, the assumption is, for the purposes of subsection (1), an aspect of the  
25       arrangement to which the ruling relates.

“3) An arrangement may be identified in a private ruling by reference to matters set out in a document identified in the ruling and which, or a copy of which, is available to the rulee.

**When private ruling made**

- 30       “14ZAT. A private ruling is made when the notice of it is served on the applicant.

**Withdrawal of private ruling**

“14ZAU.(1) The Commissioner may withdraw a private ruling, either wholly or to an extent, with the consent of the rulee.

- 35       “2) The Commissioner may withdraw a private ruling, either wholly or to an extent, even without the consent of the rulee, if:

- (a) the arrangement to which it relates has not begun to be carried out; or  
      (b) the arrangement to which it relates has begun to be carried out  
40       and, in the opinion of the Commissioner:

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- (i) another person would be disadvantaged if the ruling is not withdrawn or withdrawn to that extent; and
  - (ii) the disadvantage would be much greater than any disadvantage for the rulee because of the withdrawal;
- unless the Commissioner has made a decision about an objection against the ruling and: 5
- (c) the period within which the decision may be appealed against has not ended; or
  - (d) the period within which an application for the review of the decision may be made has not ended; or 10
  - (e) there has been an unwithdrawn appeal against, or an unwithdrawn application for the review of, the decision (whether or not the appeal or review has been finalised).
- “(3) In working out the extent of any disadvantage for the rulee under subsection (2), the Commissioner must have regard to when the arrangement began to be carried out and when the ruling was made. 15
- “(4) A private ruling may not be withdrawn under subsection (2) to any extent if it relates to a year of income that has commenced or ended.
- Method of withdrawing private ruling 20**
- “14ZAV. Subject to section 14ZAW, the Commissioner withdraws a private ruling, whether wholly or to an extent, by serving on its applicant written notice of the withdrawal.
- Private ruling withdrawn by inconsistent public ruling**
- “14ZAW. If the Commissioner makes a public ruling that is inconsistent with a private ruling, the Commissioner is taken to have withdrawn the private ruling so far as there is inconsistency and withdrawal is allowed by section 14ZAU. 25
- Effect of withdrawal of private ruling**
- “14ZAX.(1) A private ruling that is wholly withdrawn is taken: 30
- (a) never to have been made; and
  - (b) never to have been included in the notice of it.
- “(2) If a private ruling is withdrawn to an extent, the ruling is taken: 35
- (a) never to have been made to that extent; and
  - (b) to that extent never to have been included in the notice of the ruling.
- Certain private rulings of no effect**
- “14ZAY.(1) Subject to subsection (2), a private ruling is taken never to have been made and never to have been in a notice of a private ruling if the applicant failed to tell the Commissioner, at the time of the application, that: 40

(a) if the applicant is not the rulee—the consent of the rulee to the application was not genuine or had been withdrawn before the application was made; or

5 (b) paragraph 14ZAN(a), (b), (c) or (e) or subparagraph 14ZAN(d)(i) applied to the application.

“(2) Subsection (1) does not apply to a private ruling that the Commissioner decides should be taken to have been made.

**Effect of withdrawals on applications**

10 “14ZAZ.(1) If a private ruling is withdrawn under section 14ZAU, whether wholly or to an extent, subsection 14ZAL(1) continues to apply to the application for a private ruling of the matter that was the subject of the withdrawn ruling.

15 “(2) If section 14ZAW or 14ZAY applies to a private ruling, subsection 14ZAL(1) does not continue to apply to the application for the ruling.

**Objections, reviews and appeals relating to private rulings**

20 “14ZAZA.(1) Subject to subsection (2), a rulee who is dissatisfied with a private ruling may object against it in the manner set out in Part IVC and such a ruling is a taxation decision for the purposes of that Part.

“(2) A rulee may not object against a private ruling if:

(a) an assessment has been made in relation to the rulee in respect of the year of income, and in relation to the arrangement, to which the ruling relates; or

25 (b) the ruling relates to withholding tax that has become due and payable.

**Successful objection decision alters ruling**

30 “14ZAZB.(1) In this section:  
‘objection decision’ and ‘taxation objection’ have the same meanings as in Part IVC.

“(2) If:

(a) the Commissioner makes an objection decision allowing, wholly or in part, a taxation objection against a private ruling; and

35 (b) the period in which an appeal against, or an application for the review of, the decision may be made has ended; and

(c) neither such an appeal nor application has been made;  
the ruling is taken to be the ruling as altered by the decision.

**Applications and objections not to affect obligations and powers**

40 “14ZAZC. The fact that there has been:

(a) an application for a private ruling; or

- (b) an objection against the ruling;  
does not in the meantime affect:
- (c) a taxpayer's obligation to lodge a return or do any other act; or
- (d) the Commissioner's power to make or amend an assessment."

**General interpretation provisions** 5

5. Section 14ZQ of the Principal Act is amended by inserting the following definition:

" 'private ruling' has the same meaning as in section 14ZAA;".

**Ineligible income tax remission decisions**

6. Section 14ZS of the Principal Act is amended: 10

- (a) by omitting "Part VII of that Act" and substituting "section 224, 225, 226, 226G, 226H, 226J, 226K, 226L or 226M of Part VII of that Act, whatever its amount, or is payable under another provision of that Part";
- (b) by omitting paragraphs (2)(b) and (c); 15
- (c) by omitting from paragraph (2)(d) ", (b) or (c)";
- (d) by omitting subsections (3) and (4).

7. After section 14ZV of the Principal Act the following section is inserted:

**Limited objection rights because of objection against private ruling** 20

"14ZVA. If there has been a taxation objection against a private ruling, then the right of objection against an assessment relating to the matter ruled is limited to a right to object on grounds that neither were, nor could have been, grounds for the taxation objection against the ruling."

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**When taxation objections are to be made**

8. Section 14ZW of the Principal Act is amended:

- (a) by omitting from subsection (1) "The" and substituting "Subject to this section, the";
- (b) by omitting from subsection (1) "60 days after"; 30
- (c) by inserting before paragraph (1)(a) the following paragraphs:
  - "(aa) if the taxation objection is made under section 78A of the *Fringe Benefits Tax Assessment Act 1986* or section 160AL, 160AQQ, 160ART or 175A of the *Income Tax Assessment Act 1936*—4 years after notice of the taxation decision to which it relates has been served on the person; or
  - (ab) if the taxation objection is a delayed administration (beneficiary) objection made under subsection 98(3) of the *Fringe Benefits Tax Assessment Act 1986* or subsection 220(3) of the *Income Tax Assessment Act* 40

- 1936 (not including that subsection as applied by any other Act)—4 years after notice of the taxation decision to which it relates has been first published; or
- 5 (ac) if the taxation objection is a delayed administration (trustee) objection made under subsection 98(7) of the *Fringe Benefits Tax Assessment Act 1986* or subsection 220(7) of the *Income Tax Assessment Act 1936* (not including that subsection as applied by any other Act)—
- 10 4 years after probate of the will, or letters of administration of the estate, of the deceased person concerned has been granted; or”;
- (d) by inserting in paragraph (1)(a) “to which paragraph (ab) does not apply” after “objection” (second occurring) and “60 days after” before “notice”;
- 15 (e) by inserting in paragraph (1)(b) “to which paragraph (ac) does not apply” after “objection” (second occurring) and “60 days after” before “probate”;
- (f) by inserting in paragraph (1)(c) “60 days after” before “notice”;
- (g) by inserting after subsection (1) the following subsections:
- 20 “(1A) The person must lodge the taxation objection against a private ruling before the end of whichever of the following ends last:
- (a) the 60 days after the private ruling was made;
- (b) the 4 years after the last day allowed to the person for lodging a return in relation to the person’s income for
- 25 the year of income to which the ruling relates.
- “(1B) If:
- (a) section 14ZV applies to a taxation objection; and
- (b) apart from this subsection, paragraph (1)(aa), (ab) or (ac)
- 30 would apply to the taxation objection;
- the person must lodge the taxation objection before the end of whichever of the following ends last:
- (c) the 4 years after notice of the assessment or determination that has been amended by the amended assessment or amended determination to which the taxation objection relates has been served on the person;
- 35 (d) the 60 days after the notice of the amended assessment or amended determination to which the taxation objection relates has been served on the person.
- 40 “(1C) For the purposes of paragraph (1B)(c), if an assessment or determination has been amended more than once, the notice is the notice of the first assessment or determination in relation to the year of income, franking year or year of tax, as the case requires.”;

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- (h) by inserting in subsections (2) and (3) “4 years or” before “60 days” (wherever occurring).

**Commissioner to consider applications for extension of time**

9. Section 14ZX of the Principal Act is amended by inserting in subsection (3) “4 years or” before “60 days”. 5

**Commissioner to decide taxation objections**

10. Section 14ZY of the Principal Act is amended by inserting in subsection (1) “4 years or” before “60 days”.

11. After section 15 of the Principal Act the following sections are inserted: 10

**Validity of private ruling**

“15AA. The validity of any private ruling within the meaning of Part IVAA is not affected because any of the provisions of this Act have not been complied with.

**Evidence 15**

“15AB. The production of:

- (a) a notice of, or a notice of the withdrawal of, a private ruling within the meaning of Part IVAA; or
- (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner, purporting to be a copy of such a notice; 20

is conclusive evidence of the proper making of the ruling or withdrawal.”.

**Application of Part IVAAA**

- 12.(1) A public ruling under Part IVAAA of the Principal Act as amended by this Act must not be made before 1 July 1992. 25

(2) In spite of section 14ZAAH of the Principal Act as amended by this Act, a public ruling does not apply to any arrangement within the meaning of section 14ZAAA of that Act as so amended that began to be carried out before 1 July 1992 or, if the commencement of this Act is later, that commencement. 30

**Application of Part IVAA**

13. An application under section 14ZAF or 14ZAG of the Principal Act as amended by this Act:

- (a) must not be made before 1 July 1992; and 35
- (b) must not relate to an arrangement (within the meaning of section 14ZAAA of that Act as so amended) that began to be carried out before 1 July 1992 or, if the commencement of this Act is later, that commencement.

**Other applications**

14.(1) Despite the amendments made by section 6, section 14ZS of the Principal Act as in force immediately before the commencement of this Act continues to apply to objection decisions that relate to the remission of additional tax payable by a taxpayer:

- (a) under section 223 of the *Income Tax Assessment Act 1936*; or
- (b) under section 224, 225 or 226 of that Act in relation to assessments in respect of:
  - (i) the 1991-92 year of income or an earlier year of income; or
  - (ii) an accounting period adopted in lieu of the 1992-93 year of income and commencing before 1 July 1992.

(2) The amendments of the Principal Act made by sections 8, 9 and 10 apply to taxation objections in respect of the year of income, franking year or year of tax, as the case requires, in which 1 July 1992, or, if the commencement of this Act is later, that commencement, occurs or a later year.

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

**Principal Act**

15. In this Act, “Principal Act” means the *Income Tax Assessment Act 1936*<sup>2</sup>.

**Losses and outgoings**

16. Section 51 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

“(5) Expenditure incurred in the year of income that consists of interest under section 170AA or 207A is an allowable deduction.”.

17. Before section 160ARX of the Principal Act the following sections are inserted in Division 11 of Part IIIA:

**Interpretation**

“160ARXA.(1) In this Division:

‘franking tax law’ means a law under which the extent of liability for franking deficit tax is worked out;

‘franking tax shortfall’, in relation to a company and a franking year, means the amount, if any, by which the company’s statement franking tax for that year at the time at which it was lowest is less than the company’s proper franking tax for that year;

‘law’ means:

- (a) a section or other provision of an Act; or
- (b) a regulation under an Act;

- ‘proper franking tax’**, in relation to a company and a franking year, means the franking deficit tax properly payable by the company in respect of that year;
- ‘shortfall section’** means section 160ARZA, 160ARZB, 160ARZC, 160ARZD or 160ARZE; 5
- ‘statement franking tax’**, in relation to a company, a franking year and a time, means the franking deficit tax that would have been payable by the company in respect of that year if the tax were assessed at that time taking into account taxation statements by the company; 10
- ‘taxation statement’** means a statement made to a taxation officer orally, in a document or in any other way, and includes a statement: 10
- (a) made in an application, certificate, declaration, notification, objection, return or other document made, prepared or given, or purporting to be made, prepared, or given, under this Act or the regulations; or 15
  - (b) made in answer to a question asked under this Act or the regulations; or
  - (c) made in any information given, or purporting to be given, under this Act or the regulations; or
  - (d) made in a document given to a taxation officer otherwise than under this Act or the regulations; 20
- but does not include a statement made in:
- (e) a document produced under paragraph 264(1)(b) or 264A(1)(d) or (e) (other than a document containing particulars of the basis of the calculation of taxable income of a year of income and the tax payable in respect of that taxable income that were specified in a return in accordance with section 221AZD); or 25
  - (f) a document produced under subparagraph 451(2)(c)(ii) or paragraph 453(1)(e).
- “(2) In this Division, **‘arrangement’**, **‘tax audit’** and **‘private ruling’** have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*. 30

**Treating a law as not applying**

“160ARXB. For the purposes of this Division, a taxpayer who treats a franking tax law as not applying in relation to a matter is taken to treat that law as applying in relation to that matter in a particular way. 35

**Taxation statement can apply to different franking years**

“160ARXC. A particular taxation statement can be taken into account in working out the tax shortfalls of a taxpayer for 2 or more franking years.”. 40

18. Section 160AS of the Principal Act is repealed and the following sections are inserted:



**Penalty tax where franking tax shortfall caused  
by lack of reasonable care**

“160ARZA. Subject to this Division, if:

- (a) a company has a franking tax shortfall for a franking year; and
- 5 (b) the shortfall or part of it was caused by the failure of the company or of a registered tax agent to take reasonable care to comply with this Act or the regulations;

the company is liable to pay, by way of penalty, additional tax equal to 25% of the amount of the shortfall or part.

10 **Penalty tax where franking tax shortfall caused by recklessness**

“160ARZB. Subject to this Division, if:

- (a) a company has a franking tax shortfall for a franking year; and
- (b) the shortfall or part of it was caused by the recklessness of the company or of a registered tax agent with regard to the correct
- 15 operation of this Act or the regulations;

the company is liable to pay, by way of penalty, additional tax equal to 50% of the amount of the shortfall or part.

**Penalty tax where franking tax shortfall caused  
by intentional disregard of law**

20 “160ARZC. Subject to this Division, if:

- (a) a company has a franking tax shortfall for a franking year; and
- (b) the shortfall or part of it was caused by intentional disregard by the company or by a registered tax agent of this Act or the regulations;

25 the company is liable to pay, by way of penalty, additional tax equal to 75% of the amount of the shortfall or part.

**Penalty tax because of position taken**

“160ARZD.(1) Subject to this Division, if:

- (a) a company has a franking tax shortfall for a franking year; and
- 30 (b) the shortfall or part of it was caused by the company, in a taxation statement, treating a franking tax law as applying in relation to a matter or identical matters in a particular way; and

(c) the shortfall or part, as the case may be, so caused exceeded whichever is the higher of:

- 35 (i) \$10,000; or
- (ii) 1% of the company’s return franking tax for that year; and

40 (d) when the statement was made, it was not reasonably arguable that the way in which the application of the law was treated was correct;

the company is liable to pay, by way of penalty, additional tax equal to 25% of the amount of the shortfall or part.

“(2) For the purposes of this section, the correctness of the treatment of the application of a law in relation to a matter is reasonably arguable if, having regard to the relevant authorities and the matter, it would be concluded that what is argued for is about as likely as not correct. 5

“(3) For the purposes of this section, if the treatment of the application of a law assumed that the Commissioner would exercise a discretion in a particular way, the correctness of the treatment is reasonably arguable, in so far as it consisted of the assumption, if the exercise by the Commissioner of the discretion in that way would be reasonably arguable in accordance with law. 10

“(4) For the purposes of this section, the exercise, or assumed exercise, by the Commissioner of a discretion is reasonably arguable in accordance with law if, having regard to the relevant authorities and the matter in relation to which the discretion is or would be exercised, it would be concluded that a court would be about as likely as not to hold that the exercise is or would be in accordance with law. 15

“(5) In this section:  
‘authority’ includes: 20

- (a) a franking tax law; or
- (b) material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*; or
- (c) a decision of a court (whether or not an Australian court), the Tribunal or a Board of Review; or 25
- (d) a public ruling within the meaning of Part IVA of the *Taxation Administration Act 1953*;

‘return franking tax’, in relation to a company and a franking year, means the franking tax that would have been payable by the company for that year if the tax were assessed on the basis of the company’s return under subsection 160ARE(1) or 160ARF(1) in relation to that year. 30

“(6) For the purposes of this section, the Commissioner exercises a discretion if the Commissioner: 35

- (a) forms an opinion; or
- (b) refuses or fails to form an opinion; or
- (c) attains a state of mind; or
- (d) refuses or fails to attain a state of mind; or
- (e) makes a determination; or
- (f) refuses or fails to make a determination; or 40
- (g) exercises a power; or
- (h) refuses or fails to exercise a power.

**Penalty because private ruling disregarded**

“160ARZE.(1) Subject to this Division, if:

- (a) a company has a franking tax shortfall for a franking year; and
- 5 (b) a private ruling was made on the way in which a franking tax law applies to the company in respect of the year in relation to an arrangement; and
- (c) the shortfall or part of it was caused by the company, in a taxation statement made after the ruling was made, treating that law as applying to the company in respect of the year in relation to the arrangement in a different way;
- 10 the company is liable to pay, by way of penalty, additional tax equal to 25% of the amount of the shortfall or part.

“(2) Subsection (1) does not apply if there is an order of a court, or a decision of the Tribunal, that applies to the private ruling.

15 **Certain amounts not shortfall because of application for private ruling**

“160ARZF. If:

- (a) apart from this section, a company has a franking tax shortfall for a franking year; and
- 20 (b) the shortfall or part of it was caused by the company, in a taxation statement, treating a franking tax law as applying to the company in respect of the year in relation to an arrangement in a particular way; and
- (c) when or before the statement was made, there was an application for a private ruling on the way in which that law would apply to the company in respect of the year in relation to the arrangement; and
- 25 (d) in the opinion of the Commissioner, the application was one that the Commissioner is required to comply with; and
- (e) when the statement was made, the private ruling had not been made;
- 30

the shortfall is not a franking tax shortfall, or the part is not part of a franking tax shortfall, for the purposes of section 160ARZA, 160ARZB, 160ARZC or 160ARZD.

**Certain amounts not shortfall because of advice etc.**

35 “160ARZG. If:

- (a) apart from this section, a company has a franking tax shortfall for a franking year; and
- (b) the shortfall or part of it was caused by the company, in a taxation statement, treating a franking tax law as applying in a particular way; and
- 40 (c) that way agrees with:
  - (i) advice given to the company by a taxation officer; or

(ii) a general administrative practice under this Act;  
the shortfall is not a franking tax shortfall, or the part is not part of a franking tax shortfall, for the purposes of section 160ARZA, 160ARZB, 160ARZC or 160ARZD.

**Where 2 or more shortfall sections apply** 5

“160ARZH. If 2 or more shortfall sections apply to all or a particular part of a company’s franking tax shortfall, the company is liable to pay the additional tax under only one of those sections, not being a section the additional tax under which is lower than it would be under another of those sections. 10

**Further penalty tax**

“160ARZI. If:

- (a) under a shortfall section, a company is liable to pay additional tax because of a franking tax shortfall or part of a franking tax shortfall; and 15
- (b) one or more of the following applies:
  - (i) the company took steps to prevent or hinder the Commissioner from becoming aware of the shortfall or part;
  - (ii) if the shortfall or part was caused otherwise than by the company in a taxation statement treating a franking tax law as applying to the company in relation to a matter in a particular way—the company became aware of the shortfall or part after a taxation statement by the company that was taken into account in working out the company’s statement franking tax for the franking year and failed to tell the Commissioner about it, in writing, within a reasonable time of becoming so aware; 20 25
  - (iii) if the additional tax is payable under section 160ARZA, 160ARZB or 160ARZC—the company was liable to pay additional tax under any of those sections in respect of an earlier year of income; 30
  - (iv) if the additional tax is payable because the company, in a taxation statement, treated a law as applying in relation to a matter in a particular way so that section 160ARZD applied—the company was liable to pay additional tax under that section in respect of an earlier franking year in respect of which the company treated that law as applying in relation to that matter or a similar matter in that way; 35 40

the company is liable to pay, by way of penalty, further additional tax equal to 20% of the amount of the additional tax.

**Reduction of penalty tax—disclosure after tax audit notified**

“160ARZJ. If:

- 5 (a) under a shortfall section, a company is liable to pay additional tax in respect of a franking year because of a franking tax shortfall or part of a franking tax shortfall; and
- (b) after the Commissioner had informed the company that a tax audit relating to the company in respect of the year was to be carried out, the company voluntarily told the Commissioner, in writing, about the shortfall or part; and
- 10 (c) telling the Commissioner could reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the audit;

the amount of the additional tax is reduced by 20%.

**Reduction of penalty tax—disclosure before tax audit notified**

15 “160ARZK. If:

- (a) under a shortfall section, a company is liable to pay additional tax in respect of a franking year because of a franking tax shortfall or part of a franking tax shortfall; and
- 20 (b) before the Commissioner had informed the company that a tax audit relating to the company in respect of the year was to be carried out, the company voluntarily told the Commissioner, in writing, about the shortfall or part;

the amount of the additional tax is reduced:

- (c) if the shortfall or part is at least \$1,000—by 80%; or
- 25 (d) if the shortfall or part is less than \$1,000—to nil.

**When disclosure made**

“160ARZL. If a company voluntarily tells the Commissioner, in writing, about a franking tax shortfall, or part of a franking tax shortfall, for a year after the Commissioner has informed the company that a tax audit in relation to the company in respect of that year is to be carried out, the Commissioner may, if the Commissioner considers it appropriate in all the circumstances, determine that, for the purposes of sections 160ARZJ and 160ARZK, the company is taken to have told the Commissioner before being informed.”.

35 **Reliance by Commissioner on returns and statements**

19. Section 169A of the Principal Act is amended:

- (a) by omitting from subsection (1) all words after “return” (last occurring) and substituting “or otherwise made by or on behalf of the taxpayer”;
- 40 (b) by omitting subsection (2) and substituting the following subsection:

“(2) Despite subsection (1), if, in a document given with a

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return of income of a taxpayer of a year of income and signed by or on behalf of the taxpayer, a question is raised:

- (a) that is relevant to the liability of the taxpayer in respect of the year of income; and
  - (b) on which the taxpayer is not entitled to apply for a private ruling under Part IVAA of the *Taxation Administration Act 1953*; 5
- the Commissioner must give attention to that question.”.

**Amendment of assessments**

**20.** Section 170 of the Principal Act is amended: 10

- (a) by inserting after subsection (1) the following subsection:

“(1A) If:

- (a) an assessment has been amended in any particular in a way that effected a reduction in the liability of a taxpayer; and 15
- (b) for the purposes of making the amendment, the Commissioner accepted a statement made by or on behalf of the taxpayer;

the Commissioner may, within 4 years from the service of the notice of the amended assessment, further amend the assessment in, or in respect of, that particular in a way that increases the liability of the taxpayer to the extent that the Commissioner considers necessary.”; 20

- (b) by inserting after subsection (5) the following subsection:

“(5A) Subsection (5) does not authorise the further amendment of an earlier further amendment of an assessment made under subsection (1A).” 25

**Payment of interest by taxpayer where assessment amended**

**21.** Section 170AA of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection: 30

“(1AA) Subsection (1) applies even if the amendment of the assessment is made in relation to a matter because of which the taxpayer is liable under Part VII to pay additional tax by way of penalty.”;

- (b) by omitting subsection (2) and substituting the following subsection: 35

“(2) Subsection (1A) applies even if the amendment of the determination is made in relation to a matter because of which the taxpayer is liable under Part VII to pay additional tax by way of penalty.”; 40

- (c) by omitting from subparagraph (3)(b)(ii) “subsection 223(2)” and substituting “section 226N, 226P or 226Q”;

- 5 (d) by omitting from subparagraph (3)(b)(iii) “subsection 223(4)”  
and substituting “section 226R, 226S or 226T”;
- (e) by inserting in subparagraph (4)(a)(i) “and the taxpayer is not  
a relevant entity within the meaning of Division 1B of Part VI”  
after “applies”;
- (f) by inserting after subparagraph (4)(a)(i) the following  
subparagraph:  
“*(ia)* in a case to which subsection (1) or (1A) applies and  
the taxpayer is a relevant entity within the meaning of  
Division 1B of Part VI—the day on which the payment  
of tax by the taxpayer was, or, if paragraph 221AZD(b)  
had applied, would have been, required to be made  
under paragraph 221AZD(b) in respect of the relevant  
year of income; or”;
- 10 (g) by omitting paragraph (4)(b) and substituting the following  
paragraph:  
“(b) at such annual rate or rates of interest as are provided  
for by section 214A.”;
- 15 (h) by omitting subsection (7) and substituting the following  
subsection:  
“(7) For the purposes of subsection (6), if the taxpayer is a  
relevant entity within the meaning of Division 1B of Part VI  
and, on the basis of the entity’s return, either:  
(a) the taxable income of the entity of the year of income is  
nil; or  
25 (b) no tax is payable on the taxable income of the entity of  
the year of income;  
then:  
(c) the Commissioner is deemed for the purposes of  
paragraph 6(a) to have served notice in respect of the  
entity; and  
30 (d) paragraph 6(c) applies as if all words after ‘payable’ were  
omitted and there were substituted ‘on the day that  
would have applied under subparagraph 4(a)(ia) if the  
notional assessment had been an assessment and the  
assessment referred to in paragraph (b) had been an  
35 amendment of the notional assessment’.”.

22. After section 170B of the Principal Act the following sections  
are inserted:

40 **Effect of public ruling on tax other than withholding tax**

“170BA.(1) In this section:  
‘**final tax**’, in relation to a person, means ruling affected tax payable in  
relation to the person after allowing:

(a) a credit within the meaning of Division 19 of Part III; or

(b) an offset within the meaning of Division 1 of Part IIIAA; or

**'ruling affected tax'** means:

(a) income tax; or

(b) franking deficit tax within the meaning of Part IIIAA; or

(c) Medicare levy;

5

but does not include withholding tax;

**'withholding tax'** includes mining withholding tax.

“(2) Expressions used in this section have the same meanings as in Part IVAAA of the *Taxation Administration Act 1953*.

10

“(3) Subject to section 170BC, if:

(a) there is a public ruling on the way in which an income tax law applies to a person in relation to an arrangement (**'ruled way'**); and

(b) that law applies to a person in relation to that arrangement in a different way; and

15

(c) the amount of final tax under an assessment in relation to that person would (apart from this section and section 170BC) exceed what it would have been if that law applied in the ruled way;

20

the assessment and amount of final tax must be what they would be if that law applied in the ruled way.

**Effect of private rulings on tax other than withholding tax**

“170BB.(1) In this section:

**'final tax'** has the same meaning as in section 170BA.

25

“(2) Expressions used in this section have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*.

“(3) Subject to sections 170BC, 170BG and 170BH, if:

(a) there is a private ruling on the way in which an income tax law applies to a person in respect of a year of income in relation to an arrangement (**'ruled way'**); and

30

(b) that law applies to that person in respect of that year in relation to that arrangement in a different way; and

(c) the amount of final tax under an assessment in relation to that person would (apart from this section and section 170BC) exceed what it would have been if that law applied in the ruled way;

35

the assessment and amount of final tax must be what they would be if that law applied in the ruled way.

“(4) Subsection (3) applies to an assessment whether or not in respect of the year of income in paragraphs (3)(a) and (b).

40



**Assessment of tax other than withholding tax where conflicting rulings**

“170BC.(1) In this section:

**‘ruling’** means:

- (a) a public ruling; or
- 5 (b) a private ruling.

“(2) Expressions used in this section have the same meanings as in section 170BA or 170BB.

“(3) If:

- 10 (a) there are rulings of different ways in which the same income tax law applies to the same person in relation to the same arrangement; and
- (b) apart from this section, because of there being those different ways, there are conflicting requirements under section 170BA or 170BB, or both, of what the assessment and amount of final
- 15 tax in relation to that person are to be;

the assessment and amount of final tax must be what they would be if that law so applied in whichever of those ways would result in the lowest amount of final tax.

**Effect of public ruling on withholding tax**

- 20 “170BD.(1) Expressions used in this section have the same meanings as in section 170BA.

“(2) If:

- (a) there is a public ruling on the way in which an income tax law applies to a person in relation to an arrangement; and
- 25 (b) an amount of withholding tax is payable that exceeds what would have been payable if that law applied in that way;

then:

- (c) the Commissioner may not sue for the recovery of the amount of the excess; and
- 30 (d) the Commissioner must not serve on a person a notice that the excess is payable by the person; and
- (e) the excess is remitted.

**Effect of private ruling on withholding tax**

“170BE.(1) In this section:

- 35 **‘objection decision’** and **‘taxation objection’** have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

“(2) Expressions used in this section have the same meanings as in section 170BA or 170BC.

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“(3) Subject to sections 170BF, 170BG and 170BH, if:

- (a) there is a private ruling on the way in which an income tax law applies to a person in respect of a year of income in relation to an arrangement; and
- (b) an amount of withholding tax is payable that exceeds what would have been payable if that law applied in the way ruled; 5

then:

- (c) the Commissioner may not sue for the recovery of the amount of the excess; and
  - (d) the Commissioner must not serve on a person a notice that the excess is payable by the person; and 10
  - (e) if no taxation objection against the ruling has been lodged—the excess is remitted; and
  - (f) if:
    - (i) there was a taxation objection against the ruling; and 15
    - (ii) an objection decision about the taxation objection has been made; and
    - (iii) the period in which the objection decision may be appealed against or an application for the review of the objection decision may be made has ended; and 20
    - (iv) there has been neither such an appeal nor application or such an appeal or application has been withdrawn;
- the excess is remitted.

**Withholding tax where conflicting rulings**

“170BF.(1) In this section: 25

‘ruling’ means:

- (a) a public ruling; or
- (b) a private ruling.

“(2) Expressions used in this section have the same meanings as in section 170BD or 170BE. 30

“(3) If:

- (a) there are rulings of different ways in which the same income tax law applies to the same person in respect of the same year of income in relation to the same arrangement; and
- (b) apart from this section, because of there being those different ways, there are 2 or more different excesses for the purposes of section 170BD or 170BE, or both; 35

the excess is the highest of those excesses.

**Final Tribunal decision about private ruling conclusive**

“170BG.(1) In this section: 40

‘arrangement’, ‘income tax law’ and ‘private ruling’ have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*;

**'objection decision'** and **'taxation objection'** have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

“(2) If:

- 5 (a) on the review of an objection decision about a taxation objection against a private ruling, the Tribunal decides that an income tax law would apply to a person in a particular way in respect of a year of income in relation to an arrangement; and

- (b) that decision becomes final;

10 then, for the purposes of this Act, that law applies to that person in that way in respect of that year in relation to that arrangement.

“(3) Subsection (2) applies in spite of any order or decision of a court, or any other decision of the Tribunal, about any application of that law.

15 “(4) For the purposes of subsection (2), if there is no appeal against the Tribunal's decision when the period for lodging an appeal ends, the decision becomes final at the end of the period.

**Final court order about private ruling conclusive**

“170BH.(1) In this section:

20 **'arrangement'**, **'income tax law'** and **'private ruling'** have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*; **'objection decision'** and **'taxation objection'** have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

“(2) If:

- 25 (a) on an appeal against:  
(i) an objection decision about a taxation objection against a private ruling; or  
(ii) a decision of the Tribunal on the review of such an objection decision;

30 a court orders that an income tax law would apply to a person in a particular way in respect of a year of income in relation to an arrangement; and

- (b) that order becomes final;

then, for the purposes of this Act, that law applies to that person in that way in respect of that year in relation to that arrangement.

35 “(3) Subsection (2) applies despite any other order or decision of a court about any application of that law.

“(4) For the purposes of subsection (2):

- 40 (a) if the order is made by the Federal Court constituted by a single judge and there is no appeal against the order when the period for lodging an appeal ends—the order becomes final at the end of the period; and

- (b) if the order is made by the Full Court of the Federal Court and there is no application for special leave to appeal to the High Court against the order when the period of 30 days after the order is made ends—the order becomes final at the end of the period.

5

**Final court order about Commissioner discretion**

“170BI.(1) Expressions used in this section have the same meanings as in section 170BH.

“(2) For the purposes of this section, the Commissioner exercises a discretion if the Commissioner acts as described in section 14ZAD of the *Taxation Administration Act 1953*.

10

“(3) If:

- (a) a private ruling rules that a discretion of the Commissioner under the income tax law which the ruling is about would be exercised in a particular way; and

15

- (b) on an appeal against:

- (i) an objection decision about a taxation objection against that ruling; or

- (ii) a decision of the Tribunal on the review of such an objection decision;

20

a court orders that it would be in accordance with law for the Commissioner to exercise that discretion in that way in relation to the law, person, year and arrangement that the ruling is about (**‘rule matters’**); and

- (c) that order becomes final;

25

then, for the purposes of this Act, if the Commissioner exercises that discretion in that way in relation to the rule matters, the discretion is exercised in accordance with law.

“(4) For the purposes of subsection (3), an order becomes final if it would become final for the purposes of subsection 170BH(2).

30

“(5) Subsection (3) applies despite any other order or decision of a court about the exercise of a discretion.”.

**Penalty for unpaid tax**

23. Section 207 of the Principal Act is amended:

- (a) by omitting from subsection (1) “20%” and substituting “8%”;
- (b) by inserting after subsection (1) the following subsection:

35

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

- (a) despite section 221AM, tax under paragraph 221AZD(b) is taken to become due and payable on the day on which its payment is required to be made under that paragraph; and

40

- (b) the tax specified under section 221AZD in a return is taken to be reduced by any credits or offsets within the meaning of subsection 221AZE(6) in determining the amount of tax, if any, under paragraph 221AZD(b).”;  
5 (c) by omitting from subsection (1B) all words after paragraph (b) and substituting “then the tax must not be taken, for the purposes of subsection (1), to have ceased to be due and payable because only of the giving or entering of the judgment.”;  
10 (d) by inserting in subsection (3) “interest under section 170AA and” after “includes”.

24. After section 207 of the Principal Act the following section is inserted:

**Penalty interest on unpaid tax**

- 15 “207A.(1) If any tax remains unpaid after it became due and payable or would, but for section 206, have become due and payable, the person liable to pay the tax is liable to pay, by way of penalty, interest to the Commissioner, at such annual rate or rates as are provided for by section 214A, on the amount unpaid, computed from the time or date from which additional tax on the amount is computed for the  
20 purposes of section 207.

“(2) For the purposes of this section, the tax specified under section 221AZD in a return is taken to be reduced by any credits or offsets, within the meaning of subsection 221AZE(6), in determining the amount of tax, if any, under paragraph 221AZD(b).

- 25 “(3) If subsection 160ARW(2) applies to an amount, interest under this section is computed as if that subsection did not apply.

“(4) The Commissioner may, in his or her discretion, remit the whole or any part of the interest payable by a taxpayer under this section.

- 30 “(5) Where judgment is given by, or entered in, a court for the payment of:

- (a) an amount of tax; or
- (b) an amount that includes an amount of tax;

then:

- 35 (c) the tax must not be taken, for the purposes of subsection (1), to have ceased to be due and payable because only of the giving or entering of the judgment; and
- (d) if the judgment debt carries interest, the interest that would, but for this paragraph, be payable under this section in relation  
40 to the tax must, by force of this paragraph, be reduced by:
- (i) in a case to which paragraph (a) applies—the amount of the judgment interest; or

- (ii) in a case to which paragraph (b) applies—an amount that bears the same proportion to the amount of the judgment interest as the amount of the tax bears to the amount of the judgment debt.

“(6) Despite anything contained in this section the Commissioner may sue for recovery of any tax unpaid immediately after the expiry of the time when it becomes due and payable. 5

“(7) In this section, unless the contrary intention appears, ‘tax’ includes interest under section 170AA and additional tax under Part VII.”. 10

25. After section 214 of the Principal Act the following section is inserted:

**Interest rates**

“214A.(1) In this section:

‘Treasury Note yield’, in relation to a month, means the weighted average yield set at the last weekly tender for the 13 week Treasury Note before the end of that month plus 4 percentage points. 15

“(2) The annual rate at which interest is calculated under section 170AA, or computed under section 207A, in respect of any period of, or within, a month is the rate of interest for that month. 20

“(3) Subject to this section, the rate of interest for a month in the first 6 months of a financial year is the Treasury Note yield for April in the preceding financial year.

“(4) Subject to this section, the rate of interest for a month in the last 6 months in a financial year is the Treasury Note yield for October in that financial year. 25

“(5) The Treasurer may determine, in writing, that the rate of interest for:

(a) a month; or

(b) consecutive months in the first 6 months in a financial year; or 30

(c) consecutive months in the last 6 months in a financial year;

is the Treasury Note yield for the month that was 3 months before that month or before the earliest of those consecutive months.

“(6) Subject to subsection (5), if, apart from this subsection, the rate for the months in the first 6 months or the last 6 months in a financial year would differ by no more than one percentage point from the rate for the last month before them, the Treasurer may determine, in writing, that the earlier rate is also to be the rate for them. 35

“(7) A rate must be rounded to the first decimal place (rounding .05 upwards). 40

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“(8) The Commissioner is to cause notice of a rate of interest for a month or months to be published in the *Gazette* before that month or those months.”.

5       26. Before section 222 of the Principal Act the following sections are inserted in Part VII:

**Interpretation**

“222A.(1) In this Part:

‘credit’ means:

- (a) a credit within the meaning of Division 19 of Part III; or
- 10       (b) an offset within the meaning of Division 1 of Part IIIAA;

‘estate shortfall excess’, in relation to a taxpayer who is or has been a beneficiary of a trust estate, a year and an estate taxation statement, means:

- (a) if:
  - 15               (i) the taxpayer would have had a tax shortfall for the year if the taxpayer’s statement tax for the year at all times had taken into account the net income of the estate calculated on the basis of that statement, but otherwise on the same basis as the correct net income of the estate would be calculated (‘statement shortfall’); and
  - 20               (ii) the taxpayer would have had a tax shortfall for the year if the taxpayer’s statement tax for the year at all times had taken into account the correct net income of the estate (‘non-statement shortfall’); and
  - 25               (iii) the statement shortfall is higher than the non-statement shortfall;

the amount equal to the difference between those shortfalls; or

- (b) if:
    - (i) the taxpayer would have had the statement shortfall; and
    - 30               (ii) would not have had the non-statement shortfall;
- the statement shortfall;

‘estate taxation statement’, in relation to a trust estate, means a taxation statement relating to the net income of the estate;

35       ‘income tax law’ means a law under which the extent of liability for income tax is worked out;

‘law’ means:

- (a) a section or other provision of an Act; or
- (b) a regulation under an Act;

40       ‘partnership shortfall excess’, in relation to a taxpayer who is a partner in a partnership, a year and a partnership taxation statement, means:

- (a) if:
  - (i) the taxpayer would have had a tax shortfall for the year if the taxpayer’s statement tax for the year at all times

- had taken into account the net income, and partnership loss, of the partnership calculated on the basis of that statement, but otherwise on the same basis as the correct net income, and partnership loss, of the partnership would be calculated (**'statement shortfall'**); and 5
- (ii) the taxpayer would have had a tax shortfall for the year if the taxpayer's statement tax for the year at all times had taken into account the correct net income, and correct partnership loss, of the partnership (**'non-statement shortfall'**); and 10
- (iii) the statement shortfall is higher than the non-statement shortfall;
- the amount equal to the difference between those shortfalls; or
- (b) if:
- (i) the taxpayer would have had the statement shortfall; and 15
- (ii) would not have had the non-statement shortfall;
- the statement shortfall;
- 'partnership taxation statement'**, in relation to a partnership, means a taxation statement relating to the net income, or partnership loss, of the partnership; 20
- 'proper tax'**, in relation to a taxpayer and a year, means the tax properly payable by the taxpayer in respect of that year on the taxpayer's taxable income after allowing credits properly allowable to the taxpayer;
- 'return tax'**, in relation to a taxpayer and a year of income, means the tax that would have been payable by the taxpayer in respect of that year if it were assessed on the basis of the taxpayer's return of income in respect of that year after allowing the credits claimed by the taxpayer in that return; 25
- 'scheme section'** means section 224, 225 or 226;
- 'shortfall section'** means section 226G, 226H, 226J, 226K, 226L or 226M; 30
- 'statement tax'**, in relation to a taxpayer, a year and a time, means the tax that would have been payable by the taxpayer in respect of that year if it were assessed at that time on the basis of taxation statements by the taxpayer after allowing the credits claimed by the taxpayer; 35
- 'taxation officer'** means a person exercising powers or performing functions under, or in relation to, this Act or the regulations;
- 'taxation officer statement'** means a statement made to a taxation officer orally, in a document or in any other way, and includes a statement:
- (a) made in an application, certificate, declaration, notification, objection, return or other document made, prepared or given, or purporting to be made, prepared, or given, under this Act or the regulations; or 40



- (b) made in answer to a question asked under this Act or the regulations; or
- (c) made in any information given, or purporting to be given, under this Act or the regulations; or
- 5 (d) made in a document given to a taxation officer otherwise than under this Act or the regulations;
- but does not include a statement made in:
- (e) a document produced under paragraph 264(1)(b) or 264A(1)(d) or (e) (other than a document containing particulars of the basis
- 10 of the calculation of taxable income of a year of income and the tax payable in respect of that taxable income that were specified in a return in accordance with section 221AZD); or
- (f) a document produced under subparagraph 451(2)(c)(ii) or paragraph 453(1)(e);
- 15 **'taxation purpose statement'** means a statement made to a person, other than a taxation officer, for a purpose relating to the operation of this Act or the regulations orally, in a document or in any other way, and includes a statement:
- (a) made in an application, certificate, declaration, notification or
- 20 other document made, prepared or given to the person; or
- (b) made in answer to a question asked by the person; or
- (c) made in any information given to the person;
- 'taxation statement'**, in relation to a person, means:
- (a) a taxation officer statement made by the person; or
- 25 (b) a taxation purpose statement made by the person;
- but does not include a statement:
- (c) in which an income tax law is treated as applying to a taxpayer in respect of a year of income in relation to a matter; and
- (d) that is made:
- 30 (i) in an objection under this Act against an assessment or determination; or
- (ii) in relation to the Commissioner's consideration of such an objection;
- 'tax shortfall'**, in relation to a taxpayer and a year, means the amount,
- 35 if any, by which the taxpayer's statement tax for that year at the time at which it was lowest is less than the taxpayer's proper tax for that year;
- 'wrongful behaviour provision'** means:
- (a) in relation to section 224, subparagraph 224(1)(d)(i) or (ii); or
- 40 (b) in relation to section 225, sub-subparagraph 225(1)(c)(i)(B) or 225(1)(c)(ii)(B); or
- (c) in relation to section 226, subparagraph 226(c)(i) or (ii);
- 'year'** means year of income.

“(2) In this Part, ‘arrangement’, ‘private ruling’ and ‘tax audit’ have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*.

**Taxation statements**

- “222B.(1) For the purposes of this section: 5
- (a) subject to paragraph (b), expressions in this section have the same meanings as in Division 16E of Part III; and
  - (b) paragraph (a) applies as if paragraph (c) of the definition of ‘qualifying security’ in subsection 159GP(1) were omitted; and
  - (c) sections 159GV (other than subsection 159GV(2)) and 159GZ 10  
apply as if references in them to ‘this Division’ were references to this section.
- “(2) Where:
- (a) a person to whom a notice is given under section 265B gives the notice to another person in connection with the transfer of a qualifying security to the other person; or 15
  - (b) a person gives advice in writing to another person, in connection with the transfer of a qualifying security, of a variation or partial redemption of the qualifying security;
- any statement in the notice when so given, or in the advice when so given, to the other person is taken, for the purposes of this Part, to have been made by the person giving the notice or advice, as the case may be, to the other person for a purpose in connection with the operation of this Act. 20
- “(3) Where: 25
- (a) the holder of a qualifying security transfers the security to another person; and
  - (b) because of the application of section 128AA, the holder is liable to pay withholding tax in relation to the transfer of the qualifying security; and 30
  - (c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a notice issued to the holder under section 265B identifying the security; and
  - (d) after the notice was issued to the holder, the security was varied or partially redeemed; and 35
  - (e) the holder did not advise the transferee in writing of the variation or partial redemption;
- the holder is taken, for the purposes of this Part, to have made for a purpose in connection with the operation of this Act a statement that the qualifying security was not so varied or partially redeemed. 40

“(4) Where:

- (a) the holder of a qualifying security who acquired the security on transfer (**‘current acquisition transfer’**) transfers the security to another person; and
- 5 (b) because of the application of section 128AA, the holder is liable to pay withholding tax in relation to the transfer of the security; and
- (c) before the security was transferred, the holder gave to the transferee, in connection with the transfer, a certificate issued to the holder under section 128AB identifying the security; and
- 10 (d) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

the holder is taken, for the purposes of this Part, to have made for a purpose in connection with the operation of this Act a statement that  
15 the certificate relates to the current acquisition transfer.

“(5) Where:

- (a) a qualifying security is redeemed or partially redeemed from the holder; and
- 20 (b) the holder acquired the security on transfer (**‘current acquisition transfer’**); and
- (c) the holder is liable to pay withholding tax in relation to the redemption or partial redemption of the security; and
- (d) before the security was redeemed or partially redeemed, the holder gave to the issuer, in connection with the redemption or  
25 partial redemption, a certificate issued to the holder under section 128AB identifying the security; and
- (e) the holder had acquired the security on transfer on any occasion before the current acquisition transfer;

the holder is taken, for the purposes of this Part, to have made for a  
30 purpose in connection with the operation of this Act a statement that the certificate relates to the current acquisition transfer.

**Reasonably arguable**

“222C.(1) For the purposes of this Part:

- (a) the correctness of the treatment of the application of a law; or
- 35 (b) another matter;

is reasonably arguable if, having regard to the relevant authorities and the matter in relation to which the law is applied or the other matter, it would be concluded that what is argued for is about as likely as not correct.

- 40 “(2) For the purposes of this Part, if the treatment of the application of a law assumed that the Commissioner would exercise a discretion in a particular way, the correctness of the treatment is reasonably arguable, in so far as it consisted of the assumption, if the exercise by the Commissioner of the discretion in that way would be reasonably  
45 arguably in accordance with law.

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“(3) For the purposes of this Part, the exercise, or assumed exercise, by the Commissioner of a discretion is reasonably arguably in accordance with law if, having regard to the relevant authorities and the matter in relation to which the discretion is or would be exercised, it would be concluded that a court would be about as likely as not to hold that the exercise is or would be in accordance with law. 5

“(4) In this section:  
‘authority’ includes:

- (a) an income tax law; or
- (b) material for the purposes of subsection 15AB(1) of the *Acts Interpretation Act 1901*; or 10
- (c) a decision of a court (whether or not an Australian court), the Tribunal or a Board of Review; or
- (d) a public ruling within the meaning of Part IVAAA of the *Taxation Administration Act 1953*. 15

“(5) For the purposes of this section, the Commissioner exercises a discretion if the Commissioner:

- (a) forms an opinion; or
- (b) refuses or fails to form an opinion; or
- (c) attains a state of mind; or 20
- (d) refuses or fails to attain a state of mind; or
- (e) makes a determination; or
- (f) refuses or fails to make a determination; or
- (g) exercises a power; or
- (h) refuses or fails to exercise a power. 25

**Treating a law as not applying**

“222D. For the purposes of this Part, a taxpayer who treats an income tax law as not applying in relation to a matter is taken to treat that law as applying in relation to that matter in a particular way.

**Taxation statement can apply to different years 30**

“222E. A particular taxation statement can be taken into account in working out the tax shortfalls of a taxpayer for 2 or more years.

**Omission of assessable income from return**

“222F. If a person omits from a return given under this Act or the regulations, being a return of income derived by the person, a partnership or a trust estate during a period, any assessable income derived by the person, the partnership or the trust estate during the period, the person is taken, for the purposes of this Part, to have made a statement in the return to the effect that the person, the partnership or the trust estate did not derive the assessable income during that period.”. 35 40

**Penalty for false or misleading statements**

27. Section 223 of the Principal Act is repealed.

**Penalty tax where certain anti-avoidance provisions apply**

28. Section 224 of the Principal Act is amended:

- 5 (a) by omitting from paragraphs (1)(e) and (f) “double” and substituting “the penalty percentage of”;
- (b) by adding at the end the following subsection:
- “(3) In subsection (1):
- ‘penalty percentage’ means:
- 10 (a) subject to paragraph (b)—50%; or
- (b) if it is reasonably arguable that the provision or provisions under which the step described in paragraph (1)(b) or the action described in paragraph (1)(c) was taken do not apply to include the amount or disallow the deduction or rebate—25%.”.
- 15

**Penalty tax where Division 13 of Part III applies**

29. Section 225 of the Principal Act is amended:

- (a) by omitting from subparagraphs (1)(d)(iii) and (iv) “double” and substituting “the first penalty percentage of”;
- 20 (b) by omitting from paragraph (1)(e) all words after “tax” (first occurring) and before subparagraph (1)(e)(i) and substituting “the second penalty percentage of”;
- (c) by inserting after subsection (1), the following subsection:
- “(1A) In subsection (1):
- 25 ‘first penalty percentage’ means:
- (a) subject to paragraph (b)—50%; or
- (b) if it is reasonably arguable that the prescribed provision or provisions do not apply—25%;
- ‘second penalty percentage’ means:
- 30 (a) subject to paragraph (b)—25%; or
- (b) if it is reasonably arguable that the prescribed provision or provisions do not apply—10%.”.

**Penalty tax where Part IVA applies**

30. Section 226 of the Principal Act is amended:

- 35 (a) by omitting from paragraphs (d) and (e) “double” and substituting “the penalty percentage of”;
- (b) by adding at the end the following subsection:
- “(2) In subsection (1):
- ‘penalty percentage’ means:
- 40 (a) subject to paragraph (b)—50%; or

- (b) if it is reasonably arguable that Part IVA does not apply—  
25%.”.

31. After section 226 of the Principal Act the following sections are inserted:

**Certain penalty tax under scheme sections not payable because of application for private ruling** 5

“226A. If:

- (a) apart from this section, a taxpayer would be liable to pay additional tax under a scheme section in respect of a year of income; and 10
- (b) the wrongful behaviour provision applied only because the taxpayer treated an income tax law as applying to the taxpayer in respect of the year in relation to an arrangement in a particular way; and
- (c) when or before the taxpayer’s return for the year was lodged, there was an application for a private ruling on the way in which that law would apply to the taxpayer in respect of the year in relation to the arrangement; and 15
- (d) in the opinion of the Commissioner, the application was one that the Commissioner is required to comply with; and 20
- (e) when the treatment of the law happened, the private ruling had not been made;

the taxpayer is not liable to pay the additional tax.

**Certain penalty tax under scheme sections not payable because of advice etc.** 25

“226B. If:

- (a) apart from this section, a taxpayer would be liable to pay additional tax under a scheme section in respect of a year of income; and
- (b) the wrongful behaviour provision applied only because the taxpayer treated an income tax law as applying in a particular way; and 30
- (c) that way agrees with:
  - (i) advice given to the taxpayer by a taxation officer; or
  - (ii) a general administrative practice under this Act; 35

the taxpayer is not liable to pay the additional tax.

**Further penalty tax—scheme sections**

“226C. If:

- (a) a taxpayer is liable to pay additional tax under a scheme section; and 40
- (b) one or both of the following applies:

- (i) the taxpayer took steps to prevent or hinder the Commissioner from becoming aware that the wrongful behaviour provision applied;
  - (ii) the taxpayer was liable to pay additional tax under any of those sections in respect of an earlier year of income;
- 5 the taxpayer is liable to pay, by way of penalty, further additional tax equal to 20% of the amount of the additional tax.

**Reduction of penalty tax under scheme sections—disclosure after tax audit notified**

- 10 “226D. If:
- (a) a taxpayer is liable to pay additional tax under a scheme section in respect of a year of income; and
  - (b) after the Commissioner had informed the taxpayer that a tax audit relating to the taxpayer in respect of the year was to be carried out, the taxpayer voluntarily told the Commissioner, in writing, about the matter because of which the wrongful behaviour provision applies;
- 15 the amount of the additional tax is reduced by 20%.

**Reduction of penalty tax under scheme sections—disclosure before tax audit notified**

- 20 “226E. If:
- (a) a taxpayer is liable to pay additional tax under a scheme section in respect of a year of income; and
  - (b) before the Commissioner had informed the taxpayer that a tax audit relating to the taxpayer in respect of the year was to be carried out, the taxpayer voluntarily told the Commissioner, in writing, about the matter because of which the wrongful behaviour provision applies;
- 25 the amount of the additional tax is reduced by 80%.

**30 When disclosure about scheme sections made**

- “226F. If a taxpayer voluntarily tells the Commissioner, in writing, about a matter because of which a wrongful behaviour provision applies for a year after the Commissioner has informed the taxpayer that a tax audit in relation to the taxpayer in respect of that year is to be carried out, the Commissioner may, if the Commissioner considers it appropriate in all the circumstances, determine that, for the purposes of sections 226D and 226E, the taxpayer is taken to have told the Commissioner before being informed.
- 35

**Penalty tax where shortfall caused by lack of reasonable care**

- 40 “226G. Subject to this Part, if:
- (a) a taxpayer has a tax shortfall for a year; and
  - (b) the shortfall or part of it was caused by the failure of the

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taxpayer or of a registered tax agent to take reasonable care to comply with this Act or the regulations;  
the taxpayer is liable to pay, by way of penalty, additional tax equal to 25% of the amount of the shortfall or part.

**Penalty tax where shortfall caused by recklessness** 5

“226H. Subject to this Part, if:

- (a) a taxpayer has a tax shortfall for a year; and
- (b) the shortfall or part of it was caused by the recklessness of the taxpayer or of a registered tax agent with regard to the correct operation of this Act or the regulations; 10

the taxpayer is liable to pay, by way of penalty, additional tax equal to 50% of the amount of the shortfall or part.

**Penalty tax where shortfall caused by intentional disregard of law**

“226J. Subject to this Part, if:

- (a) a taxpayer has a tax shortfall for a year; and 15
- (b) the shortfall or part of it was caused by the intentional disregard by the taxpayer or by a registered tax agent of this Act or the regulations;

the taxpayer is liable to pay, by way of penalty, additional tax equal to 75% of the amount of the shortfall or part. 20

**Penalty tax where unarguable position taken**

“226K. Subject to this Part, if:

- (a) a taxpayer has a tax shortfall for a year; and
- (b) the shortfall or part of it was caused by the taxpayer, in a taxation statement, treating an income tax law as applying in relation to a matter or identical matters in a particular way; and 25

- (c) the shortfall or part, as the case may be, so caused exceeded whichever is the higher of:

(i) \$10,000; or 30

(ii) 1% of the taxpayer's return tax for that year; and

- (d) when the statement was made, it was not reasonably arguable that the way in which the application of the law was treated was correct;

the taxpayer is liable to pay, by way of penalty, additional tax equal to 25% of the amount of the shortfall or part. 35

**Penalty tax where unarguable position taken about scheme**

“226L. Subject to this Part, if:

- (a) a taxpayer has a tax shortfall for a year; and
- (b) the shortfall or part of it was caused by the taxpayer in a 40



taxation statement treating an income tax law as applying in relation to a scheme in a particular way; and

(c) the scheme was a tax avoidance scheme within the meaning of subsection 224(1); and

5 (d) none of the scheme sections applies in relation to the scheme;  
the taxpayer is liable to pay, by way of penalty, additional tax equal to:

(e) if, when the statement was made, it was reasonably arguable that the way in which the application of the law was treated  
10 was correct—25% of the amount of the shortfall or part; or

(f) in any other case—50% of the amount of the shortfall or part.

**Penalty because private ruling disregarded**

“226M.(1) Subject to this Part, if:

(a) a taxpayer has a tax shortfall for a year; and

15 (b) a private ruling was made on the way in which an income tax law applies to the taxpayer in respect of the year in relation to an arrangement; and

(c) the shortfall or part of it was caused by the taxpayer, in a taxation statement made after the private ruling was made, treating that law as applying to the taxpayer in respect of the  
20 year in relation to the arrangement in a different way;

the taxpayer is liable to pay, by way of penalty, additional tax equal to 25% of the amount of the shortfall or part.

25 “(2) Subsection (1) does not apply if there is an order of a court, or a decision of the Tribunal, that applies to the private ruling.

**Shortfall because of statement by partner**

“226N. If:

(a) a partner in a partnership (**‘defaulting partner’**) makes a partnership taxation statement; and

30 (b) a taxpayer who is a partner in the partnership has a partnership shortfall excess for a year in relation to the statement;

then:

(c) the excess is a tax shortfall of the defaulting partner for that year; and

35 (d) if the statement was caused by behaviour described in section 226G, 226H or 226J, the shortfall is taken to have been caused by that behaviour.

**Shortfall because of unarguable position of partner**

“226P. If:

40 (a) a partner in a partnership (**‘defaulting partner’**) makes a partnership taxation statement; and

- (b) that statement treated an income tax law as applying in relation to a matter or identical matters in a particular way; and
  - (c) a taxpayer who is a partner in the partnership has a partnership shortfall excess for a year in relation to the statement; and
  - (d) the net income of the partnership for a year would have been reduced, or the partnership loss for that year would have been increased, because of the treatment by an amount that exceeds whichever is the higher of:
    - (i) \$20,000; or
    - (ii) 2% of the net income of the partnership (if any) calculated on the basis of the partnership's return for that year; and
  - (e) when the statement was made, it was not reasonably arguable that the way in which the application of the law was treated was correct;
- then the excess is a tax shortfall of the defaulting partner for that year to which section 226K applies.

**Penalty tax because of unarguable position of partner about scheme**

“226Q. If:

- (a) a partner in a partnership (“defaulting partner”) makes a partnership taxation statement; and
  - (b) that statement treated an income tax law as applying in relation to a scheme in a particular way; and
  - (c) a taxpayer who is a partner in the partnership has a partnership shortfall excess for a year in relation to the statement; and
  - (d) the scheme was a tax avoidance scheme within the meaning of section 224;
- then:
- (e) the excess is a tax shortfall of the defaulting partner for that year to which section 226L applies; and
  - (f) for the purposes of section 226L the statement referred to in paragraph 226L(e) is taken to be the statement referred to in paragraph (a).

**Shortfall because of statement by trustee**

“226R.(1) If:

- (a) a trustee of a trust estate makes an estate taxation statement; and
  - (b) a taxpayer who is or has been a beneficiary of the estate has an estate shortfall excess for a year in relation to the statement;
- then:
- (c) the excess is a tax shortfall of the trustee for that year; and
  - (d) if the statement was caused by behaviour described in section 226G, 226H or 226J, the shortfall is taken to have been caused by that behaviour.

“(2) Subsection (1) does not mean that a reference in this Part to a taxpayer does not include a reference to a taxpayer in the capacity of a trustee.

**Shortfall because of unarguable position of trustee**

- 5 “226S.(1) If:
- (a) a trustee of a trust estate makes an estate taxation statement; and
  - (b) that statement treated an income tax law as applying in relation to a matter or identical matters in a particular way; and
  - 10 (c) a taxpayer who is or has been a beneficiary of the estate has an estate shortfall excess for a year in relation to the statement; and
  - (d) the net income of the estate for a year would have been reduced, or a loss of the estate for that year would have been increased, because of the treatment by an amount that exceeds  
15 whichever is the higher of:
    - (i) \$20,000; or
    - (ii) 2% of the net income of the estate (if any) calculated on the basis of the estate’s return for that year; and
  - 20 (e) when the statement was made, it was not reasonably arguable that the way in which the application of the law was treated was correct;

then the excess is a tax shortfall of the trustee for that year to which section 226K applies.

- 25 “(2) Subsection (1) does not mean that a reference in this Part to a taxpayer does not include a reference to a taxpayer in the capacity of a trustee.

**Penalty tax because of unarguable position of trustee about scheme**

- “226T.(1) If:
- 30 (a) a trustee of a trust estate makes an estate taxation statement; and
  - (b) that statement treated an income tax law as applying in relation to a scheme in a particular way; and
  - (c) a taxpayer who is or has been a beneficiary of the estate has an  
35 estate shortfall excess for a year in relation to the statement; and
  - (d) the scheme was a tax avoidance scheme within the meaning of section 224;
- then:
- 40 (e) the excess is a tax shortfall of the trustee for that year to which section 226L applies; and

- (f) for the purposes of section 226L the statement referred to in paragraph 226L(e) is taken to be the statement referred to in paragraph (a).

“(2) Subsection (1) does not mean that a reference in this Part to a taxpayer does not include a reference to a taxpayer in the capacity of a trustee. 5

**Certain amounts not shortfall because of application for private ruling**

“226U. If:

- (a) apart from this section, a taxpayer has a tax shortfall for a year of income; and 10
- (b) the shortfall or part of it was caused by the taxpayer, in a taxation statement, treating an income tax law as applying to the taxpayer in respect of the year in relation to an arrangement in a particular way; and
- (c) when or before the statement was made, there was an application for a private ruling on the way in which that law would apply to the taxpayer in respect of the year in relation to the arrangement; and 15
- (d) in the opinion of the Commissioner, the application was one that the Commissioner is required to comply with; and 20
- (e) when the statement was made, the private ruling had not been made;

the shortfall is not a tax shortfall, or the part is not part of a tax shortfall, for the purposes of section 226G, 226H, 226J, 226K or 226L.

**Certain amounts not shortfall because of advice etc. 25**

“226V. If:

- (a) apart from this section, a taxpayer has a tax shortfall for a year of income; and
- (b) the shortfall or part of it was caused by the taxpayer, in a taxation statement, treating an income tax law as applying in a particular way; and 30
- (c) that way agrees with:
  - (i) advice given to the taxpayer by a taxation officer; or
  - (ii) a general administrative practice under this Act;

the shortfall is not a tax shortfall, or the part is not part of a tax shortfall, for the purposes of section 226G, 226H, 226J, 226K or 226L. 35

**Where 2 or more shortfall sections apply**

“226W. If 2 or more shortfall sections apply to all or a particular part of a taxpayer’s tax shortfall, the taxpayer is liable to pay the additional tax under only one of those sections, not being a section the additional tax under which is lower than it would be under another of those sections. 40

**Further penalty tax**

“226X. If:

- 5 (a) under a shortfall section, a taxpayer is liable to pay additional tax because of a tax shortfall or part of a tax shortfall; and
- 5 (b) one or more of the following applies:
- 10 (i) the taxpayer took steps to prevent or hinder the Commissioner from becoming aware of the shortfall or part;
- 10 (ii) if the shortfall or part was caused otherwise than by the taxpayer in a taxation statement treating an income tax law as applying to the taxpayer in relation to a matter or scheme in a particular way—the taxpayer became aware of the shortfall or part after a taxation statement by the taxpayer that was taken into account in working out the taxpayer’s statement tax for the year and failed to tell the Commissioner about it, in writing, within a reasonable time of becoming so aware;
- 15 (iii) if the additional tax is payable under section 226G, 226H or 226J—the taxpayer was liable to pay additional tax under any of those sections in respect of an earlier year of income;
- 20 (iv) if the additional tax is payable because the taxpayer, in a taxation statement, treated a law as applying in relation to a matter or scheme in a particular way so that section 226K or 226L applied—the taxpayer was liable to pay additional tax under that section in respect of an earlier year of income in respect of which the taxpayer treated that law as applying in relation to that matter or a similar matter or that scheme or a similar scheme in that way;
- 25
- 30 the taxpayer is liable to pay, by way of penalty, further additional tax equal to 20% of the amount of the additional tax.

**Reduction of penalty tax—disclosure after tax audit notified**

“226Y. If:

- 35 (a) under a shortfall section a taxpayer is liable to pay additional tax in respect of a year of income because of a tax shortfall or part of a tax shortfall; and
- (b) after the Commissioner had informed the taxpayer that a tax audit relating to the taxpayer in respect of the year was to be carried out, the taxpayer voluntarily told the Commissioner, in writing, about the shortfall or part; and
- 40 (c) telling the Commissioner could reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the audit;

the amount of the additional tax is reduced by 20%.

**Reduction of penalty tax—disclosure before tax audit notified**

“226Z. If:

- (a) under a shortfall section, a taxpayer is liable to pay additional tax in respect of a year of income because of a tax shortfall or part of a tax shortfall; and 5
- (b) before the Commissioner had informed the taxpayer that a tax audit relating to the taxpayer in respect of the year was to be carried out, the taxpayer voluntarily told the Commissioner, in writing, about the shortfall or part;

the amount of the additional tax because of the shortfall or part is reduced: 10

- (c) if the shortfall or part is at least \$1,000—by 80%; or
- (d) if the shortfall or part is less than \$1,000—to nil.

**When disclosure made**

“226ZA. If a taxpayer voluntarily tells the Commissioner, in writing, about a tax shortfall, or part of a tax shortfall, for a year after the Commissioner has informed the taxpayer that a tax audit in relation to the taxpayer in respect of that year is to be carried out, the Commissioner may, if the Commissioner considers it appropriate in all the circumstances, determine that, for the purposes of sections 226Y and 226Z, the taxpayer is taken to have told the Commissioner before being informed. 15 20

**Minimum amount of additional tax**

“226ZB. If, apart from this section, an amount of additional tax, being an amount less than \$20, is payable by a person under this Part, then, by force of this section, the amount of the additional tax is \$20.”. 25

**Negligence of registered tax agents etc.**

32. Section 251M of the Principal Act is amended:

- (a) by omitting from subsection (1) “or any additional tax” and substituting “, any additional tax or any interest under section 170AA or 207A”; 30
- (b) by omitting from subsection (1) “or additional tax” and substituting “, additional tax or interest”.

**Other amendments**

- 33.(1) The Principal Act is amended as set out in Schedule 1. 35
- (2) The Principal Act is amended as set out in Schedule 2.
- (3) The Principal Act is amended as set out in Schedule 3.
- (4) The Principal Act is amended as set out in Schedule 4.

**Application**

5     **34.(1)** The amendment of the Principal Act made by section 16, in so far as that amendment applies to interest payable under section 170AA of the Principal Act, applies only to interest payable under section 170AA of the Principal Act in relation to assessments in respect of income for the 1992-93 year of income and all subsequent years of income.

10     **(2)** The amendments of the Principal Act made by sections 17, 18, 26 and 31, apart from the repeal of section 160AS and the insertion of sections 226A to 226F (inclusive), apply to:

15     **(a)** tax shortfalls, within the meaning of Part VII of the Principal Act as amended by this Act, for the 1992-93 year of income and all subsequent years of income, but not an accounting period adopted in lieu of the 1992-93 year of income and commencing before 1 July 1992; and

**(b)** franking tax shortfalls, within the meaning of Division 11 of Part IIIAA of the Principal Act as so amended, for a franking year commencing on or after 1 July 1992.

20     **(3)** Despite the repeal of section 160AS by this Act, that section continues to apply in so far as its continued application results, because of statements, in additional tax in respect of a franking year commencing before 1 July 1992.

25     **(4)** The amendments of section 170AA of the Principal Act made by this Act apply in relation to assessments in respect of the 1992-93 year of income and all subsequent years of income.

**(5)** Subject to subsection (6):

**(a)** the amendments of section 207 of the Principal Act made by this Act; and

**(b)** section 207A of the Principal Act as amended by this Act; and

30     **(c)** the amendment of subsection 160ARW(2) made by this Act; apply to the late payment of tax, within the meaning of the Principal Act as so amended, in respect of:

**(d)** the 1992-93 year of income and all subsequent years of income; or

35     **(e)** a franking year commencing on or after 1 July 1992.

**(6)** Both:

**(a)** the amendment of section 207 of the Principal Act made by this Act; and

40     **(b)** section 207A of the Principal Act as amended by this Act; apply to the late payment of provisional tax in respect of the 1993-94 year of income and all subsequent years of income.

- (7) Despite the repeal of section 223 by this Act, that section continues to apply in so far as its continued application results, because of statements, in additional tax in respect of:
- (a) the 1991-92 year of income or an earlier year of income; or
  - (b) an accounting period adopted in lieu of the 1992-93 year of income and commencing before 1 July 1992. 5
- (8) The amendments made by sections 28, 29 and 30 and by section 31 in so far as it inserts sections 226A to 226F (inclusive) apply in relation to:
- (a) assessments in respect of the 1992-93 year of income and all subsequent years of income, but not an accounting period adopted in lieu of the 1992-93 year of income and commencing before 1 July 1992; or 10
  - (b) the consideration of objections against such assessments.
- (9) The amendments of the Principal Act made by subsection 33(1) do not apply to elections made before 1 July 1992 or, if the commencement of this Act is later, that commencement. 15
- (10) The amendments of the Principal Act made by subsection 33(2):
- (a) do not apply before 1 July 1992 or, if the commencement of this Act is later, that commencement; and 20
  - (b) do not affect the operation of notices given, or requests made, before the amendments apply.
- (11) The amendment of section 159J of the Principal Act made by subsection 33(4) does not apply to claims for a rebate for the maintenance of an invalid relative made in a return lodged before 1 July 1992 or, if the commencement of this Act is later, that commencement. 25
- (12) The amendments of section 160AM of the Principal Act made by subsection 33(4) do not apply to claims for a credit made in a return lodged before 1 July 1992 or, if the commencement of this Act is later, that commencement. 30
- (13) The amendments of section 275 of the Principal Act made by subsection 33(4) apply to the year of income in which 1 July 1992 occurs, and to all later years of income. 35

#### **PART 4—AMENDMENT OF THE FRINGE BENEFITS TAX ASSESSMENT ACT 1986**

##### **Principal Act**

35. In this Act, “Principal Act” means the *Fringe Benefits Tax Assessment Act 1986*<sup>3</sup>. 40

36. After section 74 of the Principal Act the following sections are inserted:



**Effect of public ruling**

“74A.(1) Expressions used in this section have the same meanings as in Part IVAAA of the *Taxation Administration Act 1953*.

“(2) Subject to section 74C, if:

- 5 (a) there is a public ruling on the way in which a fringe benefits tax law applies to a person in relation to an arrangement (**‘ruled way’**); and
- (b) that law applies to that person in relation to that arrangement in a different way; and
- 10 (c) the amount of fringe benefits tax under an assessment in relation to that person would (apart from this section and section 74C) exceed what it would have been if that law applied in the ruled way;

15 the assessment and amount of fringe benefits tax must be what they would be if that law applied in the ruled way.

**Effect of private ruling**

“74B.(1) Expressions used in this section have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*.

“(2) Subject to sections 74C, 74D and 74E, if:

- 20 (a) there is a private ruling on the way in which a fringe benefits tax law applies to a person in respect of a year of tax in relation to an arrangement (**‘ruled way’**); and
- (b) that law applies to that person in respect of that year in relation to that arrangement in a different way; and
- 25 (c) the amount of fringe benefits tax under an assessment in relation to that person would (apart from this section and section 74C) exceed what it would have been if that law applied in the ruled way;

30 the assessment and amount of fringe benefits tax must be what they would be if that law applied in the ruled way.

**Assessment where conflicting rulings**

“74C.(1) In this section:

**‘ruling’** means:

- (a) a public ruling; or
- 35 (b) a private ruling.

“(2) Expressions used in this section have the same meanings as in section 74A or 74B.

“(3) If:

- 40 (a) there are rulings of different ways in which the same fringe benefits tax law applies to the same person in relation to the same arrangement; and

(b) apart from this section, because of there being those different ways, there are conflicting requirements under section 74A or 74B, or both, of what the assessment and amount of fringe benefits tax in relation to that person are to be;  
the assessment and amount of fringe benefits tax must be what they would be if that law so applied in whichever of those ways would result in the lowest amount of fringe benefits tax. 5

**Final Tribunal decision about private ruling conclusive**

“74D.(1) In this section:  
‘arrangement’, ‘fringe benefits tax law’ and ‘private ruling’ have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*; 10  
‘objection decision’ and ‘taxation objection’ have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

“(2) If:  
(a) on the review of an objection decision about a taxation objection against a private ruling, the Tribunal decides that a fringe benefits tax law would apply to a person in a particular way in respect of a year of tax in relation to an arrangement; and 15  
(b) that decision becomes final;  
then, for the purposes of this Act, that law applies to that person in that way in respect of that year in relation to that arrangement. 20

“(3) Subsection (2) applies in spite of any order or decision of a court, or any other decision of the Tribunal, about any application of that law.

“(4) For the purposes of subsection (2), if there is no appeal against the Tribunal’s decision when the period for lodging an appeal ends, the decision becomes final at the end of the period. 25

**Final court order about private ruling conclusive**

“74E.(1) In this section:  
‘arrangement’, ‘fringe benefits tax law’ and ‘private ruling’ have the same meanings as in Part IVAA of the *Taxation Administration Act 1953*; 30  
‘objection decision’ and ‘taxation objection’ have the same meanings as in Part IVC of the *Taxation Administration Act 1953*.

“(2) If:  
(a) on an appeal against: 35  
(i) an objection decision about a taxation objection against a private ruling; or  
(ii) a decision of the Tribunal on the review of such an objection decision;  
a court orders that a fringe benefits tax law would apply to a person in a particular way in respect of a year of tax in relation to an arrangement; and 40

(b) that order becomes final;

then, for the purposes of this Act, that law applies to that person in that way in respect of that year in relation to that arrangement.

5 “(3) Subsection (2) applies despite any other order or decision of a court about any application of that law.

“(4) For the purposes of subsection (2):

10 (a) if the order is made by the Federal Court constituted by a single judge and there is no appeal against the order when the period for lodging an appeal ends—the order becomes final at the end of the period; and

15 (b) if the order is made by the Full Court of the Federal Court and there is no application for special leave to appeal to the High Court against the order when the period of 30 days after the order is made ends—the order becomes final at the end of the period.

**Final court order about Commissioner discretion**

“74F.(1) Expressions used in this section have the same meanings as in section 74E.

20 “(2) For the purposes of this section, the Commissioner exercises a discretion if the Commissioner acts as described in section 14ZAD of the *Taxation Administration Act 1953*.

“(3) If:

25 (a) a private ruling rules that a discretion of the Commissioner under the fringe benefits tax law would be exercised in a particular way; and

(b) on an appeal against:  
30 (i) an objection decision about a taxation objection against that ruling; or  
(ii) a decision of the Tribunal on the review of such an objection decision;

a court orders that it would be in accordance with law for the Commissioner to exercise that discretion in that way in relation to the law, person, year and arrangement that the ruling is about (**“rule matters”**); and

35 (c) that order becomes final;

then, for the purposes of this Act, if the Commissioner exercises that discretion in that way in relation to the rule matters, the discretion is exercised lawfully.

40 “(4) For the purposes of subsection (3), an order becomes final if it would become final for the purposes of section 74E.

“(5) Subsection (3) applies despite any other order or decision of a court about the exercise of a discretion.”.

*Taxation Laws Amendment (Self Assessment) No. 101, 1992*

**PART 5—AMENDMENT OF THE TAXATION (INTEREST ON  
UNDERPAYMENTS) ACT 1986**

**Principal Act**

37. In this Part, “**Principal Act**” means the *Taxation (Interest on Underpayments) Act 1986*<sup>4</sup>. 5

**Imposition of interest charge**

38. Section 3 of the Principal Act is amended by adding at the end the following subsection:

“(2) Subsection (1) does not apply to interest that is not a tax.”.

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**SCHEDULE 1**

Subsection 33(1)

**AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936  
TO REMOVE REQUIREMENTS TO LODGE ELECTIONS**

**Subsection 26AAC(4E):**

Omit all the words after “(4C) or (4D)”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income to which the election relates, or before such later date as the Commissioner allows.”.

**Subsection 26AAC(8B):**

Omit all the words after “a right”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the right was acquired, or before such later date as the Commissioner allows.”.

**Subsection 26AAC(15A)**

Omit “specified in the election”.

**Subsection 26AAC(15B):**

Omit all words after “a share”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income in which the share was issued, or within such further period as the Commissioner allows.”.

**Subsection 26B(5):**

Omit “shall be made in writing and lodged with the Commissioner”, substitute “must be made”.

**Subsection 26BA(8):**

Omit “shall be made in writing and lodged with the Commissioner”, substitute “must be made”.

**Paragraph 34(2)(a):**

Omit “and in the manner”.

**Subsection 34(2A):**

Omit all the words after “or (b)(ii)”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income to which the election relates, or before such later date as the Commissioner allows.”.

**Subsection 36(7):**

Omit “shall be made in writing”, substitute “must be made”.

**SCHEDULE 1—continued**

**Subsection 36AAA(4):**

- (a) Omit “there shall”, substitute “an amount is to”.
- (b) Omit “such amount as is specified in the election”.

**Subsection 36AAA(14):**

Omit “shall be made in writing”, substitute “must be made”.

**Subsection 36AA(6):**

Omit “shall be made in writing and lodged with the Commissioner”, substitute “must be made”.

**Subsection 51AE(9):**

Omit all the words after “in relation to a year of income”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income, or before such later date as the Commissioner allows.”.

**Subsection 56(1AB):**

Omit the subsection, substitute:

“56.(1AB) An election under subsection (1AA):

- (a) must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income in which depreciation is first allowable to the taxpayer in respect of those units, or within such further time as the Commissioner allows; and
- (b) has effect for the purposes of determining the depreciation allowable to the taxpayer in respect of each of those units for the year of income referred to in paragraph (a) and for all subsequent years of income.”.

**Subsection 57AK(9):**

Omit all the words after “a unit of property”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the first year of income in which depreciation calculated in accordance with this section would, but for subsection (8), be allowable to the taxpayer in respect of the unit of property, or before such later date as the Commissioner allows.”.

**Subsection 57AM(32):**

Omit the subsection.

**Subsection 79E(6):**

Omit “specified”.

**SCHEDULE 1—continued**

**Subsection 79E(7):**

Omit all the words after “subsection (6)”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income to which the election relates or within such further period as the Commissioner allows.”.

**Subsection 80(2C):**

Omit “specified”.

**Subsection 80(2D):**

Omit all the words after “subsection (2C)”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income to which the election relates or within such further period as the Commissioner allows.”.

**Subsection 82KY(1):**

Omit all the words after “Subdivision”, substitute “must be made on or before the date of lodgment of the return of income of the taxpayer for the year of income to which the election relates, or before such later date as the Commissioner allows.”.

**Subsection 88(6):**

Omit “shall be made in writing and lodged with the Commissioner”, substitute “must be made”.

**Subsection 102AAX(4):**

Omit all the words after “subsection (3)”, substitute “must be made before the end of the period of 30 days after the end of the year of income concerned, or within such further period as the Commissioner allows.”.

**Subsection 116D(1):**

Omit all the words after “Division”, substitute:

- “(a) must be made on or before the last day for the lodgment of the return of income of the year of income to which the election relates, or within such further time as the Commissioner allows; and
- (b) must take effect from the year of income to which the election relates; and
- (c) has effect in relation to that year of income and, unless the Commissioner otherwise determines, to all subsequent years of income.”.

**Subsection 116D(2):**

Omit the subsection.

**SCHEDULE 1—continued**

**Section 122M:**

Omit all the words after “Division”, substitute “must be made on or before the last day for the lodgment of the return of income of the year of income to which the election relates, or within such further time as the Commissioner allows.”.

**Subsection 123BB(2):**

Omit “shall be made in writing signed by or on behalf of the taxpayer and shall be delivered to the Commissioner”, substitute “must be made”.

**Subsections 122D(4), 122DB(4), 122DD(4), 122DF(4), 122DG(6A), 122J(4BA), 122JE(6) and 122JF(3):**

Omit “specified in the election”.

**Subsection 122H(1):**

- (a) Omit “referred to in the election”.
- (b) Omit “specified in the election”.

**Subsection 122H(2):**

- (a) Omit “specified in an election under this section”, substitute “to which an election under this section relates”.
- (b) Omit “referred to in the election”, substitute “to which the election relates”.

**Subsection 124ADH(1):**

Omit “specified in the election”.

**Subsection 124ADH(2):**

- (a) Omit “shall be made in writing signed by or on behalf of the taxpayer and shall be delivered to the Commissioner”, substitute “must be made”.
- (b) Omit “specified in the election”, substitute “to which the election relates”.

**Subsection 124AG(1):**

- (a) Omit “referred to in the election”.
- (b) Omit “specified in the election”.

**Subsection 124AG(2):**

- (a) Omit “specified in an election under this section shall”, substitute “to which an election under this section relates must”.
- (b) Omit “referred to in the election”, substitute “to which the election relates”.



**SCHEDULE 1—continued**

**Subsection 124AG(3):**

- (a) Omit “shall be made in writing signed by or on behalf of the taxpayer and shall be delivered to the Commissioner”, substitute “must be made”.
- (b) Omit “specified in the election”, substitute “to which the election relates”.

**Subsection 124AH(4AA):**

Omit “specified in the election”.

**Subsection 124AH(4AB):**

- (a) Omit “shall be made in writing signed by or on behalf of the taxpayer and be delivered to the Commissioner”, substitute “must be made”.
- (b) Omit “specified in the election”, substitute “to which the election relates”.

**Subsection 124UA(3):**

Omit “shall be made in writing signed by or on behalf of the owner of the unit and shall be delivered to the Commissioner”, substitute “must be made”.

**Subsection 124ZAE(2):**

Omit all the words after “film” (first occurring), substitute “must be made on or before the date of lodgment of the return of income of the taxpayer of the first year of income in respect of which a deduction would, but for this section, and the provisions of Subdivision B other than sections 124ZAF and 124AFA, be allowable to the taxpayer in relation to the film.”.

**Paragraphs 148(6)(a) and (b):**

Omit the paragraphs.

**Paragraph 148(6)(c):**

Omit “be delivered to the Commissioner”, substitute “be made”.

**Subsections 159GZS(5), 159GZT(7), 159GZU(5), 159GZV(5) and 159GZW(5):**

Omit “lodged with the Commissioner”, substitute “made”.

**Subsection 160M(11C):**

Omit “in writing”.

**Subsection 160ZSA(2):**

Omit “lodged with the Commissioner”, substitute “made”.

**SCHEDULE 1—continued**

**Subsections 160ZZQ(5A), 160ZZQ(5B) and 160ZZQ(11A):**

Omit “lodged with the Commissioner”, substitute “made”.

**Subsection 275B(5):**

Omit all the words after “subsection (1)”, substitute “must be made on or before the date of lodgment of the return of income of the trustee for the year of income to which the election relates, or before such later date as the Commissioner allows.”.

**Subsection 279(6):**

Omit all the words after “subsection (4)”, substitute “must be made on or before the date of lodgment of the return of income of the trustee for the year of income to which the election relates, or before such later date as the Commissioner allows.”.

**Subsection 290A(3):**

Omit all the words after “subsection (4)”, substitute “must be made on or before the date of lodgment of the return of income of the ADF for the year of income to which the election relates, or before such later date as the Commissioner allows.”.

**Subparagraph 401(3)(d)(i):**

- (a) Omit “specifies, in an election”, substitute “makes an election that”.
- (b) Omit “parts specified”, substitute “parts to which the election relates”.
- (c) Omit “specified part”, substitute “part to which the election relates”.

**Subsection 401(4):**

Omit “in the eligible taxpayer’s return of income”, substitute “on or before the date of lodgment of the eligible taxpayer’s return of income”.

**Subparagraph 461(3)(c)(i):**

- (a) Omit “specifies, in an election”, substitute “makes an election that”.
- (b) Omit “amounts specified”, substitute “amounts to which the election relates”.
- (c) Omit “specified part”, substitute “part to which the election relates”.

**SCHEDULE 1—continued**

**Subsection 461(4):**

Omit “in the taxpayer’s”, substitute “on or before the date of lodgment of the taxpayer’s”.

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**SCHEDULE 2**

Subsection 33(2)

**AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936  
RELATING TO NOTICES AND REQUESTS**

**Paragraph 36A(2)(d):**

Omit “give notice to the Commissioner, in accordance with this section that they have agreed”, substitute “agree”.

**Subsection 36A(3):**

Omit the subsection, substitute:

“(3) An agreement under paragraph (2)(d) must be:

- (a) in writing and signed by, or on behalf of, each party to the agreement; and
- (b) made on or before 31 August next succeeding the end of the financial year in which the change in ownership or interests occurred or on or before such later date as the Commissioner determines.”.

**Subsection 37(2):**

Omit “and give notice of their agreement to the Commissioner at the time and in the manner prescribed”, substitute “within the time prescribed”.

**After subsection 37(2):**

Add:

“(3) An agreement under subsection (2) must be in writing and signed by or on behalf of, each party to the agreement.”.

**Subsection 59(2A):**

- (a) Omit “the Commissioner shall, if the taxpayer so requests in writing when lodging”, substitute “the taxpayer may elect, on or before the date of lodgment of”.
- (b) After “successively”, insert “to”.

**Subsection 59(2D):**

- (a) Omit “the Commissioner shall, if the taxpayer so requests in writing”, substitute “the taxpayer may elect”.

**SCHEDULE 2—continued**

- (b) After “allows”, insert “, to”.

**Paragraph 80G(6)(c):**

Omit all the words from and including “give”, substitute “agree that the right to an allowable deduction under subsection 79E(3), 79F(6), 80(2), 80AAA(7) or 80AA(4), as the case requires, in respect of so much of the whole or part of the loss as has not been allowed as a deduction should be transferred to the income company in the income year;”.

**After subsection 80G(6):**

Insert:

“(6A) An agreement under paragraph (6)(c) must be:

- (a) in writing and signed by the public officer of each of the loss company and the income company; and
- (b) made before the date of lodgment of the return of income of the income company for the income year or within such further time as the Commissioner allows.”.

**Subsections 80G(7) and (8):**

- (a) Omit “A notice”, substitute “An agreement”.
- (b) Omit “specified in the notice and any amounts specified in notices previously given under paragraph (6)(c)”, substitute “specified in the agreement and any amount specified in an agreement previously made under paragraph (6)(c) and any amounts specified in notices given under paragraph (6)(c) of this Act as in force immediately before 1 July 1992 or the commencement of the *Taxation Laws Amendment (Self Assessment) Act 1992*, whichever is later”.

**Subsection 80G(13):**

- (a) Omit “gives to the Commissioner a notice or notices”, substitute “makes an agreement”.
- (b) Omit “shall not give a further notice”, substitute “must not make a further agreement”.
- (c) Omit “notice or notices”, substitute “agreement”.

**Subsection 80G(16):**

- (a) Omit “specified in a notice under paragraph (6)(c)”, substitute “specified in an agreement under paragraph (6)(c) or specified in a notice given under paragraph (6)(c) of this Act as in force immediately before 1 July 1992 or before the commencement of the *Taxation Laws Amendment (Self Assessment) Act 1992*, whichever is later”.
- (b) Insert “that agreement or” before “that notice”.

**SCHEDULE 2—continued**

**Subsection 83A(2):**

Omit all the words before and including “premium” (first occurring), substitute “If the parties to an agreement under which an amount to which this section applies is payable agree (in accordance with subsection (3)) that the amount is to be treated as a premium”.

**Subsection 83A(3):**

Omit the subsection, substitute:

“(3) An agreement under subsection (2) must be:

- (a) in writing and signed by or on behalf of each party to the agreement; and
- (b) made on or before 31 August next succeeding the end of the financial year in which the agreement was made or on or before such later date as the Commissioner determines.”.

**Subsection 122B(1):**

Omit all the words after “may”, substitute “agree to include in the allowable capital expenditure of the purchaser a specified amount representing all or part of the expenditure incurred in the acquisition.”.

**Subsection 122B(2):**

- (a) Omit “a notice given”, substitute “an agreement made”.
- (b) Omit “the notice”, substitute “the agreement”.

**Subsection 122B(4):**

Omit the subsection, substitute:

“(4) If:

- (a) expenditure referred to in subsection (1) relates to a lease; and
- (b) the grant, assignment or surrender of that lease is the subject of an election under subsection 88B(5) (whether made before or after an agreement under subsection (1) is made);

any agreement made under subsection (1) in respect of that expenditure is of no effect for the purposes of this section.”.

**Subsection 122B(5):**

Omit the subsection, substitute:

“(5) An agreement made under subsection (1) must:

- (a) be in writing and signed by or on behalf of each party to the agreement; and
- (b) be made not later than 2 months after the end of the year of income of the purchaser in which the right or information was acquired, or within such further time as the Commissioner allows.”.

**SCHEDULE 2—continued**

**Subsection 124AB(1):**

Omit all the words after “may”, substitute “agree to include in the allowable capital expenditure of the purchaser a specified amount, representing all or part of the proportion of the expenditure incurred by the purchaser in acquiring the right or information that has not been the subject of an agreement made under subsection 124ABA(2).”.

**Subsection 124AB(3):**

- (a) Omit “a notice given”, substitute “an agreement made”.
- (b) Omit “the notice”, substitute “the agreement”.

**Subsection 124AB(5):**

Omit the subsection, substitute:

“(5) An agreement under this section must be:

- (a) in writing signed by or on behalf of each party to the agreement; and
- (b) made not later than 2 months after the end of the year of income of the purchaser in which the transaction occurred, or within such further time as the Commissioner allows.”.

**Subsection 124ABA(2):**

Omit all the words after “may” (second occurring), substitute “agree to transfer to the purchaser the proportion of the vendor’s entitlement to the eligible cash bidding amount specified in the agreement.”.

**Subsection 124ABA(3):**

Omit “A notice”, substitute “An agreement”.

**Paragraph 124ABA(3)(a):**

Omit “giving the notice”, substitute “making the agreement”.

**Paragraph 124ABA(3)(b):**

Omit “specified in a notice previously given”, substitute “specified in an agreement previously made under subsection 124AB(1), or specified in a notice given under subsection 124AB(1) of this Act as in force immediately before 1 July 1992 or before the commencement of the *Taxation Laws Amendment (Self Assessment) Act 1992*, whichever is later”.

**Paragraph 124ABA(3)(c):**

Omit “be lodged with the Commissioner”, substitute “be made”.

**Paragraph 160AFE(1D)(c):**

Omit all the words from and including “give”, to and including “stating”, substitute “agree”.

**SCHEDULE 2—continued**

**Subsection 160AFE(1D):**

Omit “the notice”, substitute “the agreement”.

**After subsection 160AFE(1D):**

Insert:

“(1DA) An agreement under paragraph (1D)(c) must be:

- (a) in writing signed by the public officer of each of the credit company and the income company; and
- (b) made on or before the date of lodgment of the return of income of the income company for the current year of income, or within such further time as the Commissioner allows.”.

**Paragraph 160ZP(7)(c):**

Omit all the words from and including “give”, substitute “agree to treat as a capital loss incurred by the gain company during the gain year the proportion of the whole or a part of the net capital loss that has not been taken into account in determining:

- (i) whether a net capital gain accrued to the loss company; or
  - (ii) whether the loss company incurred a net capital loss;
- in respect of the year of income next following the loss year;”.

**After subsection 160ZP(7):**

Insert:

“(7AA) An agreement made under paragraph (7)(c) must be:

- (a) in writing and signed by the public officer of each of the gain company and the loss company; and
- (b) made on or before the date of lodgment of the return of income of the gain company for the gain year or within such further time as the Commissioner allows.”.

**Subsection 160ZP(7A):**

Omit “a notice given”, substitute “an agreement made”.

**Paragraph 160ZP(7A)(a):**

- (a) Omit “notice was given”, substitute “agreement was made”.
- (b) Omit “notice had not been given”, substitute “agreement had not been made”.

**Paragraph 160ZP(7A)(b):**

- (a) Omit “notice” (wherever occurring), substitute “agreement”.
- (b) Omit “given” (wherever occurring), substitute “made”.

**Subsection 160ZP(7B):**

Omit “a notice given”, substitute “an agreement made”.

**SCHEDULE 2**—continued

**Subsection 160ZP(8):**

- (a) Omit “A notice”, substitute “An agreement”.
- (b) Omit “specified in the notice and any amounts specified in notices previously given under that paragraph”, substitute “specified in the agreement and any amount specified in an agreement previously made under that paragraph and any amount specified in notices given under paragraph (7)(c) of this Act as in force immediately before 1 July 1992 or before the commencement of the *Taxation Laws Amendment (Self Assessment) Act 1992*, whichever is later”.

**Subsection 160ZP(9):**

Omit “a notice”, substitute “an agreement”.

**Subsection 160ZP(10):**

- (a) Omit “gives to the Commissioner a notice or notices”, substitute “makes an agreement”.
- (b) Omit “shall not give a further notice”, substitute “must not make a further agreement”.
- (c) Omit “notice or notices”, substitute “agreement”.

**Paragraph 160ZP(13)(a):**

Omit “a notice”, substitute “an agreement”.

**Subsection 274(7):**

Omit “gives to the Commissioner a notice in writing”, substitute “elects”.

**Subsection 274(8):**

Omit “notices” (first occurring), substitute “elections”.

**Subsection 274(9):**

Omit the subsection, substitute:

“(9) An election under subsection (7):

- (a) must be made on or before the date of lodgment of the return of income of the fund for the fund’s year of income or before such later time as the Commissioner allows; and
- (b) is irrevocable.”.



**SCHEDULE 3**

Subsection 33(3)

**AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936  
RELATING TO INTEREST**

**Subsection 102AAM(14):**

After "207," insert "207A,".

**Subsection 160ARW(1):**

After "207," insert "207A,".

**Subsection 160ARW(2):**

Omit the subsection, substitute:

"(2) If:

- (a) the Commissioner amends a franking account assessment ('former assessment') made under section 160ARH or 160ARK in relation to a company for a franking year; and
- (b) the franking deficit tax payable under the amended assessment exceeds the franking deficit tax payable under the former assessment;

section 207 applies as if an amount of franking deficit tax equal to the difference between the franking deficit tax payable under the former assessment and the franking deficit tax payable under the amended assessment were due and payable on the 30th day after the day on which the amended assessment was made."

**Subsection 160ARW(3):**

Omit the subsection.

**Subsection 172(1):**

Omit "and 207", substitute ", 207 and 207A".

**Subsections 172(2), 208(2), 209(2), 214(2) and 215(6):**

After "includes", insert "interest under section 170AA or 207A and".

**Subsection 218(6B) (paragraph (ba) of the definition of "tax"):**

Omit "or 170AA", substitute ", 170AA or 207A".

**Subsection 218(6B) (subparagraph (c)(iv) of the definition of "tax"):**

Omit "or 170AA", substitute ", 170AA or 207A".

**Subsection 220(5):**

After "207" insert "or interest under section 207A".

**SCHEDULE 3—continued**

**Subsections 221AK(3) and 221YA(2):**

After “207,” insert “207A,”.

**Paragraph 221YBA(6)(g):**

Omit “section 207 applies”, substitute “sections 207 and 207A apply”.

**Subsection 221YDA(2AC):**

After “207” insert “. 207A”.

**Subsection 221YDA(2A):**

Omit “section 207”, substitute “sections 207 and 207A”.

**Subsection 221YHAAE(3):**

After “207” insert “and interest under section 207A”.

**Paragraph 221YHAAE(4)(a):**

Omit “section 207”, substitute “sections 207 and 207A”.

**Subsections 254(2), 255(4), 258(2), 259(2) and 265(12):**

After “includes” insert “interest under section 170AA or 207A and”.

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**SCHEDULE 4**

Subsection 33(4)

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

**Subsection 159J(6) (paragraph (c) of the definition of “invalid  
relative”):**

Omit “produces to the Commissioner”, substitute “obtains”.

**Section 160AM:**

(a) Omit “within 4 years”, substitute “for a period of 4 years”.

(b) Omit “furnishes to the Commissioner”, substitute “is able to  
produce”.

**Subsection 275(1):**

Omit the subsection, substitute:

“(1) Subject to this section, the trustee of a complying  
superannuation fund or complying ADF (“transferor”) may agree with a  
particular life assurance company, registered organisation or PST  
(“transferee”) that this section is to apply in relation to a year of income

**SCHEDULE 4—continued**

**(“transferor’s year of income”)** and to the transferor and transferee in relation to an amount specified in the agreement.”.

**Subsections 275(2) and (4):**

Omit “notice” (wherever occurring), substitute “agreement”.

**Subsection 275(6):**

Omit “give only one notice”, substitute “make only one agreement”.

**Subsection 275(7):**

Omit the subsection, substitute:

“(7) An agreement under subsection (1):

- (a) must be in writing signed by or on behalf of the transferor and the transferee; and
- (b) must be made on or before the date of lodgment of the return of income of the transferor for the transferor’s year of income; and
- (c) is irrevocable.”.

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**NOTES**

1. 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; and Nos. 5, 6, 48, 100 and 216, 1991.
2. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110,

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**NOTES—continued**

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 and 216, 1991; and No. 3, 1992.

3. No. 39, 1986, as amended. For previous amendments, see Nos. 48 and 112, 1986; Nos. 23 and 145, 1987; No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 6, 78, 95, 97 and 153, 1988; Nos. 2, 11, 97 and 107, 1989; Nos. 58, 60 and 135, 1990; and Nos. 48, 100 and 216, 1991.

4. No. 47, 1986.

*[Minister's second reading speech made in—  
House of Representatives on 26 May 1992  
Senate on 1 June 1992]*