





# **Taxation Laws Amendment Act (No. 3) 1998**

**Act No. 47 of 1998 as amended**

This compilation was prepared on 6 August 2002

**[This Act was amended by Act No. 58 of 2000  
and Act No. 57 of 2002]**

**Amendment from Act No. 58 of 2000**

[Schedule 3 (item 8) amended Schedule 7 (item 26)  
Schedule 3 (item 8) commenced on 23 June 1998]

**Amendment from Act No. 57 of 2002**

[Schedule 12 (item 78) repealed Item 19 of Schedule 3  
Schedule 12 (item 78) commenced on 3 July 2002]

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# **An Act to amend the law relating to taxation, and for related purposes**

[Assented to 23 June 1998]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Taxation Laws Amendment Act (No. 3) 1998*.

## **2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Items 2 and 4 of Schedule 1 commence on the later of 1 July 1998 and the day after the day on which this Act receives the Royal Assent.

## **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **4 Amendment of income tax assessments**

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

## Schedule 1—Income Tax deductions

### Part 1—Constitutional convention

#### *Income Tax Assessment Act 1997*

##### **1 Section 20-30 (table item 1.6)**

Omit “, Commonwealth and State elections”.

##### **2 Section 20-30 (table item 1.6)**

After “election expenses”, insert “, Commonwealth and State elections”.

##### **3 At the end of section 25-60**

Add:

- (2) You can deduct expenditure you incur in contesting an election under the *Constitutional Convention (Election) Act 1997* for delegates from each State and Territory to the Constitutional Convention. The maximum that you can deduct is \$1,000.

Note: Entertainment expenses are excluded: see section 25-70.

##### **4 Subsection 25-60(2)**

Repeal the subsection.

##### **5 Application**

- (1) The amendments made by items 1 and 3 apply in relation to expenses incurred in the 1997-98 income year.
- (2) The amendments made by items 2 and 4 do not affect the application of the *Income Tax Assessment Act 1997* in relation to expenses incurred in the 1997-98 income year.

## Part 2—National Nurses' Memorial Trust

### *Income Tax Assessment Act 1997*

#### **6 Subsection 30-50(2) (at the end of the table)**

Add:

5.2.6	The National Nurses' Memorial Trust	the gift must be made after 3 September 1997 and before 4 September 1999
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## Schedule 2—Malaysian Visiting Force

### *Sales Tax (Exemptions and Classifications) Act 1992*

#### 1 After Item 139 of Schedule 1

Insert:

##### **Item 139A: [Malaysian Visiting Force]**

- (1) The following imported goods, if they are covered by item 8 in Schedule 4 to the Customs Tariff:
  - (a) personal effects, furniture or household goods of:
    - (i) a member of the Visiting Force; or
    - (ii) a member of the civilian component; or
    - (iii) a dependant of such a member;
  - (b) motor vehicles for use by a member of the Visiting Force or by a member of the civilian component.

[local entry only]
- (2) In this Item, *Visiting Force*, *civilian component* and *dependant* have the same meanings as in the Agreement between Australia and Malaysia regarding the Status of Forces of each State in the Territory of the other State that was signed on 3 February 1997.

#### 2 Application

The amendment made by this Schedule applies to dealings after the day on which this Act receives the Royal Assent.

## Schedule 3—Charitable trusts

### Part 1—Income Tax Assessment Act 1997

#### 1 Section 50-5 (table items 1.1 and 1.2)

Omit “none”, substitute “see section 50-50”.

#### 2 Section 50-5 (table items 1.3 and 1.4)

Omit “none”, substitute “see section 50-55”.

#### 3 Section 50-5 (table item 1.5)

Omit “or instrument of trust”, substitute “before 1 July 1997”.

#### 4 Section 50-5 (after table item 1.5)

Insert:

1.5A	trust covered by paragraph 50-80(1)(c)	see section 50-60
1.5B	fund established in Australia for public charitable purposes by will or instrument of trust (and not covered by item 1.5 or 1.5A)	see section 50-60

#### 5 Section 50-5 (table item 1.6)

Omit “fund applied for the purpose for which it was established”, substitute “see section 50-65”.

#### 6 Section 50-5 (table item 1.7)

Omit “not carried on for the profit or gain of its individual members”, substitute “see section 50-70”.

#### 7 At the end of section 50-5

Add:

Note: Section 50-80 may affect which item a trust is covered by.

#### 8 Section 50-10 (table item 2.1)

Omit “not carried on for the profit or gain of its individual members”, substitute “see section 50-70”.

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**9 Section 50-15 (table item 3.1, cell relating to Special conditions)**

Repeal the cell, substitute:

the association:

- (a) is registered under an \*Australian law relating to the settlement of industrial disputes; and
- (b) is located in Australia, and incurs its expenditure and pursues its objectives principally in Australia

**10 Section 50-15 (table item 3.2)**

Omit “none”, substitute “located in Australia and incurring its expenditure and pursuing its objectives principally in Australia”.

**11 Section 50-20 (table item 4.1)**

Omit “not carried on for the profit or gain of its individual members”, substitute “see section 50-70”.

**12 Section 50-30 (table item 6.1)**

Omit “none”, substitute “see section 50-55”.

**13 Section 50-30 (table item 6.2)**

After “not carried on for the profit or gain of its individual members”, insert “, see also section 50-55”.

**14 Section 50-45 (table items 9.1 and 9.2)**

Omit “not carried on for the profit or gain of its individual members”, substitute “see section 50-70”.

**15 After section 50-45**

Insert:

**50-50 Special conditions for items 1.1 and 1.2**

An entity covered by item 1.1 or 1.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution which is referred to in a table in Subdivision 30-B; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia.

Note: Certain distributions may be disregarded: see section 50-75.

### **50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2**

An entity covered by item 1.3, 1.4, 6.1 or 6.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution which is referred to in a table in Subdivision 30-B; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

### **50-60 Special conditions for items 1.5A and 1.5B**

A fund covered by item 1.5A or 1.5B is not exempt from income tax unless the fund is applied for the purposes for which it was established and:

- (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997 pursued, its charitable purposes solely in Australia; or
  - (b) is a fund which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15; or
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- (c) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia; or
- (d) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is a charitable fund, foundation or institution which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15.

Note: Certain distributions may be disregarded: see section 50-75.

### **50-65 Special conditions for item 1.6**

A fund covered by item 1.6 is not exempt from tax unless the fund is applied for the purposes for which it was established and is:

- (a) a fund that is located in, and which incurs its expenditure principally in, Australia and that is established for the purpose of enabling scientific research to be conducted principally in Australia by or in conjunction with a public university or public hospital; or
- (b) a scientific research fund that is referred to in a table in Subdivision 30-B or in the table in section 30-15.

Note: Certain distributions may be disregarded: see section 50-75.

### **50-70 Special conditions for items 1.7, 2.1, 4.1, 9.1 and 9.2**

An entity covered by item 1.7, 2.1, 4.1, 9.1 or 9.2 is not exempt from tax unless the entity is a society, association or club that is not carried on for the purpose of profit or gain of its individual members and that:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is a society, association or club which is referred to in a table in Subdivision 30-B; or

- (c) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

### **50-75 Certain distributions may be made overseas**

- (1) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount received by the institution, fund or other body as a gift (whether of money or other property) or by way of government grant are to be disregarded.
- (2) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in a table in Subdivision 30-B and operated by the institution, fund or other body are to be disregarded.
- (3) In determining for the purposes of section 50-60 whether a fund:
- (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997, pursued its charitable purposes solely in Australia; or
  - (b) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution described in paragraph 50-60(c) or (d);
- distributions of any amount received by the fund as a gift (whether of money or property) or by way of government grant are to be disregarded.

### **50-80 Testamentary trusts may be treated as 2 trusts**

- (1) If:
- (a) a trust (the *existing trust*) covered by item 1.5 was in existence immediately before 1 July 1997; and

- (b) on or after 1 July 1997 one or more assets are given to the existing trust (other than in return for valuable consideration) or become part of the trust property under a will;
- then, for the purposes of this Subdivision, the existing trust is taken to be 2 separate trusts (the *new trust* and the *old trust*) as follows:
- (c) the new trust is taken to be a trust created after the start of 1 July 1997 that consists of so much of the trust property as consists of those assets together with any income derived from those assets; and
- (d) the old trust is taken to be a trust created before 1 July 1997 that consists of the remainder of the trust property.
- (2) Where an asset is received in substitution for another asset, subsection (1) applies as if the substituted asset were the other asset.

## **16 Application**

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to income derived on or after 1 July 1997.

## **Part 2—Income Tax Assessment Act 1936**

### **17 Subparagraph 128B(3)(a)(i)**

After “section 50-5”, insert “(other than because of item 1.5A, 1.5B or 1.6 in the table in that section)”.

### **18 Subparagraph 128B(3)(a)(i)**

Omit “, 50-15”.

### **20 Application**

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to income derived on or after 1 July 1997.

## **Schedule 4—Payment of RPS, PAYE and PPS deductions to Commissioner**

### **Part 1—Insertion of new Division 1AAA**

#### *Income Tax Assessment Act 1936*

#### **1 After Division 1 of Part VI**

Insert:

### **Division 1AAA—Payment of RPS, PAYE and PPS deductions to Commissioner**

#### **Subdivision A—Outline of Division**

#### **220AAA Outline of Division**

This Division sets out when and how amounts deducted under:

- (a) Division 1AA (RPS); and
- (b) Division 2 (PAYE); and
- (c) Division 3A (PPS);

must be paid to the Commissioner.

Remitters are divided into 3 categories—small, medium and large. The timing and method of payment depends on the category of the remitter.

Failure to remit payments or to comply with other requirements of this Division may be a criminal offence or result in penalties.

## **Subdivision B—Large remitters**

### **220AAB Who is a large remitter—general**

#### *General rule*

- (1) Subject to this section, a person is a large remitter in relation to a particular month if any of the following paragraphs applies:
- (a) the total of the deductions that the person makes under Divisions 1AA, 2 and 3A for the financial year ending on 30 June 1997 exceeded \$1 million;
  - (b) both of the following subparagraphs apply:
    - (i) at the end of the financial year (the **1996-97 year**) ending on 30 June 1997, the person was included in a company group;
    - (ii) the total of the deductions under Divisions 1AA, 2 and 3A, for the 1996-97 year, of the persons that were included in that company group at the end of the 1996-97 year exceeded \$1 million;
  - (c) the total of the deductions that the person makes under Divisions 1AA, 2 and 3A for any financial year ending on or after 30 June 1998 and before that month exceeded \$1 million;
  - (d) both of the following subparagraphs apply:
    - (i) at the end of any financial year (the **threshold year**) ending on or after 30 June 1998 and before that month, the person was included in a company group;
    - (ii) the total of the deductions under Divisions 1AA, 2 and 3A, for the threshold year, of the persons that were included in that company group at the end of the threshold year exceeded \$1 million;
- Note: **Company group** is defined in section 220AAI.
- (e) that month is covered by a notice in force under section 220AAC;
- and that month is not covered by a notice in force under subsection (3).

*Not large remitter before certain times*

- (2) A person:
- (a) is not a large remitter in relation to any month before July 1998; and
  - (b) is not a large remitter in relation to July or August 1998 unless the person is covered by paragraph (1)(a) or (b); and
  - (c) is not a large remitter because of paragraph (1)(c) or (d) in relation to July or August in a later financial year unless the person was a large remitter in relation to June of the previous financial year.

*Commissioner's determination that person not a large remitter*

- (3) The Commissioner may, by notice in writing served on a person who would otherwise be a large remitter:
- (a) determine that the person is not a large remitter in relation to:
    - (i) a month or months specified in the notice; or
    - (ii) all months after and including a month specified in the notice; and
  - (b) revoke or vary any such determination.

Note: A person who is not a large remitter because of this subsection will generally be a medium remitter: see paragraph 220AAJ(1)(d).

- (4) A notice under subsection (3) does not have effect in relation to a particular month unless the notice was served before the beginning of the month.

**220AAC Who is a large remitter—determination by Commissioner**

- (1) The Commissioner may, by notice in writing served on a person who would otherwise be a medium remitter or a small remitter in relation to a month:
- (a) determine that the person is a large remitter in relation to:
    - (i) a month or months specified in the notice; or
    - (ii) all months after and including a month specified in the notice; and
  - (b) revoke or vary any such determination.

- (2) A notice under subsection (1) does not have effect in relation to any month earlier than the second month following the month in which the notice is served.

*Matters to have regard to*

- (3) In exercising powers under subsection (1), the Commissioner may have regard to the following matters:
- (a) any arrangement that was entered into or carried out after 15 August 1989 for the purpose, or for purposes that included the purpose, of avoiding the application of section 220AAE or of paragraph 221F(5)(a) in relation to deductions made by a person;
  - (b) the extent (if any) to which the person concerned pays:
    - (i) salary or wages to persons to whom salary or wages were previously paid by another person; or
    - (ii) reportable payments to persons to whom reportable payments were previously paid by another person; or
    - (iii) prescribed payments to persons to whom prescribed payments were previously paid by another person;
  - (c) the amount that the Commissioner considers the person is likely to deduct under Divisions 1AA, 2 and 3A in the following 12 months;
  - (d) such other matters as the Commissioner considers relevant.
- (4) The reference in paragraph (3)(a) to paragraph 221F(5)(a) is a reference to that paragraph as in force before the commencement of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1998*.

### **220AAD Application to cease to be a large remitter**

A person who is a large remitter in relation to a month may apply in writing to the Commissioner for a determination under subsection 220AAB(3) that the person is not a large remitter in relation to particular months.

### **220AAE When amounts must be remitted**

- (1) A person who is a large remitter in relation to a month must pay to the Commissioner the amount of any deductions that the person makes under Division 1AA, 2 or 3A during that month as set out in the following table:

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**Table of payments by large remitters**

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<b>Item</b>	<b>Day on which amount deducted</b>	<b>Payment day</b>
1	Saturday or Sunday	The second Monday after that day
2	Monday or Tuesday	The first Monday after that day
3	Wednesday	The second Thursday after that day
4	Thursday or Friday	The first Thursday after that day

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Note: The payments covered by items 1 and 2 would normally be paid together, as would the payments covered by items 3 and 4.

- (2) The payments must be sent in sufficient time for them to be received by the Commissioner in the ordinary course of events on or before the payment day specified in the table.
- (3) A person (other than a government body) who intentionally or recklessly contravenes this section is guilty of an offence punishable on conviction by imprisonment for a maximum period of 12 months.

Note: See section 220AAV for an alternative civil penalty for contravening this section.

### **220AAF How amounts must be paid**

A large remitter must pay an amount by a means of electronic transfer approved in writing by the Commissioner. If a large remitter pays an amount other than by electronic transfer, the large remitter will be liable for a penalty under section 220AAW.

### **220AAG What else must be sent**

- (1) Each payment that is made to the Commissioner must be accompanied by a statement about the payment and about the deductions in relation to which the payment is made.
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- (2) The Commissioner may, by written notice, require statements to be in a particular form, contain particular information and be given in a particular manner. For example, the Commissioner may require certain statements to be given by way of electronic transmission.

### **220AAH Variation of requirements**

The Commissioner may, in such cases and to the extent the Commissioner thinks fit, by written notice given to a large remitter:

- (a) extend any time set out in section 220AAE for compliance with the requirements of that section; or
- (b) with the agreement of the large remitter, vary the requirements of section 220AAF or 220AAG in their application to the large remitter.

### **220AAI Grouping of companies**

- (1) For the purposes of this Division, a company group consists of any collection of 2 or more companies each of which is a group company in relation to each of the others.
- (2) For the purposes of this section, a company is a group company in relation to another company if:
  - (a) one of the companies is a 100% subsidiary of the other company; or
  - (b) each of the companies is a 100% subsidiary of the same third company.
- (3) A company (the *subsidiary company*) is a 100% subsidiary of another company (the *holding company*) if all the shares in the subsidiary company are beneficially owned by:
  - (a) the holding company; or
  - (b) one or more 100% subsidiaries of the holding company; or
  - (c) the holding company and one or more 100% subsidiaries of the holding company.
- (4) A company (other than the subsidiary company) is a 100% subsidiary of the holding company if, and only if:

- (a) it is a 100% subsidiary of the holding company; or
  - (b) it is a 100% subsidiary of a 100% subsidiary of the holding company;
- because of any other application or applications of this section.

### **Subdivision C—Medium remitters**

#### **220AAJ Who is a medium remitter—general**

*General rule*

- (1) Subject to this section, a person is a medium remitter in relation to a particular month if the person is not a large remitter in relation to that month and any of the following paragraphs applies:
  - (a) the total of the deductions that the person makes under Divisions 1AA, 2 and 3A for the period between 1 July 1997 and 31 March 1998 exceeded \$18,750;
  - (b) the total of the deductions that the person makes under Divisions 1AA, 2 and 3A for any financial year ending on or after 30 June 1998 and before that month exceeded \$25,000;
  - (c) that month is covered by a notice in force under section 220AAK;
  - (d) that month is covered by a notice in force under subsection 220AAB(3) (determination that the person is not a large remitter);and that month is not covered by a notice in force under subsection (3).

*Not medium remitter before certain times*

- (2) A person:
  - (a) is not a medium remitter in relation to any month before July 1998; and
  - (b) is not a medium remitter in relation to July, August or September 1998 unless the person is covered by paragraph (1)(a), (c) or (d); and
  - (c) is not a medium remitter because of paragraph (1)(b) in relation to July, August or September in a later financial year

unless the person was a medium remitter in relation to June of the previous financial year.

*Commissioner's determination that person not a medium remitter*

- (3) The Commissioner may, by notice in writing served on a person who would otherwise be a medium remitter:
- (a) determine that the person is not a medium remitter in relation to:
    - (i) a month or months specified in the notice; or
    - (ii) all months after and including a month specified in the notice; and
  - (b) revoke or vary any such determination.

Note: A person who is not a medium remitter because of this subsection will be a small remitter.

- (4) A notice under subsection (3) does not have effect in relation to a particular month unless the notice was served before the beginning of the month.

#### **220AAK Who is a medium remitter—determination by Commissioner**

- (1) The Commissioner may, by notice in writing served on a person who would otherwise be a small remitter:
- (a) determine that the person is a medium remitter in relation to:
    - (i) a month or months specified in the notice; or
    - (ii) all months after and including a month specified in the notice; and
  - (b) revoke or vary any such determination.
- (2) A notice under subsection (1) does not have effect in relation to any month earlier than the second month following the month in which the notice is served.

*Matters to have regard to*

- (3) In exercising powers under subsection (1), the Commissioner may have regard to the following matters:

- (a) any failure to comply with one or more of the person's obligations under this Division as a result of which the Commissioner considers that it is no longer appropriate for the person to be a small remitter;
- (b) any arrangement that was entered into or carried out after 13 May 1997 for the purpose, or for purposes that included the purpose, of avoiding the application of section 220AAM in relation to deductions made by a person;
- (c) the extent (if any) to which the person concerned pays:
  - (i) salary or wages to persons to whom salary or wages were previously paid by another person; or
  - (ii) reportable payments to persons to whom reportable payments were previously paid by another person; or
  - (iii) prescribed payments to persons to whom prescribed payments were previously paid by another person;
- (d) the amount that the Commissioner considers the person is likely to deduct under Divisions 1AA, 2 and 3A in the following 12 months;
- (e) such other matters as the Commissioner considers relevant.

#### **220AAL Application to cease to be a medium remitter**

A person who is medium remitter in relation to a month may apply in writing to the Commissioner for a determination under subsection 220AAJ(3) that the person is not a medium remitter in relation to particular months.

#### **220AAM When amounts must be remitted**

- (1) A person who is a medium remitter in relation to a month must pay to the Commissioner the amount of any deductions that the medium remitter makes under Division 1AA, 2 or 3A in that month not later than the 7th day after the end of the month.
- (2) The amounts must be sent in sufficient time for them to be received by the Commissioner in the ordinary course of events on or before the day specified in subsection (1).

- (3) A person (other than a government body) who intentionally or recklessly contravenes this section is guilty of an offence punishable on conviction by imprisonment for a maximum period of 12 months.

Note: See section 220AAV for an alternative civil penalty for contravening this section.

### **220AAN How amounts must be paid**

A medium remitter must pay an amount:

- (a) by a means of electronic transfer approved in writing by the Commissioner; or
- (b) by any other means approved in writing by the Commissioner.

### **220AAO What else must be sent**

- (1) Each payment that is made to the Commissioner must be accompanied by a statement about the payment and about the deductions in relation to which the payment is made.
- (2) The Commissioner may, by written notice, require statements to be in a particular form, contain particular information and be given in a particular manner. For example, the Commissioner may require certain statements to be given by way of electronic transmission.

### **220AAP Variation of requirements**

The Commissioner may, in such cases and to the extent the Commissioner thinks fit, by written notice given to a medium remitter:

- (a) extend the time set out in section 220AAM for compliance with the requirements of that section; or
- (b) with the agreement of the medium remitter, vary the requirements of section 220AAN or 220AAO in their application to the medium remitter.

## **Subdivision D—Small remitters**

### **220AAQ Who is a small remitter**

A person is a small remitter in relation to any month in relation to which the person is neither a large remitter nor a medium remitter.

### **220AAR When amounts must be remitted**

- (1) A person who is a small remitter in relation to a month must pay to the Commissioner the amount of any deductions that the person makes under Division 1AA, 2 or 3A in that month not later than the 7th day after the end of the quarter in which the month occurs. The quarters end at the end of 31 March, 30 June, 30 September and 31 December.
- (2) The amounts must be sent in sufficient time for them to be received by the Commissioner in the ordinary course of events on or before the day specified in subsection (1).
- (3) A person (other than a government body) who intentionally or recklessly contravenes this section is guilty of an offence punishable on conviction by imprisonment for a maximum period of 12 months.

Note: See section 220AAV for an alternative civil penalty for contravening this section.

### **220AAS How amounts must be paid**

A small remitter must pay an amount:

- (a) by a means of electronic transfer approved in writing by the Commissioner; or
- (b) by any other means approved in writing by the Commissioner.

### **220AAT What else must be sent**

- (1) Each payment that is made to the Commissioner must be accompanied by a statement about the payment and about the deductions in relation to which the payment is made.
-

- (2) The Commissioner may, by written notice, require statements to be in a particular form, contain particular information and be given in a particular manner. For example, the Commissioner may require certain statements to be given by way of electronic transmission.

### **220AAU Variation of requirements**

The Commissioner may, in such cases and to the extent the Commissioner thinks fit, by written notice given to a small remitter:

- (a) extend the time set out in section 220AAR for compliance with the requirements of that section; or
- (b) with the agreement of the small remitter, vary the requirements of section 220AAS or 220AAT in their application to the small remitter.

### **Subdivision E—Offences and penalties**

#### **220AAV Penalty for failure to send deductions to Commissioner**

- (1) This section applies if an amount (the *principal amount*) payable to the Commissioner under section 220AAE, 220AAM or 220AAR by a person remains unpaid after the end of the period within which it is required to be paid.
- (2) The principal amount continues to be payable by the person to the Commissioner.

*Persons other than government bodies*

- (3) If the person is not a government body, the person is liable to pay to the Commissioner, by way of penalty:
  - (a) an amount (the *relevant penalty amount*) equal to 20% of the principal amount; and
  - (b) an amount at the rate of 16% per annum of the sum of:
    - (i) so much of the principal amount as remains unpaid; and
    - (ii) so much of the relevant penalty amount as remains unpaid;computed from the end of that period.

*Government bodies*

- (4) If the person is a government body other than the Commonwealth, the person is liable to pay to the Commissioner, by way of penalty, an amount at the rate of 16% per annum on so much of the principal amount as remains unpaid, computed from the end of that period.

**220AAW Large remitters—non-electronic payment**

If a person, other than a government body, who is a large remitter pays an amount (the *principal amount*) other than by electronic transfer, the person is liable to pay to the Commissioner, by way of penalty, an amount equal to the greater of:

- (a) \$500; or
- (b) 16% per annum on the principal amount for a period of 7 days.

**220AAX Commissioner may remit penalties**

- (1) This section applies to a penalty payable by a person under section 220AAV or 220AAW.
- (2) The Commissioner may remit the whole or a part of a penalty payable under section 220AAV or 220AAW.

*Criteria for remission—interest-based penalties*

- (3) If the penalty is payable by a person under paragraph 220AAV(3)(b) or subsection 220AAV(4) in relation to another amount that has not been paid (the *principal amount*), the Commissioner may only remit the whole or a part of the penalty if:
  - (a) the Commissioner is satisfied that:
    - (i) the circumstances that contributed to the delay in payment of the principal amount were not due to, or caused directly or indirectly by, an act or omission of the person; and
    - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or

- (b) the Commissioner is satisfied that:
  - (i) the circumstances that contributed to the delay in payment of the principal amount were due to, or caused directly or indirectly by, an act or omission of the person; and
  - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
  - (iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the whole or the part of the penalty; or
- (c) the Commissioner is satisfied that there are special circumstances because of which it would be fair and reasonable to remit the penalty or the part of the penalty.

*Criteria for remission—paying other than electronically*

- (4) If the penalty is payable by a person under section 220AAW, the Commissioner may only remit the whole or a part of the penalty if:
    - (a) the Commissioner is satisfied that:
      - (i) the circumstances that contributed to the payment not being made by electronic transfer were not due to, or caused directly or indirectly by, an act or omission of the person; and
      - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
    - (b) the Commissioner is satisfied that:
      - (i) the circumstances that contributed to the payment not being made by electronic transfer were due to, or caused directly or indirectly by, an act or omission of the person; and
      - (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
      - (iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the whole or the part of the penalty; or
    - (c) the Commissioner is satisfied that there are special circumstances because of which it would be fair and reasonable to remit the penalty or the part of the penalty.
-

*Notification of decisions*

- (5) If the Commissioner makes a decision:
- (a) to remit part only of a penalty payable under paragraph 220AAV(3)(a) or section 220AAW; or
  - (b) not to remit any part of such a penalty;
- the Commissioner must give written notice of the decision to the person liable to pay the penalty.

**220AA Y Reduction of late payment penalty where judgment debt carries interest**

- (1) For the purposes of this section, each of the following amounts is a ***principal amount***:
- (a) an amount of the kind referred to in subsection 220AAV(1) as the principal amount;
  - (b) an amount of the kind referred to in paragraph 220AAV(3)(a) as the relevant penalty amount.
- (2) This section applies if judgment is given by, or entered in, a court for the payment of:
- (a) the whole or a part of a principal amount; or
  - (b) an amount that includes the whole or a part of a principal amount.

*Principal amount still due and payable*

- (3) A person's liability to a penalty (the ***interest-based penalty***) under paragraph 220AAV(3)(b) or subsection 220AAV(4) is to be worked out on the basis that the principal amount or the part of the principal amount, as the case may be, does not cease to be due and payable only because of the giving or entering of the judgment.

*Reduction of interest-based penalties*

- (4) If the judgment debt carries interest, the interest-based penalty that would otherwise be payable in relation to the principal amount or the part of the principal amount, as the case may be, is to be reduced by the amount worked out using the formula:

$$\text{Amount of interest} \times \frac{\text{Whole or part of principal amount}}{\text{Amount of judgment debt}}$$

### **220AAZ Failure to send statements to Commissioner—offence**

A person (other than a government body) who contravenes section 220AAG, 220AAO or 220AAT is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

### **Subdivision F—Recovery of amounts by Commissioner**

#### **220AAZA Recovery of amounts by Commissioner**

*Recoverable amount*

(1) In this section:

***recoverable amount*** means any of the following amounts:

- (a) an amount payable to the Commissioner under this Division by a person other than the Commonwealth;
- (b) the unpaid amount of an estimate under section 222AGA that relates to a liability under this Division;
- (c) a penalty payable under Subdivision E of Division 8 in relation to such an estimate;
- (d) an amount that is due and payable under an agreement under section 222ALA that relates to:
  - (i) a liability under this Division; or
  - (ii) a liability to pay an estimate relating to a liability under this Division;even if the agreement also relates to a liability that is not of a kind referred to in subparagraph (i) or (ii);
- (e) a penalty payable under Subdivision B of Division 9 in relation to a company's liability under this Division;
- (f) a penalty payable under Subdivision C of Division 9 in relation to an estimate relating to a company's liability under this Division;

(g) a penalty payable under Subdivision D of Division 9 in relation to a company's liability to pay an amount of the kind mentioned in paragraph (d).

- (2) A recoverable amount is a debt due to the Commonwealth.
- (3) A recoverable amount is payable to the Commissioner.
- (4) A recoverable amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.

*Criminal proceedings—ancillary order for payment*

- (5) If proceedings for an offence against this Division are brought against the person by whom a recoverable amount is payable, the court before which the proceedings are brought may order the person to pay the amount to the Commissioner.

*Averments*

- (6) The provisions of section 8ZL of the *Taxation Administration Act 1953* (which deals with averments) apply in proceedings for the recovery of a recoverable amount in a corresponding way to the way in which they apply in relation to a prosecution for a prescribed taxation offence within the meaning of Part III of that Act.

*Evidentiary certificate*

- (7) In an action for the recovery of a recoverable amount, a written certificate stating that the sum specified in the certificate was, as at the date of the certificate, due by a specified person to the Commonwealth in respect of a recoverable amount is prima facie evidence of the matters stated in the certificate. The certificate must be signed by the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner.

*Multiple amounts owing*

- (8) If:

- (a) 2 or more recoverable amounts are payable by a person; and
- (b) an amount (the *eligible payment*) is paid to the Commissioner in respect of one or more of those recoverable amounts; and
- (c) the sum of the recoverable amounts payable exceeds the eligible payment;

the Commissioner may:

- (d) apply the eligible payment in partial discharge of the sum of the recoverable amounts payable; and
- (e) recover as a debt due to the Commonwealth the amount by which the sum of the recoverable amounts payable exceeds the eligible payment.

The Commissioner may do those things in spite of any direction to the contrary by or on behalf of the person by whom the recoverable amounts are payable or the person making the eligible payment.

#### *Application of Divisions 8 and 9*

- (9) If the Commissioner applies or recovers an amount under subsection (8), the Commissioner may make a written determination about how the amount is to be taken, for the purposes of Divisions 8 and 9, to have been applied towards discharging any one or more of the recoverable amounts referred to in paragraph (8)(a). A determination has effect accordingly.
- (10) In making a statement (whether orally or in writing and whether or not under oath) for a purpose connected with proceedings to recover a recoverable amount from a person (the *debtor*), the maker of the statement (who may be the debtor) may, in so far as the statement relates to a question about whether the debtor has a defence, ignore the possibility that a statutory declaration relating to an estimate may be given to the Commissioner, or an affidavit relating to an estimate may be filed, under Subdivision B, C or D of Division 8.

#### *Interpretation*

- (11) An expression used in paragraphs (1)(b) to (g) has the same meaning as in Division 8.

## **Subdivision G—Miscellaneous**

### **220AAZB Power of Commissioner to obtain information**

Section 264 applies, for the purposes of this Division, as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

Note: Section 264 empowers the Commissioner to obtain information.

### **220AAZC Declarations**

A form that is approved by the Commissioner for the purposes of this Division may be required to contain a declaration by the person using the form.

### **220AAZD Application of this Division to partnerships**

This Division applies to a partnership as if the partnership were a person, but it applies with the following changes:

- (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;
- (b) the partners are jointly and severally liable to pay an amount that would be payable by the partnership;
- (c) any offence against this Division that would otherwise be committed by the partnership is taken to have been committed by each partner who:
  - (i) aided, abetted, counselled or procured the relevant act or omission; or
  - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

### **220AAZE Application of this Division to unincorporated companies**

- (1) This Division applies to an unincorporated company as if the company were a person, but it applies with the following changes:
-

- (a) obligations that would be imposed on the company are imposed instead on each member of the committee of management of the company, but may be discharged by any of those members;
- (b) any offence against this Division that would otherwise be committed by the company is taken to have been committed by each member of the committee of management of the company who:
  - (i) aided, abetted, counselled or procured the relevant act or omission; or
  - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

### **220AAZF Review of decisions**

A person who is dissatisfied with any of the following decisions may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*:

- (a) a refusal to determine under subsection 220AAB(3) that a person is not a large remitter in relation to particular months;
- (b) a decision to revoke or vary a determination under subsection 220AAB(3) that a person is not a large remitter in relation to particular months;
- (c) a determination under subsection 220AAC(1) that a person is a large remitter in relation to particular months;
- (d) a refusal to determine under subsection 220AAJ(3) that a person is not a medium remitter in relation to particular months;
- (e) a decision to revoke or vary a determination under subsection 220AAJ(3) that a person is not a medium remitter in relation to particular months;
- (f) a determination under subsection 220AAK(1) that a person is a medium remitter in relation to particular months;
- (g) a decision referred to in subsection 220AAX(5) (remission of penalties).

## **220AAZG Interpretation**

In this Division:

***government body*** means the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory.

***person*** means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in a particular capacity of trustee;
- (d) a government body;
- (e) any other person.

Note 1: Section 220AAZD sets out additional rules about partnerships.

Note 2: Section 220AAZE sets out additional rules about unincorporated companies.

***prescribed payment*** has the same meaning as in Division 3A.

***reportable payment*** has the same meaning as in Division 1AA.

***salary or wages*** has the same meaning as in Division 2.

## **Part 2—Other amendments**

### ***Child Support (Registration and Collection) Act 1988***

#### **2 Paragraphs 50(2)(a) and (b)**

Omit “221YHJ(3) or”.

#### **3 Subsection 50(2) (note)**

Omit “subsections”, substitute “subsection”.

### ***Crimes (Taxation Offences) Act 1980***

#### **4 Subsection 3(1) (paragraph (d) of the definition of income tax)**

Omit “or 221F(5) or subparagraph 221F(12)(b)(ii)”, substitute “, section 220AAE, 220AAM or 220AAR or subsection 220AAV(3)”.

#### **5 Subsection 3(1) (paragraph (g) of the definition of income tax)**

Omit “subsection 220AG(1), 220AS(2), 220AT(3), 221YHDC(2) or 221YHH(1), subparagraph 221YHJ(1)(b)(ii)”, substitute “subsection 220AS(2) or 221YHH(1)”.

### ***Income Tax Assessment Act 1936***

#### **6 Subsection 215(6) (paragraph (c) of the definition of tax)**

After “Division”, insert “1AAA,”.

#### **7 Subsection 218(6B) (definition of tax)**

After “Division” (wherever occurring), insert “1AAA,”.

#### **8 Section 220AB (table entry relating to obligation to send deductions to Commissioner)**

Repeal the entry.

**9 Section 220AB (table entry relating to statements accompanying deductions)**

Repeal the entry.

**10 At the end of section 220AB**

Add:

- (2) Amounts deducted under this Division must be paid to the Commissioner in accordance with Division 1AAA.

**11 Section 220AG**

Repeal the section.

**12 Section 220AI**

Repeal the section.

**13 Subsection 220AK(1)**

Repeal the subsection.

Note: The heading to section 220AK is altered by omitting “**statement and**”.

**14 Section 220AT**

Repeal the section.

**15 Subsection 220AU(1)**

Omit “or 220AT”.

Note: The heading to section 220AU is altered by omitting “**or for failure to send deductions to Commissioner**”.

**16 Subsection 220AU(3)**

Omit “, 220AT(3)(b) or subsection 220AT(4)”.

**17 Paragraph 220AU(4)(a)**

Omit “, subsection 220AS(3) or paragraph 220AT(3)(a)”, substitute “or subsection 220AS(3)”.

**18 Subsection 220AV(1)**

Repeal the subsection, substitute:

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*Principal amount*

(1) In this section:

*principal amount* means an amount of the kind referred to in paragraph 220AS(2)(a) as the undeducted amount.

**19 Subsection 220AV(3)**

Omit “, 220AT(3)(b) or subsection 220AT(4)”.

**20 Subsection 220AY(1) (definition of recoverable amount)**

Repeal the definition, substitute:

*recoverable amount* means an amount payable to the Commissioner under this Division other than by the Commonwealth.

**21 Subsections 220AY(9), (10) and (11)**

Repeal the subsections.

**22 Sections 221EC to 221EDC**

Repeal the sections.

**23 Subsection 221F(5)**

Repeal the subsection.

**24 Subsection 221F(7)**

Omit “(5)”, substitute “(5A)”.

**25 Subsections 221F(12), (12A) and (12B)**

Repeal the subsections.

**26 Subsection 221F(14)**

Repeal the subsection.

**27 Subsection 221N(1)**

Omit “, subparagraph 221F(12)(b)(i) or sub-subparagraph 221F(12)(b)(ii)(B)”.

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**28 Subsection 221N(2)**

Omit “, subsection 221EAA(2) or sub-subparagraph 221F(12)(b)(ii)(A)”, substitute “or subsection 221EAA(2)”.

**29 Paragraphs 221NA(1)(c) and (d)**

Omit “, subparagraph 221F(12)(b)(i) or sub-subparagraph 221F(12)(b)(ii)(B), as the case may be”.

**30 Subsection 221NA(2)**

Repeal the subsection, substitute:

(2) In subsection (1):

*principal amount* means an amount of the kind referred to in subsection 221EAA(1) as the undeducted amount.

**31 Subsections 221R(1AA) and (1B)**

Repeal the subsections.

**32 Subsections 221R(4) and (5)**

Repeal the subsections.

**33 Subsection 221YHAAG(4)**

After “Commissioner”, insert “under Division 1AAA”.

**34 Paragraph 221YHAAG(4)(a)**

Repeal the paragraph, substitute:

(a) forms that are sent, under Division 1AAA, with the deductions; and

**35 Subsections 221YHDC(2), (3) and (4)**

Repeal the subsections.

**36 Subsection 221YHDC(10)**

Omit “(4),”.

**37 Subsection 221YHDC(11)**

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Omit “(2),”.

**38 Paragraph 221YHDC(12)(a)**

Omit “(2), (4), ”.

**39 Section 221YHJ**

Repeal the section.

**40 Subsection 221YHL(1)**

Omit “, subparagraph 221YHJ(1)(b)(i) or sub-subparagraph 221YHJ(1)(b)(ii)(B),”.

**41 Subsection 221YHL(2)**

Omit “, subsection 221YHH(2) or sub-subparagraph 221YHJ(1)(b)(ii)(A)”, substitute “or subsection 221YHH(2)”.

**42 Paragraph 221YHLA(1)(c)**

Omit “, subparagraph 221YHJ(1)(b)(i) or sub-subparagraph 221YHJ(1)(b)(ii)(B), as the case requires”.

**43 Paragraph 221YHLA(1)(d)**

Omit “, subparagraph 221YHJ(1)(b)(i) or sub-subparagraph 221YHJ(1)(b)(ii)(B), as the case may be”.

**44 Subsection 221YHLA(2)**

Repeal the subsection, substitute:

(2) In subsection (1):

*principal amount* means an amount of the kind referred to subsection 221YHH(1) as the undeducted amount.

**45 Subsection 221YHN(1A)**

Repeal the subsection.

**46 Subsections 221YHN(5), (6) and (7)**

Repeal the subsections.

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**47 Subsection 221YHZD(4)**

Repeal the subsection, substitute:

- (4) Notwithstanding anything contained in any other law of the Commonwealth, or in any law of a State or Territory, an amount payable to the Commissioner by a trustee under subsection (3) has priority over all other debts, whether preferential, secured or unsecured.

**48 Division 8 of Part VI (heading)**

Repeal the heading substitute:

**Division 8—Prompt recovery, through estimates and payment agreements, of amounts not remitted under Divisions 1AAA, 3B and 4**

**49 Subsections 222AFA(1) and (4)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

**50 Subsection 222AFA(5)**

Omit “220AY, 221R, 221YHN”, substitute “220AAZA”.

**51 Subsection 222AFB(1) (paragraphs (aa), (a) and (b) of the definition of remittance provision)**

Repeal the paragraphs, substitute:

- (a) in Division 1AAA—sections 220AAE, 220AAM and 220AAR;

**52 Paragraph 222AHE(4)(b)**

Omit “that Division”, substitute “Division 1AAA, 3B or 4”.

**53 Paragraph 222AID(4)(b)**

Omit “that Division”, substitute “Division 1AAA, 3B or 4”.

**54 Paragraph 222AIH(3)(b)**

Omit “that Division”, substitute “Division 1AAA, 3B or 4”.

**55 Paragraph 222AJB(1)(b)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

Note: The heading to section 222AJB is altered by omitting “1AA, 2, 3A” and substituting “Division 1AAA”.

**56 Subsection 222AJB(3)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

**57 Subsection 222AJC(1)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

**58 Subsection 222ALA(6)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

**59 Subsection 222ALB(2)**

Omit “220AY(9), 221R(1B), 221YHN(5)”, substitute “220AAZA(9)”.

**60 Subsection 222ANA(1)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

**61 Subsection 222ANA(4)**

Omit “220AY, 221R, 221YHN”, substitute “220AAZA”.

**62 Subdivision B of Division 9 of Part VI (heading)**

Repeal the heading, substitute:

**Subdivision B—Company failing to remit under Division  
1AAA, 3B or 4**

**63 Paragraph 222AOB(1)(a)**

Omit “1AA, 2, 3A”, substitute “1AAA”.

**64 Subparagraph 222AOB(1)(a)(i)**

Omit “that Division”, substitute “Division 1AAA, 3B or 4”.

**65 Paragraph 222AOC(a)**

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Omit “1AA, 2, 3A”, substitute “1AAA”.

***Taxation (Interest on Overpayments and Early Payments) Act  
1983***

**66 Subsection 3(1) (paragraph (baa) of the definition of relevant tax)**

Omit “220AT(3)(a)”, substitute “220AAV(3)(a)”.

**67 Subsection 3(1) (paragraph (ba) of the definition of relevant tax)**

Omit “sub-subparagraph 221F(12)(b)(ii)(A)”, substitute “220AAV(3)(a)”.

**68 Subsection 3(1) (paragraph (bb) of the definition of relevant tax)**

Omit “sub-subparagraph 221YHJ(1)(b)(ii)(A)”, substitute “220AAV(3)(a)”.

## **Part 3—Application of amendments**

### **69 Application of amendments**

The amendments made by this Schedule apply to amounts deducted on or after 1 July 1998.

## Schedule 5—Technical amendments

### *Income Tax Assessment Act 1997*

#### **1 Section 42-65 (table item 12 (second occurring))**

Renumber the item as 12A.

#### **2 Section 42-205 (column 3 of table item 10B)**

Omit “disposal”, substitute “event”.

#### **3 Section 42-205 (after item 10C of the table)**

Insert:

- |     |  |  |
|-----|--|--|
| 10D | of which you are<br>the *quasi-owner<br>because of section<br>42-312 and for<br>which a *balancing<br>adjustment event<br>occurs because of<br>subsection<br>42-330(2) | the market value of the *plant<br>immediately before the<br>*balancing adjustment event,<br>worked out as if the plant had<br>been removed from the land |
|-----|--|--|

#### **4 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

## Schedule 6—CGT asset register

### *Income Tax Assessment Act 1936*

#### **1 Subsection 160ZZU(6)**

After “retain those records”, insert “, an asset register entry for those records, or a combination of both, containing all the information required to be contained in those records under that subsection,”.

#### **2 At the end of subsection 160ZZU(6)**

Add:

Note: *Asset register entry* is defined in subsection (9).

#### **3 Subsection 160ZZU(6C)**

After “retain the records”, insert “, an asset register entry for the records, or a combination of both, containing all the information required to be contained in the records under that subsection,”.

#### **4 At the end of subsection 160ZZU(6C)**

Add:

Note: *Asset register entry* is defined in subsection (9).

#### **5 At the end of section 160ZZU**

Add:

(9) If:

- (a) a person (the *record keeper*) is required by subsection (1), (3), (6A) or (6B) to keep records containing particular information; and
- (b) the record keeper makes an entry in a register, in English, setting out some or all of the information; and
- (c) a registered tax agent (within the meaning of section 251A) or other person approved by the Commissioner certifies in the register that the information entered is information from those records (so long as the person certifying is not the record keeper); and

- (d) the record keeper retains the records that contain the information entered for at least 5 years after the entry is certified;

the entry is an *asset register entry* for those records.

## **6 Application of amendments**

The amendments made by this Schedule apply in relation to any asset (whether acquired before or after the commencement of the Schedule) if the information in a register entry for the asset is certified under paragraph 160ZZU(9)(c) of the *Income Tax Assessment Act 1936* (as amended by this Schedule) on or after 1 January 1998.

## **Schedule 7—Franking of dividends and other distributions**

### **Part 1—Income Tax Assessment Act 1936 (streaming of dividends or other benefits)**

#### **1 Subsection 46F(2)**

Omit all the words from and including “in respect of”, substitute:  
in respect of:

- (a) the unfranked part of a dividend paid to the shareholder in the year of income; or
- (b) any part of a dividend, paid to the shareholder in the year of income, in respect of which a determination is made under paragraph 160AQCBA(3)(b).

#### **2 Paragraph 128B(3)(ga)**

After “section 160AQF”, insert “(other than a dividend in respect of which a determination is made under paragraph 160AQCBA(3)(b))”.

#### **3 Section 160APE**

Repeal the section, substitute:

##### **160APE What constitutes a class of shares**

- (1) A share in a company is taken for the purposes of this Part to be in the same class as another share in the company if the shares have the same, or substantially the same, rights.
- (2) The shares of all the partners in a partnership that is a corporate limited partnership for the purposes of Division 5A of Part III are taken to constitute the same class of shares.

#### **4 After subsection 160APP(1B)**

Insert:

- (1C) If a determination is made under paragraph 160AQCBA(3)(b) in respect of the dividend, no franking credit arises in respect of the dividend.

## 5 After section 160AQCB

Insert:

### 160AQCBA Further provisions relating to dividend streaming

#### *Definitions*

- (1) In this section, unless the contrary intention appears:

*advantaged shareholders* has the meaning given by subsection (2).

*franking credit benefit* has the meaning given by subsection (16).

*giving a benefit to a shareholder* has a meaning affected by subsection (15).

*greater benefit from franking credits* has a meaning affected by subsection (17).

#### *Application of section*

- (2) This section applies in respect of a company that, whether in the same franking year or in different franking years, streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its shareholders in such a way that:
- (a) franking credit benefits are, or apart from this section would be, received by shareholders (*advantaged shareholders*) who would, in the year of income in which the dividends are paid, derive a greater benefit from franking credits than other shareholders; and
  - (b) the other shareholders (*disadvantaged shareholders*) will receive lesser franking credit benefits or will not receive any franking credit benefits, whether or not they receive any other benefits.

*Commissioner to determine franking debit or deny franking credit*

- (3) The Commissioner may make, in writing, either of the following determinations:
- (a) a determination that a franking debit of the company arises in respect of each dividend or other benefit paid or given to a disadvantaged shareholder;
  - (b) a determination that no franking credit benefit is to arise in respect of any dividend paid to an advantaged shareholder.
- A determination does not form part of an assessment.

*Notice of determination*

- (4) If the Commissioner makes a determination under subsection (3), the Commissioner must:
- (a) in respect of a determination made under paragraph (3)(a)—serve notice in writing of the determination on the company;  
or
  - (b) in respect of a determination made under paragraph (3)(b)—serve notice in writing of the determination on the advantaged shareholder.

The notice may be included in a notice of assessment.

*Publication in national newspaper of determination in relation to listed public company denying franking credit benefit*

- (5) If the Commissioner makes a determination under paragraph (3)(b), in respect of a dividend paid by a listed public company within the meaning of the *Income Tax Assessment Act 1997*, the Commissioner is taken to have served notice in writing of the determination on the advantaged shareholder if the Commissioner causes the notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

*Evidence of determination*

- (6) The production of:
-

- (a) a notice of a determination; or
- (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;

is conclusive evidence of:

- (c) the due making of the determination; and
- (d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

*Objections*

- (7) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*Effect of determination of franking debit*

- (8) If the Commissioner makes a determination under paragraph (3)(a):
  - (a) on the day on which notice of the determination is served in writing on the company, a franking debit of the company arises in respect of the dividend or other benefit; and
  - (b) the amount of the franking debit is worked out in accordance with subsections (9) to (13).

*Franking debit in respect of partly franked dividend*

- (9) In the case of a franking debit in respect of a partly franked dividend, the amount of the franking debit is the difference between the franked amount and the amount that would have been the franked amount if the dividend had been franked to the maximum extent to which the dividends paid to the advantaged shareholders were franked.

*Franking debit in respect of unfranked dividend*

- (10) In the case of a franking debit in respect of an unfranked dividend, the amount of the franking debit is the amount that would have been the franked amount if the dividend had been franked to the
-

maximum extent to which the dividends paid to the advantaged shareholders were franked.

*Franking debit in respect of bonus shares from share premium account*

- (11) In the case of a franking debit in respect of a benefit by way of the issue of bonus shares from a share premium account, the amount of the franking debit is the amount that, if the company had paid a dividend of an amount equal to the amount debited to the share premium account in respect of the bonus shares and had franked the dividend to the maximum extent to which the dividends paid to the advantaged shareholders were franked, would have been the franked amount of the dividend.

*Franking debit in respect of any other benefit*

- (12) In the case of a franking debit in respect of any other benefit, the amount of the franking debit is the amount that, if the company had paid a dividend of an amount equal to the value of the benefit at the time when it was paid and had franked the dividend to the maximum extent to which the dividends paid to the advantaged shareholders were franked, would have been the franked amount of the dividend.

*Franking debit to be reduced by any franking debit under section 160AQCB*

- (13) If:
- (a) a franking debit of the company arises under paragraph (8)(a) in respect of a dividend or other benefit; and
  - (b) a franking debit of the company arises under section 160AQCB in respect of the same dividend or other benefit;
- the amount of the franking debit arising under paragraph (8)(a) is reduced by the amount of the franking debit arising under section 160AQCB.

*Effect of determination that no franking credit benefit is to arise*

- (14) If the Commissioner makes a determination under paragraph (3)(b), the determination has effect according to its terms.

*Meaning of giving a benefit to a shareholder*

- (15) A reference to ***giving a benefit to a shareholder*** in a company includes, but is not limited to, a reference to any of the following:
- (a) the issue to the shareholder of bonus shares in the company;
  - (b) the return to the shareholder of capital paid on shares in the company;
  - (c) the forgiveness of a debt owed by the shareholder to the company;
  - (d) the making of a payment of any kind, or the giving of any property, to the shareholder or to another person on the shareholder's behalf, whether the payment is made or the property is given by the company or another person.

*Where franking credit benefit is received*

- (16) A shareholder receives a ***franking credit benefit*** if:
- (a) the shareholder is a company and:
    - (i) a franking credit of the company arises under section 160APP; or
    - (ii) the company is entitled to a rebate under section 46 or 46A in respect of a franked dividend or a part of a franked dividend and would not be so entitled if the dividend were an unfranked dividend; or
  - (b) the shareholder is a trustee or a partnership and an amount is included in the shareholder's assessable income because of the operation of section 160AQT; or
  - (c) the shareholder is entitled to a rebate of tax under section 160AQU or 160AQY; or
  - (d) the shareholder is not liable to pay tax under section 128B on a dividend or a part of a dividend because of the operation of paragraph 128B(3)(ga).

*Meaning of greater benefit from franking credits*

- (17) The circumstances in which a shareholder would, in a year of income, derive a *greater benefit from franking credits* than another shareholder include, but are not limited to, any of the following circumstances existing in relation to the other shareholder and not in relation to the first shareholder:
- (a) the shareholder is a non-resident;
  - (b) the amount of tax (if any) that, apart from this Part, would be payable by the shareholder is less than the amount of the rebate of tax to which the shareholder would be entitled under section 160AQU or 160AQY;
  - (c) the shareholder is a company that is unable to pay a dividend to its shareholders in the year of income because it has not made any profits or has not made sufficient profits to do so;
  - (d) the shareholder is a company for which no franking credits arise.

**6 At the end of Subdivision C of Division 2 of Part IIIA**

Add:

**160AQCNA Company that streams dividends or other benefits**

- (1) If:
- (a) a company streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its shareholders in a way mentioned in subsection 160AQCBA(2); and
  - (b) the Commissioner makes a determination under paragraph 160AQCBA(3)(a) in respect of a dividend paid or other benefit given by the company;
- then, on the day on which notice of the determination is served in writing on the company, a franking debit of the company will arise in respect of the dividend or other benefit under paragraph 160AQCBA(8)(a).
- (2) The amount of the franking debit is worked out as mentioned in paragraph 160AQCBA(8)(b).

## 7 After subsection 160AQT(1C)

Insert:

- (1D) If a determination is made under paragraph 160AQCBA(3)(b) in respect of the dividend, an amount is not included under this section in the assessable income of a shareholder.

## 8 At the end of section 160AQY

Add:

- (2) If a determination is made under paragraph 160AQCBA(3)(b) in respect of a dividend or distribution that is represented by the trust amount, the trustee is not entitled to a rebate of tax under subsection (1).

## 9 Application

- (1) Subject to subitem (3), the amendments made by items 1, 2 and 4 to 8 apply to dividends paid or other benefits given after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 (including dividends paid, or other benefits given, pursuant to a dividend streaming arrangement entered into before that time).
- (2) Subject to subitem (3), the amendment made by item 3 applies to franking years beginning after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.
- (3) However, the amendments made by this Part do not apply to:
- (a) dividends paid by a listed public company after the time referred to in subitem (1) if the dividends were declared before that time; or
  - (b) any other benefits given after that time that related to such dividends.
- (4) In subitem (3):

*listed public company* has the same meaning as in the *Income Tax Assessment Act 1997*.

## **Part 2—Income Tax Assessment Act 1936 (schemes to provide franking credit benefits)**

### **10 At the end of section 45Z**

Add:

- (6) If a determination under paragraph 177EA(5)(b) is made in respect of the assessable amount referred to in subsection (1), (2), (3) or (4), assume that the dividend referred to in paragraph (1)(f), (2)(e), (3)(f) or (4)(e), as the case may be, was an unfranked dividend.

### **11 At the end of paragraph 46F(2)(b)**

Add “or 177EA(5)(b)”.

### **12 Paragraph 128B(3)(ga)**

After “160AQCBA(3)(b)”, insert “or a dividend or a part of a dividend in respect of which a determination is made under paragraph 177EA(5)(b)”.

### **13 After subsection 160APP(1C)**

Insert:

- (1D) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of the dividend, no franking credit arises in respect of the dividend.
- (1E) If a determination is made under paragraph 177EA(5)(b) in respect of a part of the dividend, the franking credit that would otherwise arise in respect of the dividend is reduced by the same proportion as that part of the dividend bears to the whole of the dividend.

### **14 At the end of section 160APQ**

Add:

- (4) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of a dividend or distribution represented by the trust amount or partnership amount, no franking credit arises under

subsection (1), (1A) or (2) in respect of the dividend or distribution.

- (5) If a determination is made under paragraph 177EA(5)(b) in respect of a part of a dividend or distribution represented by the trust amount or partnership amount, the franking credit that would otherwise arise under subsection (1), (1A) or (2) in respect of the dividend or distribution is reduced by the same proportion as that part of the dividend or distribution bears to the whole of the dividend or distribution.

## **15 After section 160AQCNA**

Add:

### **160AQCNB Company that is a party to a scheme to enable franking credit benefits to be obtained**

- (1) If:
- (a) a company is a party to a scheme to which section 177EA applies; and
  - (b) the Commissioner makes a determination under paragraph 177EA(5)(a) in respect of a dividend paid by the company under the scheme;
- a franking debit of the company will arise under paragraph 177EA(10)(a).
- (2) The amount of the franking debit is worked out under paragraph 177EA(10)(b).

## **16 After subsection 160AQT(1D)**

Insert:

- (1E) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of the dividend, an amount is not included under this section in the assessable income of a shareholder.
- (1F) If a determination is made under paragraph 177EA(5)(b) in respect of a part of the dividend, the amount that would otherwise be included under this section in the assessable income of a

shareholder is reduced by the same proportion as that part of the dividend bears to the whole of the dividend.

### **17 At the end of section 160AQX**

Add:

- (2) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of a dividend or distribution that is represented by the trust amount, the taxpayer is not entitled to a rebate of tax under subsection (1).
- (3) If a determination is made under paragraph 177EA(5)(b) in respect of a part of a dividend or distribution that is represented by the trust amount, the rebate of tax to which the taxpayer would otherwise be entitled under subsection (1) is reduced by the same proportion as that part of the dividend or distribution bears to the whole of the dividend or distribution.

### **18 At the end of subsection 160AQY(2)**

Add:

- (3) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of a dividend or distribution that is represented by the trust amount, the trustee is not entitled to a rebate of tax under subsection (1).
- (4) If a determination is made under paragraph 177EA(5)(b) in respect of a part of a dividend or distribution that is represented by the trust amount, the rebate of tax to which the trustee would otherwise be entitled under subsection (1) is reduced by the same proportion as that part of the dividend or distribution bears to the whole of the dividend or distribution.

### **19 At the end of section 160AQYA**

Add:

- (3) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of a dividend or distribution that is represented by the trust amount or partnership amount, the taxpayer is not entitled to a rebate of tax under this section.

- (4) If a determination is made under paragraph 177EA(5)(b) in respect of a part of a dividend or distribution that is represented by the trust amount or partnership amount, the rebate of tax to which the taxpayer would otherwise be entitled under this section is reduced by the same proportion as that part of the dividend or distribution bears to the whole of the dividend or distribution.

## **20 At the end of section 160AQZ**

Add:

- (2) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of a dividend or distribution that is represented by the partnership amount, the taxpayer is not entitled to a rebate of tax under this section.
- (3) If a determination is made under paragraph 177EA(5)(b) in respect of a part of a dividend or distribution that is represented by the partnership amount, the rebate of tax to which the taxpayer would otherwise be entitled under this section is reduced by the same proportion as that part of the dividend or distribution bears to the whole of the dividend or distribution.

## **21 At the end of section 160AQZA**

Add:

- (4) If a determination is made under paragraph 177EA(5)(b) in respect of the whole of a dividend or distribution that is represented by the trust amount or partnership amount, the taxpayer is not entitled to a rebate of tax under this section.
- (5) If a determination is made under paragraph 177EA(5)(b) in respect of a part of a dividend or distribution that is represented by the trust amount or partnership amount, the rebate of tax to which the taxpayer would otherwise be entitled under this section is reduced by the same proportion as that part of the dividend or distribution bears to the whole of the dividend or distribution.

## **22 Subdivision C of Division 7 of Part IIIA (heading)**

Repeal the heading, substitute:

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**Subdivision C—Adjustments in relation to section 160AQT amounts**

**23 Paragraphs 160AR(1)(b), (1A)(b), (1B)(b), (2)(b), (3)(b) and (4)(b)**

After “arises”, insert “, or apart from subsection 160APQ(4) would arise,”.

**24 After section 160AR**

Insert:

**160ARAA Adjustment where franking rebate arises**

(1) If:

- (a) a trust amount is included in a taxpayer’s assessable income of a year of income; and
- (b) a determination under paragraph 177EA(5)(b) is made in respect of a distribution represented by the trust amount; and
- (c) except for the determination the taxpayer would be entitled to a franking rebate under section 160AQX, 160AQY, 160AQYA, 160AQZ or 160AQZA; and
- (d) no deduction has been allowed, or is allowable, from the taxpayer’s assessable income of any year of income under section 160AR in respect of the trust amount;

an amount equal to so much of the class A potential rebate amount, the class B potential rebate amount or the class C potential rebate amount that, except for the determination, would arise in relation to the trust amount as does not exceed the trust amount is allowable as a deduction from the taxpayer’s assessable income of the year of income.

(2) If:

- (a) a partnership amount is included in, or is allowable as a deduction from, a taxpayer’s assessable income of a year of income; and
  - (b) a determination under paragraph 177EA(5)(b) is made in respect of a distribution represented by the partnership amount; and
-

- (c) except for the determination, the taxpayer would be entitled to a franking rebate under section 160AQX, 160AQY, 160AQYA, 160AQZ or 160AQZA; and
  - (d) no deduction has been allowed, or is allowable, from the taxpayer's assessable income of any year of income under section 160AR in respect of the partnership amount;
- the class A potential rebate amount, the class B potential rebate amount or the class C potential rebate amount that, except for the determination, would arise in relation to the partnership amount is allowable as a deduction from the taxpayer's assessable income of the year of income.

## 25 After section 177E

Insert:

### 177EA Creation of franking debit or cancellation of franking credits

#### *Definitions*

- (1) In this section, unless the contrary intention appears:

***distribution***, in relation to an interest in shares, has the meaning given by subsection (15).

***franked***:

- (a) in relation to a dividend, means franked in accordance with section 160AQF; and
- (b) in relation to a distribution in respect of an interest in shares, has the meaning given by subsection (16).

***franking credit benefit*** has the meaning given by subsection (18).

***greater benefit from franking credits*** has a meaning affected by subsection (20).

***interest*** in shares has the meaning given by subsection (13).

***relevant circumstances*** has a meaning affected by subsection (19).

***relevant taxpayer*** has the meaning given by subsection (3).

*scheme for a disposition*, in relation to shares or an interest in shares, has a meaning affected by subsection (14).

*share* has a meaning affected by subsection (12).

*Expressions to have same meanings as in Part IIIAA*

- (2) Subject to subsection (1), expressions used in this section that are defined in Part IIIAA have the same meanings as in that Part.

*Application of section*

- (3) This section applies if:
- (a) there is a scheme for a disposition of shares, or an interest in shares, in a company; and
  - (b) a frankable dividend has been paid, or is payable or expected to be payable, in respect of the shares or a distribution has been paid, or is payable or expected to be payable, in respect of the interest, as the case may be; and
  - (c) the dividend or distribution was, or is expected to be, franked; and
  - (d) except for this section, a person (the *relevant taxpayer*) would receive, or could reasonably be expected to receive, franking credit benefits as a result of the dividend or distribution; and
  - (e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain a franking credit benefit.

*Bare acquisition of shares or interest in shares*

- (4) It is not to be concluded for the purposes of paragraph (3)(e) that a person entered into or carried out a scheme for a purpose mentioned in that paragraph merely because the person acquired shares, or an interest in shares, in the company.

*Commissioner to determine franking debit or deny franking credit*

- (5) The Commissioner may make, in writing, either of the following determinations:
- (a) if the company is a party to the scheme, a determination that a franking debit of the company arises in respect of each dividend paid to the relevant taxpayer;
  - (b) a determination that no franking credit benefit is to arise in respect of a dividend or a specified part of a dividend paid, or in respect of a distribution or a specified part of a distribution made, to the relevant taxpayer.

A determination does not form part of an assessment.

*Notice of determination*

- (6) If the Commissioner makes a determination under subsection (5), the Commissioner must:
- (a) in respect of a determination made under paragraph (5)(a)—serve notice in writing of the determination on the company; or
  - (b) in respect of a determination made under paragraph (5)(b)—serve notice in writing of the determination on the relevant taxpayer.

The notice may be included in a notice of assessment.

*Publication in national newspaper of determination in relation to listed public company denying franking credit benefit*

- (7) If the Commissioner makes a determination under paragraph (5)(b), in respect of a dividend paid by a listed public company within the meaning of the *Income Tax Assessment Act 1997*, the Commissioner is taken to have served notice in writing of the determination on the relevant taxpayer if the Commissioner causes the notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

*Evidence of determination*

- (8) The production of:
- (a) a notice of a determination; or
  - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;
- is conclusive evidence of:
- (c) the due making of the determination; and
  - (d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

*Objections*

- (9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*Effect of determination of franking debit*

- (10) If the Commissioner makes a determination under paragraph (5)(a):
- (a) on the day on which notice in writing of the determination is served on the company, a franking debit of the company arises in respect of the dividend; and
  - (b) the amount of the franking debit is such amount as is stated in the Commissioner's determination, being an amount that:
    - (i) the Commissioner considers reasonable in the circumstances; and
    - (ii) does not exceed the amount of the franking debit of the company arising under section 160AQB in respect of the dividend.

*Effect of determination that no franking credit benefit is to arise*

- (11) If the Commissioner makes a determination under paragraph (5)(b), the determination has effect according to its terms.

*Meaning of share*

- (12) A **share** includes:
- (a) the interest in a corporate limited partnership (within the meaning of Division 5A of Part III) that a partner in the partnership has; and
  - (b) if a company does not have a share capital—the interest in the company that a member has.

*Meaning of interest in shares*

- (13) A person has an **interest** in shares if:
- (a) the person has any legal or equitable interest in the shares; or
  - (b) the person is a partner in a partnership and:
    - (i) the assets of the partnership include, or will include, the shares; or
    - (ii) the partnership derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from dividends paid on the shares; or
  - (c) the person is a beneficiary of a trust (including a potential beneficiary of a discretionary trust) and:
    - (i) the shares form, or will form, part of the trust estate; or
    - (ii) the trust derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from dividends paid on the shares.

*Meaning of scheme for a disposition*

- (14) A **scheme for a disposition** of shares or an interest in shares includes, but is not limited to, a scheme that involves any of the following:
- (a) issuing the shares or creating the interest;
  - (b) entering into any contract, arrangement, transaction or dealing that changes or otherwise affects the legal or equitable ownership of the shares or interest;
  - (c) creating, varying or revoking a trust in relation to the shares or interest;

- (d) creating, altering or extinguishing a right, power or liability attaching to, or otherwise relating to, the shares or interest;
- (e) substantially altering any of the risks of loss, or opportunities for profit or gain, involved in holding or owning the shares or having the interest;
- (f) the shares or interest beginning to be included, or ceasing to be included, in any of the insurance funds of a life assurance company.

*Meaning of distribution*

- (15) A **distribution** in respect of an interest in shares is made if a partnership amount within the meaning of Part IIIAA, or a trust amount within the meaning of that Part, is included in, or is allowable as a deduction from, a person's assessable income.

*Meaning of franked distribution*

- (16) A distribution in respect of an interest in shares is taken to be **franked** if there is a class A flow-on franking amount, a class B flow-on franking amount or a class C flow-on franking amount in relation to the relevant partnership amount or trust amount.

*Assumptions to be made for purposes of subsections (15) and (16)*

- (17) In determining whether:
- (a) a partnership amount or a trust amount is included in, or allowable as a deduction from, a person's assessable income for the purposes of subsection (15); or
  - (b) there is a flow-on franking amount in relation to a partnership amount or a trust amount for the purposes of subsection (16);
- assume:
- (c) that sections 110C, 112A, 116FB, 282B, 283 and 297B had not been enacted; and
  - (d) that the definition of **eligible insurance policy** in section 116E were amended by omitting "an RA policy, a superannuation policy, a sickness policy, a funeral policy or an eligible policy" and substituting "an RA policy or a superannuation policy".
-

*When franking credit benefit is received*

- (18) A taxpayer receives a **franking credit benefit** if:
- (a) the taxpayer is a company and:
    - (i) a franking credit of the company arises under section 160APP or 160APQ; or
    - (ii) the company is entitled to a rebate under section 46 or 46A in respect of a franked dividend or a part of a franked dividend, or in respect of a franked distribution in respect of an interest in shares, and would not be so entitled if the dividend or distribution were not franked; or
  - (b) the taxpayer is a trustee or a partnership and an amount is included in the taxpayer's assessable income because of the operation of section 160AQT; or
  - (c) the taxpayer is entitled to a rebate of tax under section 160AQU, 160AQX, 160AQY, 160AQYA, 160AQZ or 160AQZA; or
  - (d) the taxpayer is not liable to pay tax under section 128B on a dividend or a part of a dividend because of the operation of paragraph 128B(3)(ga).

*Meaning of relevant circumstances of scheme*

- (19) The **relevant circumstances** of a scheme include the following:
- (a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding shares, or having interests in shares, in the company that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the relevant taxpayer or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any shares, or interests in shares, in the company);
  - (b) whether the relevant taxpayer would, in the year of income in which the dividend is paid or the distribution is made, derive a greater benefit from franking credits than other persons who hold shares, or have interests in shares, in the company;
-

- (c) if the scheme involves the payment of a franked dividend—whether, apart from the scheme, the company would have retained the franking credits or would have used the franking credits to pay a franked dividend to another person referred to in paragraph (b);
- (d) if the scheme involves the making of a franked distribution—whether, apart from the scheme, a franked distribution would have been made to another person referred to in paragraph (b);
- (e) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the relevant taxpayer in connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the franking credit benefits to be received by the relevant taxpayer;
- (f) whether a deduction is allowable or a capital loss is incurred in connection with the paying of a dividend or the making of a distribution under the scheme;
- (g) whether a dividend paid or a distribution made under the scheme to the relevant taxpayer is equivalent to the receipt by the relevant taxpayer of interest or of an amount in the nature of, or similar to, interest;
- (h) the period for which the relevant taxpayer held shares, or had an interest in shares, in the company;
- (i) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

*Meaning of greater benefit from franking credits*

- (20) The circumstances in which the relevant taxpayer would, in a year of income, derive a **greater benefit from franking credits** than another person include, but are not limited to, any of the following circumstances existing in relation to the other person and not in relation to the relevant taxpayer:
  - (a) the person is a non-resident;
  - (b) the amount of tax (if any) that, apart from Part IIIAA, would be payable by the person is less than the amount of the rebate of tax to which the person would be entitled under section

160AQU, 160AQX, 160AQY, 160AQYA, 160AQZ or  
160AQZA;

- (c) the person is a company that is unable to pay a dividend to its shareholders in the year of income because it has not made any profits or has not made sufficient profits to do so;
- (d) the person is a company for which no franking credits arise.

## **26 Application**

- (1) The amendments made by items 11, 12 and 15 take effect immediately after the commencement of Part 1.
- (2) Subject to subitem (3), the amendments made by this Part apply to dividends paid or distributions made after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 (including dividends paid, or distributions made, pursuant to a scheme entered into before that time).
- (3) However, the amendments made by this Part do not apply to:
  - (a) dividends paid by a listed public company after the time referred to in subitem (2) if the dividends were declared before that time; or
  - (b) any distributions made after that time that related to:
    - (i) dividends paid by a listed public company; or
    - (ii) dividends declared by a listed public company before that time.
- (4) In subitem (3):

*listed public company* has the same meaning as in the *Income Tax Assessment Act 1997*.

## **Schedule 8—Distributions from private companies**

### **Part 1—Income Tax Assessment Act 1936**

#### **1 After subsection 108(1)**

Insert:

(2AA) For the purposes of this section, the Commissioner must not consider an amount paid or credited by a private company to represent a distribution of profits to the extent that the private company:

- (a) is taken under section 109C, 109D or 109E to pay a dividend to the associated person because of the payment or crediting of the amount; or
- (b) would be taken under section 109C, 109D or 109E to pay a dividend to the associated person because of the payment or crediting of the amount, apart from sections 109J, 109L, 109N, 109NA, 109NB, 109P and 109Q.

Note: Sections 109C and 109D treat a private company as paying a dividend to an associated person (except a company) if the private company makes a payment or loan to the associated person on or after 4 December 1997. Section 109E treats a private company as paying a dividend if it does not receive minimum payments in relation to loans it made in earlier years (but on or after 4 December 1997).

#### **2 After Division 7 of Part III**

Insert:

### **Division 7A—Distributions to entities connected with a private company**

#### **Subdivision A—Overview of this Division**

#### **109B Simplified outline of this Division**

The following is a simplified outline of this Division:

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This Division treats 3 kinds of amounts as dividends paid by a private company:

- amounts paid by the company to a shareholder or shareholder's associate (see section 109C);
- amounts lent by the company to a shareholder or shareholder's associate (see sections 109D and 109E);
- amounts of debts owed by a shareholder or shareholder's associate to the company that the company forgives (see section 109F).

This treatment makes the amounts assessable income of the shareholder or associate (under section 44) and provides a basis for reducing the company's franking account credit (under section 160AQCNC).

However, some payments, loans and forgiven debts are not treated as dividends. (See Subdivisions C and D.)

An amount may be treated as a dividend even if it is paid or lent by the company to the shareholder or associate through one or more interposed entities. (See Subdivision E.)

If the total of the amounts is more than the company's distributable surplus, only the part of the total equal to the distributable surplus is treated as dividends. (See section 109Y.)

## **Subdivision B—Private company payments, loans and debt forgiveness are treated as dividends**

### **109C Payments treated as dividends**

*When private company is taken to pay a dividend*

- (1) A private company is taken to pay a dividend to an entity at the end of the private company's year of income if the private company pays an amount to the entity during the year and either:
- (a) the payment is made when the entity is a shareholder in the private company or an associate of such a shareholder; or
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the payment is made because the entity has been such a shareholder or associate at some time.

Note 1: Some payments do not give rise to dividends. See Subdivision D.

Note 2: A private company is treated as making a payment to a shareholder or shareholder's associate if an interposed entity makes a payment to the shareholder or associate. See Subdivision E.

*Amount of dividend*

- (2) The dividend is taken to equal the amount paid, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

*What is a payment to an entity?*

- (3) In this Division, **payment** to an entity means:
- (a) a payment to the extent that it is to the entity, on behalf of the entity or for the benefit of the entity; and
  - (b) a credit of an amount to the extent that it is:
    - (i) to the entity; or
    - (ii) on behalf of the entity; or
    - (iii) for the benefit of the entity; and
  - (c) a transfer of property to the entity.

*Loans are not payments*

- (3A) However, a loan to an entity is not a payment to the entity.

*Value of payment by transfer of property*

- (4) The amount of a payment consisting of a transfer of property is the amount that would have been paid for the transfer by parties dealing at arm's length less any consideration given by the transferee for the transfer. (The amount of a payment is nil if the consideration given by the transferee equals or exceeds the amount that would have been paid at arm's length for the transfer.)

**109D Loans treated as dividends**

*Loans treated as dividends in year of making*

- (1) A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the **current year**) if:
- (a) the private company makes a loan to the entity during the current year; and
  - (b) the loan is not fully repaid by the end of the current year; and
  - (c) Subdivision D does not prevent the private company from being taken to pay a dividend because of the loan at the end of the current year; and
  - (d) either:
    - (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
    - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time.

Note 1: Some repayments cannot be counted for the purpose of this subsection. See section 109R.

Note 2: A private company is treated as making a loan to a shareholder or shareholder's associate if an interposed entity makes a loan to the shareholder or associate. See Subdivision E.

*Loans treated as dividends in year following that of making*

- (1A) A private company is taken to pay a dividend to an entity at the end of the private company's year of income (the **current year**) if:
- (a) the private company made a loan to the entity during the previous year of income; and
  - (b) it made the loan in the course of a winding-up of the private company by a liquidator; and
  - (c) the loan is not fully repaid by the end of the current year; and
  - (d) either:
    - (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
    - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time.

Subdivision D (other than section 109R) does not apply to loans covered by this subsection.

*Amount of dividend*

- (2) The amount of the dividend taken to have been paid is the amount of the loan that has not been repaid at the end of the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

*What is a loan?*

- (3) In this Division, **loan** includes:
- (a) an advance of money; and
  - (b) a provision of credit or any other form of financial accommodation; and
  - (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and

- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

*In which year of income is a loan made?*

- (4) For the purposes of this Division, a loan is made to an entity at the time the amount of the loan is paid to the entity by way of loan or anything described in subsection (3) is done in relation to the entity.

*Loans made before 4 December 1997*

- (5) If the terms of a loan made before 4 December 1997 are varied on or after that day by extending the term of the loan or increasing its amount, this Division applies to the loan as if it were made on the new terms when the variation occurred.

**109E Amalgamated loan from a previous year treated as dividend if minimum repayment not made**

*Amalgamated loan treated as dividend in first year in which payment is less than minimum yearly repayment*

- (1) A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the **current year**) if:
- (a) the private company made an amalgamated loan to the entity in an earlier year of income; and
  - (b) the amalgamated loan is not repaid at the end of the current year; and
  - (c) the current year is the first year of income in which:
    - (i) the amount paid to the private company during the year of income in relation to the amalgamated loan is less than the minimum yearly repayment of the amalgamated loan worked out under subsection (5) for the year of income; and
    - (ii) section 109Q does not apply.

Note: The amalgamated loan does not give rise to a dividend for that year if the minimum yearly repayment is not made and the entity satisfies the

Commissioner that treating the loan as a dividend would cause hardship. See section 109Q.

*Amount of dividend*

- (2) The amount of the dividend is taken to be the amount of the amalgamated loan that has not been repaid at the end of the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

*What is an amalgamated loan?*

- (3) For the purposes of this Division, a private company is taken to make a loan (the **amalgamated loan**) to a single entity during a year of income if the private company makes one or more loans (**constituent loans**) to the entity during the year, each of which:
- (a) is not fully repaid at the end of the year; and
  - (b) would cause the company to be taken under section 109D to pay a dividend to the entity at the end of the year, apart from section 109N; and
  - (c) has the same maximum term for the purposes of that section.
- The amount of the amalgamated loan is the sum of the amounts of the constituent loans that have not been repaid at the end of the year of income in which the amalgamated loan is made.

*Payments in relation to constituent loans treated as payments in relation to amalgamated loan*

- (4) For the purposes of this Division, a payment to the private company in relation to a constituent loan in a year of income after the one in which the constituent loan was made is taken to be a payment in relation to the amalgamated loan that takes account of the constituent loan.

*Minimum yearly repayment*

- (5) The minimum yearly repayment of an amalgamated loan for a year of income is the amount worked out using the formula in subsection (6). However, the minimum yearly repayment of an
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amalgamated loan for a year of income is the amount worked out under the regulations, if they provide for working it out.

*Formula for minimum yearly repayment*

- (6) The formula for the minimum yearly repayment for a year of income is:

$$\frac{\text{Amount of the loan not repaid by the end of the previous year of income} \times \text{Current year's benchmark interest rate}}{1 - \frac{1}{1 + \text{Current year's benchmark interest rate}}^{\text{Remaining term}}}$$

where:

**current year's benchmark interest rate** is the benchmark interest rate for the year of income for which the minimum yearly repayment is being worked out.

**remaining term** is the difference between:

- (a) the number of years in the longest term of any of the constituent loans that the amalgamated loan takes account of; and
- (b) the number of years between the end of the private company's year of income in which the loan was made and the end of the private company's year of income before the year of income for which the minimum yearly repayment is being worked out;

rounded up to the next higher whole number if the difference is not already a whole number.

Note: Section 109R provides that certain payments relating to a loan are not to be taken into account for the purposes of working out the minimum yearly repayment.

*Benchmark interest rate used to work out how much of a payment relating to amalgamated loan is a repayment*

- (7) Work out the amount of an amalgamated loan repaid by the end of a year of income on the basis that interest is payable on the balance
-

of the loan from time to time in a year of income at a rate equal to the benchmark interest rate for the year of income.

### 109F Forgiven debts treated as dividends

#### *Forgiven debt treated as dividend*

- (1) A private company is taken to pay a dividend to an entity at the end of the private company's year of income if all or part of a debt the entity owed the private company is forgiven in that year and either:
  - (a) the amount is forgiven when the entity is a shareholder in the private company, or an associate of such a shareholder; or
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the amount is forgiven because the entity has been such a shareholder or associate at some time.

Note: In some cases forgiving a debt does not give rise to a dividend. See section 109G.

#### *Amount of dividend*

- (2) The amount of the dividend equals the amount of debt forgiven, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

#### *When is a debt forgiven?*

- (3) An amount of a debt is **forgiven** for the purposes of this Division if and when the amount would be forgiven under section 245-35 (except subsection 245-35(4)) of Schedule 2C, assuming the amount were a commercial debt for the purposes of Division 245 of that Schedule.

Note: Division 245 of Schedule 2C applies to forgiveness of certain commercial debts.

*Discharge of debt by transfer of property is not forgiveness*

- (4) Despite subsection (3), an amount of debt is not forgiven for the purposes of this Division if the obligation to pay the amount is discharged by a payment to the creditor consisting of a transfer of property.

Note: Subsection 109C(4) explains how to work out the value of a payment consisting of a transfer of property.

*Debt forgiveness by debt parking*

- (5) An amount of debt an entity (the **debtor**) owes a private company is also **forgiven** for the purposes of this Division if:
- (a) the private company assigns the right to receive payment of the amount to another entity (the **new creditor**) who is either:
    - (i) an associate of the debtor; or
    - (ii) a party to an arrangement with the debtor about the assignment; and
  - (b) a reasonable person would conclude (having regard to all the circumstances) that the new creditor will not exercise the assigned right.

*Debt forgiveness by failure to rely on obligation to pay*

- (6) An amount of debt an entity (the **debtor**) owes a private company is also **forgiven** for the purposes of this Division if a reasonable person would conclude (having regard to all the circumstances) that the private company will not insist on the entity paying the amount or rely on the entity's obligation to pay the amount. (The amount is forgiven when a reasonable person would first reach that conclusion.)

*Forgiveness of amalgamated loan debt*

- (7) If a private company forgives an amount of debt resulting from a constituent loan taken into account in working out the amount of an amalgamated loan under subsection 109E(3), the private company is taken to forgive the same amount of the debt resulting from the amalgamated loan.

*This section operates on only the earliest debt forgiveness*

- (8) If the same debt is forgiven for the purposes of this Division at different times under different provisions of this section, this section operates on the first forgiveness only.

Example: Subsection (3) of this section provides that a debt is forgiven if it has not been paid by the time a statute of limitations prevents recovery of the debt. (It does this by applying subsection 245-35(2) of Schedule 2C.) The debt might already have been forgiven under subsection (6) of this section (because a reasonable person would have concluded earlier that the private company was not going to insist on payment). This section would apply to the forgiveness under subsection (6) but not the forgiveness under subsection (3).

### **Subdivision C—Forgiven debts that are not treated as dividends**

#### **109G Debt forgiveness that does not give rise to a dividend**

*Forgiveness of debt owed by company generally not treated as dividend*

- (1) A private company is not taken under this Division to pay a dividend because a debt owed to it by another company is forgiven.

Note: This does not apply to a debt owed by a company as trustee. (See section 109ZE.)

*Forgiveness of debts under Bankruptcy Act not treated as dividends*

- (2) A private company is not taken under this Division to pay a dividend because a debt is forgiven because the debtor becomes a bankrupt or because of Part X of the *Bankruptcy Act 1966*.

*Forgiveness of loan debt does not give rise to dividend if loan did give rise to dividend*

- (3) A private company is not taken under section 109F to pay a dividend at the end of a year of income because of the forgiveness of an amount of a debt resulting from a loan if, because of the loan, the private company is taken:
-

- (a) under section 109D or 109E to pay a dividend at the end of that year or an earlier one; or
- (b) under subsection 108(1) to pay a dividend on the last day of that year or an earlier one.

*Commissioner may treat forgiveness as not giving rise to dividend*

- (4) A private company is not taken under this Division to pay a dividend because of the forgiveness of a debt owed by an entity if the Commissioner is satisfied that:
  - (a) the debt was forgiven because payment of the debt would have caused the entity undue hardship; and
  - (b) when the entity incurred the debt, the entity had the capacity to pay the debt; and
  - (c) the entity lost the ability to pay the debt in the foreseeable future as a result of circumstances beyond the entity's control.

### **Subdivision D—Payments and loans that are not treated as dividends**

#### **109H Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

This Subdivision sets out rules about payments and loans that are not treated as dividends.

The following sorts of payments are not treated as dividends:

- payments of genuine debts (section 109J);
- payments to other companies (section 109K);
- payments that are otherwise assessable or that are specifically excluded from assessable income (section 109L).

The following sorts of loans are not treated as dividends:

- loans to other companies (section 109K);
- loans that are otherwise assessable (section 109L);
- loans made in the ordinary course of business on ordinary commercial terms (section 109M);
- loans that meet criteria for minimum interest rate and maximum term (section 109N);
- certain loans and distributions by liquidators (section 109NA);
- loans that are for the purpose of funding the purchase of certain shares or rights under an employee share scheme (section 109NB).

An amalgamated loan may not be treated as a dividend if the Commissioner is satisfied that doing so would cause undue hardship. (See section 109Q.)

This Subdivision also provides for some loan repayments and interest payments to private companies to be disregarded if they are made with the intention of borrowing a similar amount from a private company later. (See section 109R.)

### **109J Payments discharging pecuniary obligations not treated as dividends**

A private company is not taken under section 109C to pay a dividend because of the payment of an amount, to the extent that the payment:

- (a) discharges an obligation of the private company to pay money to the entity; and
- (b) is not more than would have been required to discharge the obligation had the private company and entity been dealing with each other at arm's length.

**109K Inter-company payments and loans not treated as dividends**

A private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan the private company makes to another company.

Note: This does not apply to a payment or loan to a company in its capacity as trustee. (See section 109ZE.)

**109L Certain payments and loans not treated as dividends**

- (1) A private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan the private company makes to an entity, to the extent that the payment or loan would be included in the entity's assessable income apart from this Division (as it operates in conjunction with section 44).
- (2) In addition, a private company is not taken under section 109C or 109D to pay a dividend because of a payment or loan that the private company made to an entity to the extent that a provision of this Act (other than this Division) has the effect that the payment or loan is not included in the entity's assessable income even though it would otherwise be included.

**109M Loans made in the ordinary course of business on arm's length terms not treated as dividends**

A private company is not taken under section 109D to pay a dividend because of a loan made:

- (a) in the ordinary course of the private company's business; and
- (b) on the usual terms on which the private company makes similar loans to parties at arm's length.

**109N Loans meeting criteria for minimum interest rate and maximum term not treated as dividends**

*Criteria*

- (1) A private company that makes a loan to an entity in one of the private company's years of income is not taken under section 109D

to pay a dividend at the end of the year of income because of the loan if:

- (a) the loan is made under a written agreement; and
- (b) the rate of interest payable on the loan for years of income after the year in which the loan is made equals or exceeds the benchmark interest rate for the year; and
- (c) the term of the loan does not exceed the term (the *maximum term*) for that kind of loan worked out under subsection (3).

*Benchmark interest rate*

- (2) The *benchmark interest rate* for the year of income is the Indicator Lending Rates—Bank variable housing loans interest rate last published by the Reserve Bank of Australia before the start of the year of income. However, the benchmark interest rate is the rate worked out under the regulations, if they provide for working it out.

*Maximum term*

- (3) The maximum term is:
  - (a) 25 years for a loan if:
    - (i) 100% of the value of the loan is secured by a mortgage over real property that has been registered in accordance with a law of a State or Territory; and
    - (ii) when the loan is first made, the market value of that real property (less the amounts of any other liabilities secured over that property in priority to the loan) is at least 110% of the amount of the loan; and
  - (b) 7 years for any other loan.

However, the maximum term for a loan is the period worked out under the regulations, if they provide for working out the maximum term for that kind of loan.

*Regulations may adopt rate as published from time to time*

- (4) Regulations made for the purposes of subsection (2) may apply, adopt or incorporate a rate published in an instrument after they are

made or take effect, or a rate contained in an instrument from time to time, despite:

- (a) subsection 49A(1) of the *Acts Interpretation Act 1901*; and
- (b) paragraph 11(b) of the *Legislative Instruments Act 1998*.

**109NA Certain liquidator's distributions and loans not treated as dividends**

A private company is not taken under section 109C or subsection 109D(1) to pay a dividend because of a distribution or loan made in the course of the winding-up of the company by a liquidator.

Note: However, if such a loan is not fully repaid by the end of the following year of income, the company will be taken to have paid a dividend under subsection 109D(1A).

**109NB Loans to purchase shares under employee share schemes not treated as dividends**

- (1) A private company is not taken under section 109D to pay a dividend because of a loan made solely for the purpose of enabling the shareholder or an associate of the shareholder to acquire qualifying shares or qualifying rights under an employee share scheme.
- (2) Expressions used in this section that are defined in Division 13A have the same meaning as in that Division.

**109P Amalgamated loans not treated as dividends in the year they are made**

A private company is not taken under section 109D to pay a dividend because of an amalgamated loan it makes.

Note: An amalgamated loan may be treated as a dividend under section 109E.

**109Q Commissioner may allow amalgamated loan not to be treated as dividend**

- (1) A private company is not taken under section 109E to pay a dividend at the end of one of its years of income (the *current year*) because of an amalgamated loan to an entity if:
  - (a) the amount paid to the private company by the entity in the current year in relation to the loan is less than the minimum yearly repayment of the loan for the current year worked out under subsection 109E(5); and
  - (b) the entity satisfies the Commissioner that:
    - (i) that amount was less than the minimum yearly repayment because of circumstances beyond the entity's control; and
    - (ii) the entity would suffer undue hardship if the private company were taken under section 109E to pay a dividend to the entity at the end of the current year because of the loan.
- (2) In deciding whether he or she is satisfied, the Commissioner must consider:
  - (a) the entity's capacity, at the end of the year of income in which the amalgamated loan was made, to repay the loan; and
  - (b) any circumstances that have reduced the entity's capacity to repay the loan; and
  - (c) whether the entity took all reasonable steps to make payments relating to the amalgamated loan during the current year equal to the minimum yearly repayment of the loan for the current year; and
  - (d) whether the entity has made payments relating to the loan as soon as possible after the current year equalling the difference between:
    - (i) the minimum yearly repayment for the current year; and
    - (ii) the amount of payments made during the current year relating to the loan.

### 109R Some payments relating to loans not taken into account

- (1) This section provides for some payments to a private company in relation to a loan the private company made to an entity not to be taken into account for the purpose of working out:
  - (a) how much of the loan has been repaid for the purposes of sections 109D and 109E (which treat amounts of loans that have not been repaid as dividends); or
  - (b) the minimum yearly repayment for the loan under subsection 109E(5).
- (2) A payment must not be taken into account if a reasonable person would conclude (having regard to all the circumstances) that when the payment was made the entity intended to obtain a loan from the private company of an amount similar to or larger than the payment.
- (3) Subsection (2) does not apply to a payment made by setting off against an amount payable in relation to the loan:
  - (a) a dividend payable by the private company to the entity; or
  - (b) PAYE earnings payable by the private company to the entity; or
  - (c) if the entity has transferred property to the private company—an amount equalling the difference between:
    - (i) the amount that a party at arm's length from the entity would have paid for the transfer of the property to the party; and
    - (ii) the amount that the private company has already paid the entity (by way of set-off or otherwise) for the transfer.
- (4) Nor does subsection (2) apply to a payment made on behalf of the entity (the *borrower*) by another entity paying to the private company an amount that:
  - (a) is payable by the other entity to the borrower; and
  - (b) is assessable income of the borrower for the year of income in which the payment was made or an earlier year of income.

## **Subdivision E—Payments and loans through interposed entities**

### **109S Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

This Subdivision allows a private company to be taken under Subdivision B to pay a dividend to an entity (the *target entity*) if an entity interposed between the private company and the target entity makes a payment or loan to the target entity under an arrangement involving the private company.

This result is achieved by treating the private company as making a payment or loan of an amount determined by the Commissioner to the target entity (according to whether the interposed entity made a payment or loan to the target entity). (See sections 109V (for payments) and 109W (for loans).)

The arrangement must involve the private company and one or more interposed entities in making payments or loans or giving loan guarantees for the purpose of the target entity receiving a payment or loan from an interposed entity. (See sections 109T, 109U, 109UA and 109UB.)

If the target entity repays a fraction of the loan made by the interposed entity, the target entity is treated as repaying the same fraction of the loan taken to have been made by the private company. (See subsection 109W(3).)

Some provisions that prevent payments or loans from giving rise to dividends do not apply to payments or loans this Subdivision treats a private company as making. (See section 109X.)

### **109T Payments and loans by a private company to an entity through one or more interposed entities**

- (1) This Division operates as if a private company makes a payment or loan to an entity (the *target entity*) as described in section 109V or 109W if:
-

- (a) the private company makes a payment or loan to another entity (the *first interposed entity*) that is interposed between the private company and the target entity; and
- (b) a reasonable person would conclude (having regard to all the circumstances) that the private company made the payment or loan solely or mainly as part of an arrangement involving a payment or loan to the target entity; and
- (c) either:
  - (i) the first interposed entity makes a payment or loan to the target entity; or
  - (ii) another entity interposed between the private company and the target entity makes a payment or loan to the target entity.

*This section operates regardless of certain factors*

- (2) For the purposes of this section, it does not matter:
  - (a) whether the interposed entity made the payment or loan to the target entity before, after or at the same time as the first interposed entity received the payment or loan from the private company; or
  - (b) whether or not the interposed entity paid or lent the target entity the same amount as the private company paid or lent the first interposed entity.

*This section does not operate if the payment or loan to the first interposed entity is treated as a dividend*

- (3) This Division does not operate as described in subsection (1) (and sections 109V and 109W) if the private company is taken under Subdivision B (as it applies apart from this Subdivision) to pay a dividend as a result of the payment or loan to the first interposed entity.

### **109U Payments and loans through interposed entities relying on guarantees**

- (1) This Division operates as if a private company makes a payment to an entity (the *target entity*) as described in section 109V if:
-

- (a) during a year of income the private company guarantees a loan made by another entity (the **first interposed entity**); and
- (b) a reasonable person would conclude (having regard to all the circumstances) that the private company gave the guarantee solely or mainly as part of an arrangement involving a payment or loan to the target entity; and
- (c) either:
  - (i) the first interposed entity that is a private company makes a loan to the target entity; or
  - (ii) another entity that is a private company interposed between the private company and the target entity makes a payment or loan to the target entity; and
- (d) the amount of the payment or the loan is greater than the amount worked out using the formula:

Distributable surplus – Subsection 109Y(3) amount

- (2) The amount of the payment from the private company to the target entity (as worked out under section 109V) is to be reduced by the amount worked out using the formula:

Distributable surplus – Subsection 109Y(3) amount

- (3) In the formulas in paragraph (1)(d) and subsection (2):

**distributable surplus** means the distributable surplus (worked out under subsection 109Y(2)) for the interposed entity that made the payment or loan to the target entity for the year of income.

**subsection 109Y(3) amount** means the total of any amounts calculated under subsection 109Y(3) in relation to that interposed entity for the year of income (apart from as a result of the operation of this section).

*This section operates regardless of certain factors*

- (4) For the purposes of this section, it does not matter:
  - (a) whether the interposed entity made the payment or loan to the target entity before, after or at the same time as the first interposed entity received the guarantee from the private company; or

- (b) whether or not the interposed entity paid or lent the target entity the same amount as the private company guaranteed.

### **109UA Certain liabilities under guarantees treated as payments**

- (1) Section 109T operates as if one entity (the *first entity*) makes a payment to a second entity if the first entity guarantees a loan the second entity makes to a third entity (the *target entity*) and, as a result of the guarantee, the first entity has a liability (other than a contingent liability) to make a payment to the second entity.

Example: A private company guarantees a loan that a bank makes to a shareholder in the private company and the shareholder defaults on the loan. As a result, the company has a presently existing liability to make a payment to the bank. Section 109T operates as if the private company had made a payment to the bank, so the company is treated by section 109V as making a payment to the shareholder (because the bank is interposed between company and shareholder).

- (2) The amount of the payment (as worked out under section 109V) is to be reduced by any amount treated as a dividend as a result of the operation of section 109U in relation to the payment or loan made by the interposed entity to the target entity.
- (3) A private company is not taken under this Division to pay a dividend because of the operation of subsection (1) in relation to a guarantee if the Commissioner is satisfied that:
- (a) the target entity would suffer undue hardship if the private company were taken to pay a dividend to the entity because of the liability; and
  - (b) when the target entity entered into the loan, the entity had the capacity to pay the loan.
- (4) This section does not limit the operation of section 109T.

### **109UB Certain trust amounts treated as loans**

- (1) If:
- (a) a private company is, or has been, presently entitled to an amount from the net income of a trust estate; and
  - (b) the trustee has not paid the amount to the private company; and
-

(c) the trustee has made a loan to a shareholder of the private company, or an associate of such a shareholder after the time that the private company first became presently entitled to that amount;

the private company is taken to have made a loan to the shareholder or associate, at the time that the trustee made the loan.

(2) The amount of the loan is the lesser of the amount of the loan made by the trustee and the amount worked out using the formula:

Unpaid present entitlement – Previous notional loans

where:

***unpaid present entitlement*** means the total amount to which the private company is, or has been, presently entitled that the trustee has not paid.

***previous notional loans*** means the sum of amounts previously treated as a loan under this section as a result of its operation in relation to the unpaid present entitlement.

*Some provisions preventing loan giving rise to dividend do not apply to notional loan*

(3) Sections 109M and 109N do not apply to a loan that is taken to have been made under this section (so it must generally be taken into account for the purposes of working out whether the private company is taken under section 109D to have paid a dividend).

### **109V Amount of private company's payment to target entity through one or more interposed entities**

*Private company taken to pay if target entity is paid*

(1) If the target entity is paid an amount by the interposed entity, this Division operates as if the private company had paid the amount (if any) determined by the Commissioner to the target entity when the interposed entity paid the target entity.

*Determining the amount of the private company's payment*

- (2) In determining the amount of the payment the private company is taken to have made, the Commissioner must take account of:
- (a) the amount the interposed entity paid the target entity; and
  - (b) how much (if any) of that amount the Commissioner believes represented consideration payable to the target entity by the private company or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

**109W Private company's loan to target entity through one or more interposed entities**

*Private company taken to lend if target entity receives loan*

- (1) If the target entity is lent an amount by the interposed entity, this Division operates as if the private company had made a loan (the **notional loan**) of the amount (if any) determined by the Commissioner to the target entity when the interposed entity made the loan to the target entity.

Note: Subsection 109D(4) specifies the time at which a loan is made.

*How big is the notional loan?*

- (2) In determining the amount of the notional loan, the Commissioner must take account of:
- (a) the amount the interposed entity lent the target entity; and
  - (b) how much (if any) of that amount the Commissioner believes represented consideration payable to the target entity by the private company or any of the interposed entities for anything (assuming that the consideration payable equals that for similar transactions at arm's length).

*Notional repayments of notional loan*

- (3) When working out whether the private company is taken under section 109D to pay a dividend as a result of the notional loan, and the amount of any such dividend, assume that the target entity

repays an amount of the notional loan equal to the amount worked out using the formula:

$$\text{Repayment made by target entity to lender} \times \frac{\text{Amount of notional loan}}{\text{Amount actually lent to target entity}}$$

where:

*amount actually lent to target entity* is the amount the interposed entity lent to the target entity.

*repayment made by target entity to lender* is the amount of any repayment made by the target entity of the loan the interposed entity made to the target entity.

### **109X Payment or loan may give rise to dividend despite Subdivision D**

*Payment or loan not affected by being made through interposed entity*

- (1) Despite sections 109K and 109L, a private company may be taken under section 109C or 109D to pay a dividend as a result of this Subdivision treating the private company as making a payment or loan to an entity (the *target entity*), even if:
  - (a) the private company is treated that way because it makes a payment or loan to an entity that is a company interposed between the private company and the target entity; or
  - (b) some or all of the amount paid or lent by a private company to an entity interposed between the private company and the target entity is included in the interposed entity's assessable income for a year of income.

*Some provisions preventing loan giving rise to dividend do not apply to notional loan*

- (2) Sections 109M and 109N do not apply to a notional loan under section 109W (so it must generally be taken into account for the purposes of working out whether the private company is taken under section 109D to have paid a dividend).

## Subdivision F—General rules applying to all amounts treated as dividends

### 109Y Proportional reduction of dividends so they do not exceed distributable surplus

#### *Reduction of amounts of dividends*

- (1) If, apart from this section, the sum of all the dividends a private company is taken under this Division to pay at the end of the year of income would be more than the company's distributable surplus for that year, the amount of each of those dividends is the amount worked out under subsection (3).

#### *Distributable surplus*

- (2) A private company's **distributable surplus** for its year of income is the amount worked out using the formula:

$$\text{Net assets} - \frac{\text{Non-commercial loans}}{\text{loans}} - \frac{\text{Paid-up share value}}{\text{value}} - \frac{\text{Repayments of non-commercial loans}}{\text{non-commercial loans}}$$

where:

**net assets** means the amount (if any), at the end of the company's year of income, by which the company's assets (according to the company's accounting records) exceed the sum of:

- (a) the present legal obligations of the company to persons other than the company; and
- (b) the following provisions (according to the company's accounting records):
  - (i) provisions for depreciation;
  - (ii) provisions for annual leave and long service leave;
  - (iii) provisions for amortisation of intellectual property and trademarks;
  - (iv) other provisions prescribed under regulations made for the purposes of this subparagraph.

If the Commissioner considers that the company's accounting records significantly undervalue its assets or overvalue its

provisions, the Commissioner may substitute a value that the Commissioner considers is appropriate.

**non-commercial loans** is the total of any amounts the company is taken under section 108, 109D or 109E to have paid as dividends in earlier years of income as are shown as assets in the company's accounting records at the end of the year of income.

**paid-up share value** is the sum of:

- (a) the amounts paid up on the company's shares by the end of its year of income; and
- (b) the balance of its share premium account (if any) at the end of its year of income.

**repayments of non-commercial loans** means the total of:

- (a) any repayments to the company of loans that have been taken by section 108, 109D or 109E to be dividends; and
  - (b) amounts set off against loans that have been taken by section 108, 109D or 109E to be dividends, other than such amounts that are set off as a result of:
    - (i) a dividend (being a later dividend for the purposes of section 109ZC or a subsequent dividend for the purposes of subsection 108(2)) being paid by the company to the extent that the dividend has not been franked under section 160AQF; or
    - (ii) a loan, or a part of a loan, being forgiven.
- (3) The amount of a dividend that a private company is taken under this Division to pay is worked out using the formula:

$$\text{Provisional dividend} \times \frac{\text{Distributable surplus for year of income}}{\text{Total of provisional dividends}}$$

where:

**provisional dividend** is the amount of the dividend that the private company would be taken to pay apart from this section.

**total of provisional dividends** is the sum of all the dividends the private company is taken under this Division to pay at the end of the year of income apart from this section.

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*Requirement for private company to provide statement*

- (4) If this section sets the amount of a dividend taken under this Division to be paid by a private company to an entity at the end of a year of income, the private company must give the entity a written statement as soon as possible after the end of the year of income.

*What the statement must contain*

- (5) The statement must set out:
- (a) the private company's distributable surplus for the year of income; and
  - (b) the total amount the company would be taken under this Division to pay as dividends in the year of income apart from this section.

**109Z Characteristics of dividends taken to be paid under this Division**

If a private company is taken under this Division to have paid a dividend to an entity, the dividend is taken for the purposes of this Act to be paid:

- (a) to the entity as a shareholder in the private company; and
- (b) out of the private company's profits.

**109ZA No dividend taken to be paid for withholding tax purposes**

If a private company is taken under this Division to have paid a dividend to an entity, disregard the dividend for the purposes of:

- (a) Division 11A of Part III (which deals with withholding tax on dividends paid to non-residents and some other people); and
- (b) Division 4 of Part VI (which deals with collection of withholding tax).

### **109ZB Amount treated as dividend is not a fringe benefit**

- (1) This Division applies to a loan of an amount to an entity by a private company, even if the loan is made:
  - (a) to the entity in its capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
  - (b) in respect of the employment of an employee (as defined in that Act).

Note: This helps ensure that a loan is not a fringe benefit for the purposes of that Act.

- (2) This Division applies to a private company's forgiveness of a debt owed by an entity to the private company, even if:
  - (a) the entity owed the debt in its capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee; or
  - (b) the forgiveness occurs in respect of the employment of an employee (as defined in that Act).

Note: This helps ensure that the forgiveness of a debt is not a fringe benefit for the purposes of that Act.

- (3) However, this Division does not apply to a payment made to a shareholder, or an associate of a shareholder, in their capacity as an employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) or an associate of such an employee.

### **109ZC Treatment of dividend that is reduced on account of an amount taken under this Division to be a dividend**

- (1) This section sets out special rules for dealing with a dividend (the *later dividend*) distributed by a private company if some or all of the later dividend is set off against some or all of an amount taken under this Division to be a dividend previously paid by the company.

Example: Some or all of a dividend distributed by a private company to a shareholder might be set off to reduce a loan the company had previously made to the shareholder that was treated as a dividend under Subdivision B.

- (2) The amount of the later dividend set off is taken not to be a dividend for the purposes of this Act except Part IIIAA (which deals with franking of dividends). However, if the amount set off exceeds the amount of the later dividend that has not been franked under section 160AQF, the excess is still a dividend.

Note: This prevents double taxation by ensuring that the entity's assessable income does not include the amount of the later dividend that is not paid to the entity (except to the extent that that amount is franked).

- (3) Subsection (2) does not cause the amount taken not to be a dividend to be exempt income for the purposes of:
- (a) section 160APP (which gives companies receiving franked dividends a franking credit, except to the extent the dividends are exempt income); or
  - (b) section 160AQT (which includes amounts in the assessable income of entities receiving dividends that are not exempt income).

## **Subdivision G—Defined terms**

### **109ZD Defined terms**

In this Division:

***amalgamated loan*** has the meaning given by subsection 109E(3).

***arrangement*** has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

***associate*** has the meaning given by section 318.

***benchmark interest rate*** for a year of income has the meaning given by subsection 109N(2).

***distributable surplus*** of a company for a year of income has the meaning given by subsection 109Y(2).

***entity*** has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

***forgive*** a debt has the meaning given by section 109F.

*guarantee*, in relation to a loan, includes providing security for the loan.

*loan* has the meaning given by subsection 109D(3).

*PAYE earnings* has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

*payment* has the meaning given by subsection 109C(3).

### **109ZE Interpretation rules about entities**

The rules in section 960-100 of the *Income Tax Assessment Act 1997* about entities apply to this Division.

### **3 Subsection 160AEA(1) (paragraph (d) of the definition of passive income)**

After “108”, insert “or Division 7A of Part III”.

### **4 Section 160APA (at the end of the definition of frankable dividend)**

Add:

; (h) an amount taken to be a dividend under Division 7A of Part III.

### **5 After section 160AQCNC**

Insert:

### **160AQCNC Franking debits for private company distributions treated as dividends**

*Creation of class A franking debit*

- (1) If a private company is a life assurance company and is taken under Division 7A of Part III to have paid a dividend at the end of the company’s year of income, there arises on the last day of the year of income a class A franking debit of the company equal to the amount (if any) worked out under subsection (2).

Note: Division 7A of Part III treats a private company as having paid a dividend if it pays or lends an amount to a shareholder or shareholder's associate, or forgives the debt of a shareholder or shareholder's associate.

*Amount of class A franking debit*

- (2) The amount is the class A required franking amount worked out under subsection 160AQDB(1) for a dividend equal to the amount taken to have been paid as a dividend. (For this purpose, assume the dividend was paid on the last day of the company's year of income.)

*Creation of class C franking debit*

- (3) If a private company is taken under Division 7A of Part III to have paid a dividend at the end of the company's year of income, there arises on the last day of the year of income a class C franking debit of the company equal to the amount (if any) worked out under subsection (4).

*Amount of class C franking debit*

- (4) The amount is the class C required franking amount worked out under subsection 160AQDB(4) for a dividend equal to the amount taken to have been paid as a dividend. (For this purpose, assume the dividend was paid on the last day of the company's year of income.)

**6 After paragraph 268-40(5)(c) of Schedule 2F**

Insert:

- or (d) Division 7A of Part III (Distributions to entities connected with a private company);

**7 Application of amendment made by item 2**

- (1) The amendment made by item 2 applies to:
- (a) loans and payments made on or after 4 December 1997 (the *introduction day*); and
  - (b) debts forgiven on or after the introduction day (regardless of when the debts arose).
-

- (2) However, subsection 109D(5) of the *Income Tax Assessment Act 1936* extends to loans made before the introduction day.

Note: That subsection applies Division 7A of Part III of that Act to loans made before the introduction day, but varied after that day, as if the loans had been made when they were varied.

- (3) However, sections 109U, 109UA and 109UB of the *Income Tax Assessment Act 1936* only apply to payments or loans made after 4.00 pm, by legal time in the Australian Capital Territory, on 27 March 1998.

## **8 Application of amendments made by items 3, 4 and 5**

The amendments made by items 3, 4 and 5 apply for the year of income containing 4 December 1997, and later years of income.

## **9 Application of amendment made by item 6**

The amendment made by item 6 applies to dividends taken to be paid under Division 7A of Part III of the *Income Tax Assessment Act 1936* on or after 4 December 1997.

## **10 Transitional—written loan agreements**

Division 7A of Part III of the *Income Tax Assessment Act 1936* applies in relation to the 1997-98 year of income as if paragraph 109N(1)(a) of that Act were repealed and the following paragraph were substituted:

- (a) the loan is covered by a written agreement that was made before 1 July 1998; and

## **Part 2—Fringe Benefits Tax Assessment Act 1986**

### **11 Subsection 136(1) (at the end of the definition of fringe benefit)**

Add:

- (q) anything done in relation to a shareholder in a private company (as those terms are defined in section 6 of the *Income Tax Assessment Act 1936*), or an associate of such a shareholder, that causes (or will cause) the private company to be taken under Division 7A of Part III of that Act to pay the shareholder or associate a dividend.

### **12 Application**

The amendment made by item 11 applies for the year of tax containing 4 December 1997, and later years of tax.

## **Part 3—Income Tax Assessment Act 1997**

### **13 Section 10-5 (table item headed “shareholders”)**

Omit “108”, substitute “108, Division 7A of Part III”.

## Schedule 9—Savings tax offset

### Part 1—Income Tax Assessment Act 1997

#### 1 Section 13-1 (table entry relating to eligible termination payments)

Before the sub-entry relating to superannuation contributions, insert:  
savings and investment income, payments included

in..... Subdivision  
61-A

#### 2 Section 13-1 (table, before the entry relating to shipping income)

Insert:

**savings and investment income**

..... Subdivision  
61-A

#### 3 Section 13-1 (table entry relating to superannuation)

Repeal the entry, substitute:

**superannuation**

undeducted contributions..... Subdivision  
61-A

see also *eligible termination payments*

#### 4 After the heading to Division 61

Insert:

#### Table of Subdivisions

- 61-A Savings tax offset
- 61-G Private health insurance tax offset

## **Subdivision 61-A—Savings tax offset**

### **Guide to Subdivision 61-A**

#### **61-50 What this Subdivision is about**

You get a tax offset equal to 15% (up to a maximum of \$450) of the sum of your savings and investment income and certain of your superannuation contributions. In most cases, you must be a resident individual to get the offset.

#### **Table of sections**

##### **Operative provisions**

- 61-55 Entitlement to the savings tax offset
- 61-60 What is savings and investment income?
- 61-65 Trustees also get the tax offset, if a beneficiary is under a legal disability
- 61-70 This tax offset is additional to the one under section 159SZ

*[This is the end of the Guide.]*

### **Operative provisions**

#### **61-55 Entitlement to the savings tax offset**

##### *Who gets the tax offset*

- (1) You are entitled to a \*tax offset for an income year if you are:
  - (a) an individual; and
  - (b) an Australian resident at any time during the income year.

Note: Trustees can also get the tax offset in some situations if a beneficiary of the trust is under a legal disability—see section 61-65.

*Amount of the tax offset*

- (2) The amount of the \*tax offset is 15% of the amount worked out as follows:

*Method statement*

- Step 1.* Take your \*savings and investment income (see section 61-60) for the income year.
- Step 2.* Add to the Step 1 amount any contributions to a \*complying superannuation fund or an \*RSA that you make during the income year to get superannuation benefits for yourself, or for your dependants in the event of your death.
- Step 3.* Subtract from the Step 2 amount the sum of your deductions for the income year, to the extent that the deductions relate to any or all of your \*savings and investment income.
- Step 4.* Subtract from the Step 3 amount any amount that you can deduct under section 82AAT of the *Income Tax Assessment Act 1936*, as specified in a notice that you give under that section, for the contributions counted at Step 2.
- Step 5.* If the final result is nil or negative, you don't get a tax offset under this section.

*Maximum tax offset allowed is \$450*

- (3) However, the maximum amount of \*tax offset you can get under this section for an income year is \$450.

*Deductions unrelated to any particular income*

- (4) To avoid doubt, deductions that are not related to the \*derivation by you of *any* particular amount of \*savings and investment

income are not subtracted under Step 3 of the method statement in subsection (2).

Example: A deduction under Division 30 for a gift that you make to a charity is not related to any particular savings and investment income of yours. Therefore, it is not subtracted under Step 3.

## 61-60 What is savings and investment income?

- (1) Your *savings and investment income* is the sum of the following:
- (a) all of your assessable income that is not \*PAYE earnings;
  - (b) any amount paid to you that is included in your assessable income and that is covered by paragraph (c) of the definition of *salary or wages* in subsection 221A(1) of the *Income Tax Assessment Act 1936*, so long as:
    - (i) the payment is from an \*Australian source and is not a rebatable benefit, or a rebatable pension, within the meaning of section 160AAA of that Act or a payment of the kind mentioned in subsection 52-105(2) of this Act; or
    - (ii) the payment is not from an \*Australian source and there is or has been a deductible amount in relation to the annuity concerned within the meaning of section 27H of the *Income Tax Assessment Act 1936*;
  - (c) so much of the amount of any eligible termination payment (as defined in section 27A of that Act) made to you as is included in your assessable income under section 27B or 27C of that Act.

Note: This basically covers annuities and pensions etc. that you purchased yourself.

### *Exceptions*

- (2) However, your \*savings and investment income does *not* include the following amounts:
- (a) payments covered by paragraph (pa) of the definition of *salary or wages* in subsection 221A(1) of the *Income Tax Assessment Act 1936*;

Note: That paragraph covers payments by way of remuneration or allowances to members of certain local government bodies.

- (b) \*assessable recoupments of amounts deductible under section 25-5 of this Act or section 69 of the *Income Tax Assessment Act 1936*;

Note: Those 2 sections basically deal with tax-related expenses.

- (c) \*assessable recoupments of amounts deductible under section 25-60 of this Act or section 74 of the *Income Tax Assessment Act 1936*.

Note: Those 2 sections basically deal with election expenses.

### **61-65 Trustees also get the tax offset, if a beneficiary is under a legal disability**

- (1) You are entitled to a \*tax offset for an income year if you are a trustee liable to pay tax under subsection 98(1) of the *Income Tax Assessment Act 1936* on a share of the trust's net income in respect of a beneficiary under a legal disability who is:
- (a) an individual; and
  - (b) an Australian resident at any time during the income year.

#### *Amount of the tax offset*

- (2) The amount of the \*tax offset, in respect of each such beneficiary, is 15% of that share.

#### *Maximum tax offset \$450 for each beneficiary*

- (3) However, the maximum amount of \*tax offset you can get under this section in respect of a particular beneficiary for an income year is \$450.

#### *No other trustees get the offset*

- (4) You are not otherwise entitled to the \*tax offset as a trustee.

**61-70 This tax offset is additional to the rebate under section 159SZ of the 1936 Act**

To avoid doubt, a \*tax offset under this Subdivision is in addition to any rebate you may be entitled to under section 159SZ of the *Income Tax Assessment Act 1936* (which deals with superannuation contributions by low income earners).

**5 Subsection 995-1(1)**

Insert:

*RSA* has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**6 Subsection 995-1(1)**

Insert:

*savings and investment income* has the meaning given by section 61-60.

## Part 2—Income Tax Assessment Act 1936

### 7 After section 160AD

Insert:

#### **160ADA Most tax offsets under the 1997 Assessment Act are treated as rebates**

A tax offset under a provision of the *Income Tax Assessment Act 1997* is taken to be a rebate for the purposes of this Act, unless that provision corresponds to a provision of this Act that provides for a credit.

Note: If the tax offset provision does correspond to a credit provision, the tax offset is treated as a credit: see section 160AHA.

### 8 After section 160AH

Insert:

#### **160AHA Some tax offsets under the 1997 Assessment Act are treated as credits**

A tax offset under a provision of the *Income Tax Assessment Act 1997* that corresponds to a provision of this Act that provides for a credit is taken to be a credit for the purposes of this Act.

Note: All other tax offsets under the *Income Tax Assessment Act 1997* are treated as rebates: see section 160ADA.

### 9 Paragraph 221YAB(1)(b) (definition of Qualifying rebates)

After “and 160ACE”, insert “of this Act and the tax offset under Subdivision 61-A of the *Income Tax Assessment Act 1997*”.

### 10 At the end of paragraph 221YCAA(2)(m)

Add:

Note: A reference in this Act to rebates generally also includes a reference to a tax offset under the *Income Tax Assessment Act 1997*: see section 160ADA of this Act.

**11 Paragraph 221YDA(1)(da)**

After “or 160AQZ”, insert “and the tax offset to which he or she will be entitled for that year of income under Subdivision 61-A of the *Income Tax Assessment Act 1997*”.

**12 Subparagraph 221YDA(2)(a)(ii)**

After “or 160AQZ”, insert “and the tax offset under Subdivision 61-A of the *Income Tax Assessment Act 1997*”.

**13 Subparagraph 221YDA(2)(a)(ii)**

After “those rebates”, insert “and that tax offset”.

## Part 3—Application and transitional

### 14 Application

The amendments made by this Schedule apply to assessments for the 1998-99 income year and later income years.

### 15 Transitional—lower tax offset for the 1998-99 income year

- (1) For the 1998-99 income year, the rate of tax offset specified in subsections 61-55(2) and 61-65(2) of the *Income Tax Assessment Act 1997* is taken to be 7.5%; not 15%.
- (2) Accordingly, for that income year, the maximum amount of tax offset specified in subsections 61-55(3) and 61-65(3) of that Act is taken to be \$225; not \$450.
- (3) In working out your provisional tax for the 1999-2000 income year under Division 3 of Part VI of the *Income Tax Assessment Act 1936*, work out your tax offset under Subdivision 61-A of the *Income Tax Assessment Act 1997* for the 1998-99 income year disregarding subitems (1) and (2) of this item.

### 16 Transitional—provisional tax for the 1998-99 income year

In working out your provisional tax for the 1998-99 income year under Division 3 of Part VI of the *Income Tax Assessment Act 1936*, it is to be assumed that:

- (a) Subdivision 61-A of the *Income Tax Assessment Act 1997* had applied to your assessment for the 1997-98 income year; and
- (b) subitems 15(1) and (2) had applied for that income year (as well as the 1998-99 income year); and
- (c) any tax offset under that Subdivision were worked out for the 1998-99 income year disregarding Steps 2 and 4 of the method statement in subsection 61-55(2) of that Act (which deal with certain superannuation contributions).

