Taxation Laws Amendment (Company Law Review) Act 1998

Act No. 63 of 1998 as amended

This compilation was prepared on 6 August 2002

[This Act was amended by Acts No. 117 of 1999 and No. 57 of 2002]

Amendments from Act No. 117 of 1999

[Schedule 1 (item 5) amended subsection 2 (2)
Schedule 1 (item 6) amended item 3 of Schedule 1
Schedule 1 (item 7) amended Schedule 2
Schedule 1 (items 5-7) commenced on 1 July 1998]

Amendments from Act No. 57 of 2002

[Schedule 12 (item 60) amended Item 5 of Schedule 6
Schedule 12 (item 61) amended Item 8 of Schedule 6
Schedule 12 (items 60 and 61) commenced on 1 July 1998]

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

[*Assented to 29 June 1998*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment (Company Law Review) Act 1998*.

2 Commencement

(1) Subject to this section, this Act commences on a day to be fixed by Proclamation.

However, if that day is the same day as the day on which Schedule 3 to the *Company Law Review Act 1997* commences, this Act commences immediately after item 32 of that Schedule commences.

(2) Items 23, 24, 54, 55, 56 and 57 of Schedule 5 commence immediately after the later of:

(a) the commencement of section 1 of this Act; and

(b) the commencement of section 1 of the *Taxation Laws Amendment Act (No. 7) 1997*.

(3) Schedule 6 commences immediately after the later of:

(a) the commencement of section 1 of this Act; and

(b) the commencement of section 1 of the *Tax Law Improvement Act (No. 1) 1998*.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General anti-avoidance rule

Income Tax Assessment Act 1936

1 After section 44

Insert:

45 Streaming of bonus shares and unfranked dividends

Application of section

(1) This section applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of shares (other than shares to which subsection 6BA(5) applies) and the payment of minimally franked dividends to its shareholders in such a way that:

(a) the shares are received by some shareholders but not all shareholders; and

(b) some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

(2) The value of the share at the time that the shareholder is provided with the share is taken, for the purposes of this Act, to be an unfranked dividend that is paid by the company, out of profits of the company, to the shareholder at that time. No entitlement to a rebate arises under section 46 or 46A in respect of the dividend.

(3) A dividend is ***minimally franked*** if it is not franked, or is franked to less than 10%, in accordance with section 160AQF or 160AQFA.

Expressions to have same meanings as in Part IIIAA

(4) Expressions used in this section that are defined in Part IIIAA have the same meanings as in that Part.

45A Streaming of dividends and capital benefits

Application of section

(1) This section applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of capital benefits and the payment of dividends to its shareholders in such a way that:

(a) the capital benefits are, or apart from this section would be, received by shareholders (the ***advantaged shareholders***) who would, in the year of income in which the capital benefits are provided, derive a greater benefit from the capital benefits than other shareholders; and

(b) it is reasonable to assume that the other shareholders (the ***disadvantaged shareholders***) have received, or will receive, dividends.

However, it does not apply if section 45 applies in relation to the streaming or in the circumstances set out in subsection (5).

Commissioner to determine that section 45C applies

(2) The Commissioner may make, in writing, a determination that section 45C applies in relation to the whole, or a part, of the capital benefits. A determination does not form part of an assessment.

Note: Subsection (6) limits the determination to a part of the capital benefit in certain cases.

Meaning of ***provision of capital benefit***

(3) A reference to the ***provision of a capital benefit*** to a shareholder in a company is a reference to any of the following:

(a) the provision to the shareholder of shares in the company;

(b) the distribution to the shareholder of share capital;

(c) something that is done in relation to a share that has the effect of increasing the value of a share (which may or may not be the same share) held by the shareholder.

*Meaning of **greater benefit** from capital benefits*

(4) The circumstances in which a shareholder would, in a year of income, derive a ***greater benefit*** from capital benefits than another shareholder include, but are not limited to, any of the following circumstances existing in relation to the first shareholder and not in relation to the other shareholder:

(a) some or all of the shares in the company held by the shareholder were acquired, or are taken to have been acquired, before 20 September 1985;

(b) the shareholder is a non-resident;

(c) the cost base (for the purposes of Part IIIA) of the relevant share is not substantially less than the value of the applicable capital benefit;

(d) the shareholder has a net capital loss for the year of income in which this capital benefit is provided;

(e) the shareholder is a private company who would not be entitled to a rebate under section 46F if the shareholder had received the dividend that was paid to the disadvantaged shareholder;

(f) the shareholder has income tax losses.

Certain capital benefits not covered

(5) This section does not apply where the capital benefit provided to the advantaged shareholders is the provision of shares and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, fully franked dividends.

Determination limited in certain cases

(6) If the capital benefit provided to the advantaged shareholders is the provision of shares and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, partly franked dividends, the Commissioner may only make a determination under subsection (2) in relation to so much of the capital benefit as the Commissioner considers relates to the unfranked part of the dividend.

45B Schemes to provide capital benefits

Purpose of section

(1) The purpose of this section is to ensure that certain payments that are paid in substitution for dividends are treated as dividends for taxation purposes.

Application of section

(2) This section applies if:
   (a) there is a scheme under which a person is provided with a capital benefit by a company; and
   (b) under the scheme, a taxpayer (the ***relevant taxpayer***), who may or may not be the person provided with the capital benefit, obtains a tax benefit; and
   (c) 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 a taxpayer (the ***relevant taxpayer***) to obtain a tax benefit.

Commissioner to determine that section 45C applies

(3) The Commissioner may make, in writing, a determination that section 45C applies in relation to the whole, or a part, of the capital benefit. A determination does not form part of an assessment.

Meaning of ***provided with a capital benefit***

(4) A reference to a person being ***provided with a capital benefit*** is a reference to any of the following:
   (a) the provision of shares in a company to the person;
   (b) the distribution to the person of share capital;
   (c) something that is done in relation to a share that has the effect of increasing the value of a share (which may or may not be the same share) that is held by the person.

*Meaning of **relevant circumstances** of scheme*

(5) The ***relevant circumstances*** of a scheme are:

(a) the extent to which the capital benefit is attributable to profits of the company or of an associate (within the meaning in section 318) of the company;

(b) the pattern of distributions of dividends, bonus shares and returns of capital by the company;

(c) whether the relevant taxpayer has capital losses that, apart from the scheme, would be carried forward to a later year of income;

(d) whether some or all of the shares in the company held by the relevant taxpayer were acquired, or are taken to have been acquired, by the relevant taxpayer before 20 September 1985;

(e) whether the relevant taxpayer is a non-resident;

(f) whether the cost base (for the purposes of Part IIIA) of the relevant share is not substantially less than the value of the applicable capital benefit;

(g) whether the relevant taxpayer is a private company who would not have been entitled to a rebate under section 46F if the taxpayer had been paid an equivalent dividend instead of the capital benefit;

(h) if the scheme involves the distribution of share capital—whether the interest held by the relevant taxpayer after the distribution is the same as the interest would have been if an equivalent dividend had been paid instead of the distribution of share capital;

(i) if the scheme involves the provision of shares and the later disposal of those shares or an interest in those shares—the matters set out in subsection (6);

(j) if the scheme involves an increase in the value of a share and the later disposal of that share or an interest in that share—the matters set out in subsection (6);

(k) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

(6) The matters are:

(a) the period for which the shares, or the interests in the shares, are held by the shareholder or the holder of the interest; and

(b) when the arrangement for the disposal of the shares, or interests in the shares, was entered into; and

(c) whether, and when, any arrangement (for example, an option or other derivative) affecting the incidence of the risks of loss and opportunities for profit or gain from holding the shares or interests in the shares was entered into; and

(d) if there is such an arrangement, the extent to which the risks or opportunities were borne by or accrued to the shareholder or holder of the interest, and the extent to which they were borne by or accrued to any other person, while the shareholder or holder of the interest held the shares or interests in the shares; and

(e) whether there was any change in those risks and opportunities for the shareholder or holder of the interest or any other person.

Meaning of ***obtaining a tax benefit***

(7) A relevant taxpayer ***obtains a tax benefit*** if an amount of tax payable, or any other amount payable under this Act, by the relevant taxpayer would, apart from this section, be less than the amount that would have been payable, or would be payable at a later time than it would have been payable, if the capital benefit had been a dividend.

Expressions to have same meanings as in Part IIIAA

(8) Expressions used in this section that are defined in Part IIIAA have the same meanings as in that Part.

45C Effect of determinations under sections 45A and 45B

(1) If the Commissioner makes a determination under subsection 45A(2) or 45B(3), the amount of the capital benefit, or the part of the benefit, is taken, for the purposes of this Act, to be an unfranked dividend that is paid by the company to the shareholder

or relevant taxpayer at the time that the shareholder or relevant taxpayer is provided with the capital benefit. No entitlement to a rebate arises under section 46 or 46A in respect of the dividend.

(2) The dividend is taken to have been paid out of profits of the company.

(3) If the Commissioner has made a determination under section 45B in respect of the whole or a part of a capital benefit and the Commissioner makes a further written determination that the capital benefit, or the part of the capital benefit, was paid under a scheme for which a purpose, other than an incidental purpose, was to avoid franking debits arising in relation to the distribution from the company:

(a) on the day on which notice of the determination is served in writing on the company, a class C franking debit of the company arises in respect of the capital benefit; and

(b) the amount of the franking debit is the amount that, if the company had paid a dividend of an amount equal to the amount of the capital benefit, or the part of the capital benefit, at the time when it was provided and had fully franked the dividend, would have been the franked amount of the dividend.

(4) The amount of the capital benefit is:

(a) if the benefit is the provision of a share—the value of the share at the time that it is provided; or

(b) if the benefit is an increase in the value of a share—the increase in the value of the share as a result of the change; or

(c) if the benefit is a distribution to the shareholder of share capital—the amount debited to the share capital account of the company in connection with the provision of the benefit.

Franking debit to be reduced by any franking debit under section 160AQCB, 160AQCNA or 160AQCNB

(5) If:

(a) a franking debit of the company arises under paragraph (3)(b) in respect of a capital benefit; and

(b) a franking debit of the company arises under section 160AQCB, 160AQCNA or 160AQCNB in respect of the same capital benefit;

the amount of the franking debit arising under paragraph (3)(b) is reduced by the amount of the franking debit arising under section 160AQCB, 160AQCNA or 160AQCNB.

Expressions to have same meanings as in Part IIIAA

(6) Expressions used in this section that are defined in Part IIIAA have the same meanings as in that Part.

45D Determinations under sections 45A, 45B and 45C

Notice of determination

(1) If the Commissioner makes a determination under section 45A, 45B or 45C, the Commissioner must give a copy of the determination to:

(a) the company; and

(b) for a section 45A determination—the advantaged shareholder referred to in that section; and

(c) for a section 45B determination—the relevant taxpayer referred to in that section.

The notice may be included in a notice of assessment.

Publication in national newspaper of determination in relation to listed public company

(2) If the Commissioner makes a determination under paragraph (1)(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

(3) 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

(4) 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*.

2 After section 160AQCNP

Insert:

160AQCNQ Company that is a party to a scheme involving capital benefits

(1) If:
  (a) a company is a party to a scheme to which section 45B applies; and
  (b) the Commissioner makes a determination under subsection 45C(3) in respect of the whole or a part of a capital benefit provided by the company under the scheme;

a franking debit of the company will arise under section 45C.

(2) The amount of the franking debit is worked out under paragraph 45C(3)(b) and subsection 45C(5).

3 Application

The amendments made by this Schedule apply to the provision of bonus shares or capital benefits on or after 1 July 1998 unless the provision was pursuant to a legally binding commitment entered into before 13 November 1997.

Schedule 2—Tainting rule

Income Tax Assessment Act 1936

1 Section 160APA

Insert:

company with higher tax shareholders, in relation to a tainted share capital account, means a company that is not a company with only lower tax shareholders in relation to the account.

2 Section 160APA

Insert:

company with only lower tax shareholders, in relation to a tainted share capital account, means a company whose only shareholders were:

(a) other companies (other than life assurance companies or registered organisations); or

(b) non-residents; or

(c) other companies (other than life assurance companies or registered organisations) and non-residents;

throughout the period beginning when the share capital account most recently became tainted under section 160ARDM and ending when the company makes an election under section 160ARDR or 160ARDW to untaint the account.

3 Section 160APA

Insert:

tainted share capital account means a share capital account that is tainted under section 160ARDM.

4 Section 160APA

Insert:

tainting amount means the sum of:

(a) the amount transferred to a company's share capital account when the share capital account most recently became tainted under section 160ARDM; and

(b) if the company subsequently transferred one or more further amounts to its share capital account—that further amount or those further amounts.

5 Section 160APA

Insert:

untainting tax means tax payable in accordance with section 160ARDT or 160ARDY.

6 After section 160AQCNQ

Insert:

160AQCNR Debits arising from untainting share capital accounts

Franking debits also arise under sections 160ARDQ, 160ARDS, 160ARDV and 160ARDX.

7 After Division 7A of Part IIIAA

Insert:

Division 7B—Tainted share capital accounts

Subdivision A—Tainting and untainting accounts, and distributions from tainted accounts

160ARDM Tainted share capital account

(1) A company's share capital account is ***tainted*** if the company transfers an amount to its share capital account from any of its other accounts.

Note: Certain distributions from tainted share capital accounts will be unfranked dividends for which no section 46 or 46A rebate is available.

(2) However, subsection (1) does not apply if the amount is a debt transferred under a debt/equity swap (within the meaning of section 63E).

160ARDN Untainting share capital account

A company's share capital account stops being tainted if the company makes an election under section 160ARDR or 160ARDW.

160ARDO Untainting tax does not cause franking credit

The payment of untainting tax as a result of an election under section 160ARDR or 160ARDW does not give rise to a franking credit.

Subdivision B—Companies other than life assurance companies

160ARDP Subdivision applies to companies other than life assurance companies

This Subdivision applies to companies other than life assurance companies.

160ARDQ Consequences of tainting share capital account—automatic franking debit

(1) If a company transfers an amount to its share capital account from any of its other accounts, a class C franking debit of the company arises on the day of the transfer.

(2) The amount of the debit is equal to the amount (if any) that would be calculated under subsection 160AQDB(4) as the class C required franking amount for a frankable dividend if:

(a) the dividend were paid on that day to a shareholder in the company; and

(b) the amount of the dividend were equal to the amount transferred to the share capital account.

160ARDR Election to untaint share capital account

(1) A company with a tainted share capital account may elect in writing to untaint that account. The election can be made at any time but cannot be revoked.

(2) If the company is a company with higher tax shareholders, the election must specify the amount of the franking debit to arise under subsection 160ARDS(2). The maximum amount that may be specified is the tainting amount less the sum of:

(a) the amount of the class C franking debit (if any) that arose under section 160ARDQ when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class C franking debits that arose under section 160ARDQ when that further amount or those further amounts were transferred.

160ARDS Consequences of election to untaint—franking debit

Company with only lower tax shareholders

(1) If a company with only lower tax shareholders elects to untaint its share capital account under section 160ARDR, a class C franking debit of the company arises on the day of the election equal to the tainting amount less the sum of:

(a) the amount of the class C franking debit (if any) that arose under section 160ARDQ when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class C franking debits that arose under section 160ARDQ when that further amount or those further amounts were transferred.

Company with higher tax shareholders

(2) If a company with higher tax shareholders elects to untaint its share capital account under section 160ARDR, a class C franking debit of the company arises on the day of the election equal to the amount specified in the election.

160ARDT Consequences of election to untaint—untainting tax for companies with higher tax shareholders

(1) If a company with higher tax shareholders elects to untaint its share capital account under section 160ARDR, the company is liable to pay tax equal to the difference between:

(a) the tax payable by top marginal rate shareholders (see subsection (2)); and

(b) the notional franking amount (see subsection (3)).

(2) In subsection (1), the ***tax payable by top marginal rate shareholders*** is the amount calculated in accordance with the formula:

$$\left(\begin{array}{c}\text{Tainting}\\ \text{amount}\end{array} + \begin{array}{c}\text{Notional}\\ \text{franking amount}\end{array}\right) \times \left(\begin{array}{c}\text{Top}\\ \text{marginal rate}\end{array} + \begin{array}{c}\text{Top medicare}\\ \text{levy rate}\end{array}\right)$$

where:

top marginal rate is the maximum rate specified in column 2 of the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* that applies for the year of income in which the election is made.

top medicare levy rate is 2.5%.

(3) In subsections (1) and (2), the ***notional franking amount*** is the amount calculated in accordance with the formula:

$$\text{Total franking debits} \times \left(\frac{36}{64}\right)$$

where:

total franking debits is the sum of:

(a) the amount of the class C franking debit (if any) that arose under section 160ARDQ when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class C franking debits that arose under section 160ARDQ when that further amount or those further amounts were transferred; and

(c) the amount of the class C franking debit (if any) specified in the election, that arose under subsection 160ARDS(2) when the election was made.

Subdivision C—Life assurance companies

160ARDU Subdivision applies to life assurance companies

This Subdivision applies to life assurance companies.

160ARDV Consequences of tainting share capital account—automatic franking debit

(1) If a company transfers an amount to its share capital account from any of its other accounts, a class A franking debit and a class C franking debit of the company arise on the day of the transfer.

(2) The amount of:

(a) the class A franking debit is equal to the amount (if any) that would be calculated under subsection 160AQDB(1) as the class A required franking amount for a frankable dividend if the assumptions in subsection (3) were made; and

(b) the class C franking debit is equal to the amount (if any) that would be calculated under subsection 160AQDB(4) as the class C required franking amount for a frankable dividend if the assumptions in subsection (3) were made.

(3) The assumptions for paragraphs (2)(a) and (b) are that:

(a) the dividend was paid on the day of the transfer to a shareholder in the company; and

(b) the amount of the dividend were equal to the amount transferred to the share capital account.

160ARDW Election to untaint share capital account

(1) A company with a tainted share capital account may elect in writing to untaint that account. The election can be made at any time but cannot be revoked.

(2) The election must specify:

(a) the amount of the class A franking debit to arise under paragraph 160ARDX(2)(a); and

(b) the amount of the class C franking debit to arise under paragraph 160ARDX(2)(b).

Company with only lower tax shareholders

(3) For a company with only lower tax shareholders, the sum of the franking debits specified in the election under subsection (2) must equal the tainting amount less the sum of:

(a) the amount of the class A franking debit (if any) that arose under section 160ARDV when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class A franking debits that arose under section 160ARDV when that further amount or those further amounts were transferred; and

(c) the amount of the class C franking debit (if any) that arose under section 160ARDV when the share capital account most recently became tainted; and

(d) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class C franking debits that arose under section 160ARDV when that further amount or those further amounts were transferred.

Company with higher tax shareholders

(4) The sum of the franking debits that may be specified under subsection (2) must not exceed the tainting amount less the sum of:

(a) the amount of the class A franking debit (if any) that arose under section 160ARDV when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class A franking debits that arose under section 160ARDV when that further amount or those further amounts were transferred; and

(c) the amount of the class C franking debit (if any) that arose under section 160ARDV when the share capital account most recently became tainted; and

(d) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class C franking debits that arose under section 160ARDV when that further amount or those further amounts were transferred.

160ARDX Consequences of election to untaint—franking debit

If a company elects to untaint its share capital account under section 160ARDW:

(a) a class A franking debit of the company arises on the day of the election equal to the amount of the class A franking debit specified in the election; and

(b) a class C franking debit of the company arises on the day of the election equal to the amount of the class C franking debit specified in the election.

160ARDY Consequences of election to untaint—untainting tax for companies with higher tax shareholders

(1) If a company with higher tax shareholders elects to untaint its share capital account under section 160ARDW, the company is liable to pay tax equal to the difference between:

(a) the tax payable by top marginal rate shareholders (see subsection (2)); and

(b) the notional franking amount (see subsection (3)).

(2) In subsection (1), the ***tax payable by top marginal rate shareholders*** is the amount calculated in accordance with the formula:

$$\left(\begin{array}{c}\text{Tainting}\\ \text{amount}\end{array} + \begin{array}{c}\text{Notional}\\ \text{franking amount}\end{array}\right) \times \left(\begin{array}{c}\text{Top}\\ \text{marginal rate}\end{array} + \begin{array}{c}\text{Top medicare}\\ \text{levy rate}\end{array}\right)$$

where:

top marginal rate is the maximum rate specified in column 2 of the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986* that applies for the year of income in which the election is made.

top medicare levy rate is 2.5%.

(3) In subsections (1) and (2), the ***notional franking amount*** is the amount calculated in accordance with the formula:

$$\left(\begin{array}{c}\text{Total class A}\\ \text{franking debits}\end{array} \times \left(\frac{39}{61}\right)\right) + \left(\begin{array}{c}\text{Total class C}\\ \text{franking debits}\end{array} \times \left(\frac{36}{64}\right)\right)$$

where:

total class A franking debits is the sum of:

(a) the amount of the class A franking debit (if any) that arose under section 160ARDV when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class A franking debits that arose under section 160ARDV when that further amount or those further amounts were transferred; and

(c) the amount of the class A franking debit (if any) specified in the election, that arose under subsection 160ARDX(2) when the election was made.

total class C franking debits is the sum of:

(a) the amount of the class C franking debit (if any) that arose under section 160ARDV when the share capital account most recently became tainted; and

(b) if the company subsequently transferred one or more further amounts to its share capital account from any of its other accounts—the amounts of any class C franking debits that arose under section 160ARDV when that further amount or those further amounts were transferred; and

(c) the amount of the class C franking debit (if any) specified in the election, that arose under subsection 160ARDX(2) when the election was made.

8 Application

The amendments made by this Schedule apply where, after the commencement of this item, an amount is transferred to the share capital account of a company with shares with no par value.

9 Transitional—merging of share capital account and share premium account

A company's share capital account does not become tainted under Division 7B of Part IIIAA of the *Income Tax Assessment Act 1936* merely because an amount standing to the credit of the company's share premium account (within the meaning of that Act) or capital redemption reserve becomes part of the company's share capital under Schedule 5 to the *Company Law Review Act 1998*.

9 Transitional—merging tainted share premium accounts

(1) This item applies if, apart from this item, a company's share capital account would become tainted under Division 7B of Part IIIAA of the *Income Tax Assessment Act 1936* because the amount (the ***tainted amount***) standing to the credit of a tainted share premium account becomes part of the company's share capital under Schedule 5 to the *Company Law Review Act 1998*.

(2) The share capital account is only tainted as a result of the tainted amount becoming part of the share capital account when the balance of the share capital account is equal to the net tainted amount.

Note: This does not prevent the share capital account from becoming tainted under section 160ARDM of the *Income Tax Assessment Act 1936* as a result of other amounts being transferred to it.

(3) No franking debit arises under section 160ARDQ of the *Income Tax Assessment Act 1936* as a result of the share capital account becoming tainted under subitem (2).

(4) Where:

(a) before a distribution that consists of one or more amounts the share capital account is not tainted; but

(b) after the distribution the share capital account is tainted;

the following proportion of each of the amounts is taken to have been paid from a tainted share account:

$$\frac{\text{Tainted amount of distribution}}{\text{Total amount of distribution}}$$

where:

tainted amount of distribution is the difference between the net tainted amount immediately before the distribution and the net tainted amount immediately after the distribution.

Note: Certain distributions from tainted share capital accounts will be unfranked dividends for which no section 46 or 46A rebate is available.

(5) In this item:

net tainted amount, in relation to an account, means the lesser of:

(a) the tainted amount;

(b) the lowest balance of the share capital account at any time after the commencement of this item.

tainted share premium account, in relation to a company, means an account, whether or not called a share premium account:

(a) to which the company has, in respect of premiums received by the company on shares issued by it, credited amounts, being the respective amounts of the premiums; and

(b) for which either of the following conditions is satisfied:

(i) any other amount is standing to the credit of the account;

(ii) an amount has been credited to the account in respect of a premium received by the company on a share issued by it (not being an amount that has been so credited immediately after the receipt by the company of the premium) which could not at all times be identified in the books of the company as such a premium.

Schedule 3—Definition of dividend, and redeemable preference shares

Income Tax Assessment Act 1936

1 Subsection 6(1) (paragraph (a) of the definition of dividend)

Omit “property;”, substitute “property; and”.

2 Subsection 6(1) (paragraph (b) of the definition of dividend)

Omit “and”.

3 Subsection 6(1) (paragraph (c) of the definition of dividend)

Repeal the paragraph.

4 Subsection 6(1) (paragraph (d) of the definition of dividend)

After “apply”, insert “or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share”.

5 Subsection 6(1) (paragraph (d) of the definition of dividend)

Omit “a share premium account of the company;”, substitute “the share capital account of the company; or”.

6 Subsection 6(1) (paragraph (e) of the definition of dividend)

Repeal the paragraph, substitute:

(e) moneys paid or credited, or property distributed, by a company for the redemption or cancellation of a redeemable preference share if:

(i) the company gives the holder of the share a notice when it redeems or cancels the share; and

(ii) the notice specifies the amount paid-up on the share immediately before the cancellation or redemption; and

(iii) the amount is debited to the company’s share capital account;

except to the extent that the amount of those moneys or the value of that property, as the case may be, is greater than the amount specified in the notice as the amount paid-up on the share; or

7 Subsection 6(4)

Repeal the subsection, substitute:

(4) Paragraph (d) of the definition of ***dividend*** in subsection (1) does not apply if, under an arrangement:

(a) a person pays or credits any money or gives property to the company and the company credits its share capital account with the amount of the money or the value of the property; and

(b) the company pays or credits any money, or distributes property to another person, and debits its share capital account with the amount of the money or the value of the property so paid, credited or distributed.

8 Application

The amendments made by this Schedule apply to dividends paid after the commencement of this item by a company with shares with no par value.

Schedule 4—Bonus shares

Income Tax Assessment Act 1936

1 Subsections 6BA(1) to (2)

Repeal the subsections, substitute:

(1) This section applies if a shareholder holds shares in a company (the ***original shares***) and the company issues other shares (the ***bonus shares***) in respect of the original shares.

(2) If the bonus shares are a dividend, or taken to be a dividend, the consideration for the acquisition of the shares for the purposes of this Act is so much of the dividend as is:

(a) included in the taxpayer's assessable income; and

(b) is not rebatable under section 46 or 46A.

Note: The heading to section 6BA is altered by omitting "**Cost**" and substituting "**Taxation treatment**".

2 Subsection 6BA(3)

Omit "In determining", substitute "If the bonus shares are:

(aa) issued for no consideration and are not a dividend or taken to be a dividend; or

(ab) rebatable under section 46 or 46A;

then for the purposes of this Act (other than section 26AAC), in determining:".

3 Subsections 6BA(4) to (9)

Repeal the subsections, substitute:

(4) A company issues shares for no consideration if:

(a) it credits its capital account with profits in connection with the issue of the shares; or

(b) it credits its capital account with the amount of any dividend to a shareholder and the shareholder does not have a choice

whether to be paid the dividend or to be issued with the shares.

This subsection does not limit the generality of subsection (1).

Note: A company that makes a credit covered by paragraph (a) or (b) will have a tainted share capital account.

(5) Subject to subsection (6), if a shareholder has a choice whether to be paid a dividend or to be issued shares and the shareholder chooses to be issued with shares:

(a) the dividend is taken to be credited to the shareholder; and

(b) the dividend is taken to have been paid out of profits; and

(c) subsection (2) applies in working out the consideration for the acquisition of the shares for the purposes of this Act.

However, the share capital account of the company does not become a tainted share capital account as a result of the crediting of the dividend to the share capital account.

(6) Subsection (5) does not apply if:

(a) a shareholder in a listed public company (within the meaning of the *Income Tax Assessment Act 1997*) has a choice whether to be paid a dividend (other than a minimally franked dividend within the meaning of subsection 45(3)) or to be issued shares and the shareholder chooses to be issued with shares; and

(b) the company does not credit the share capital account in connection with the issue of those shares.

Note: If subsection (5) does not apply because of this subsection, subsection (3) will apply.

4 Section 160APA (after paragraph (a) of the definition of frankable dividend)

Insert:

(a) a share that is taken to be a dividend under subsection 6BA(5); or

5 Application

The amendment made by this Schedule applies in relation to bonus shares provided after the commencement of this item by a company with shares with no par value.

Schedule 5—Definitional changes

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

amount paid-up on a share means the amount (if any), including any premium, paid on that share.

2 Subsection 6(1)

Insert:

amount unpaid on a share means the amount (if any) unpaid on that share.

3 Subsection 6(1)

Insert:

paid-up share capital of a company means the amount standing to the credit of the company's share capital account reduced by:

(a) the amount (if any) that represents amounts unpaid on shares; and

(b) the tainting amount (if any).

4 Subsection 6(1)

Insert:

share capital account, for the purposes of this Act other than the definition of ***paid-up share capital***, subsection 44(1B), section 46H, subsection 159GZZZQ(5), Division 7B of Part IIIAA and subsection 160ZA(7A), does not include an account that is tainted for the purposes of Division 7B of Part IIIAA.

5 Subsection 6(1) (definition of share premium account)

Repeal the definition.

6 Subsection 6(1)

Insert:

tainting amount has the meaning given by section 160APA.

7 Subsection 6(5)

Repeal the subsection.

8 Paragraph 44(1B)(a)

Omit “share premium account”, substitute “share capital account”.

9 Paragraph 44(1B)(b)

Omit “moneys paid up”, substitute “an amount paid-up”.

10 Paragraph 46H(1)(c)

Repeal the paragraph.

11 Subsection 46H(2)

Repeal the subsection.

12 Paragraph 46J(2)(a)

Omit “or a share premium account”.

13 Paragraph 46J(2)(b)

Omit “, or in share premiums, that have been permanently lost or have”, substitute “that has been permanently lost or has”.

14 Subsection 47(1)

Omit “paid up capital”, substitute “paid-up share capital”.

15 Subsection 47(3)

Omit “***paid up capital***”, substitute “***paid-up share capital***”.

16 Subsection 52A(8)

Omit “as payment of a premium in respect of the prescribed property,”.

17 Subsection 82L(1) (subparagraph (a)(ii) of the definition of convertible note)

Repeal the subparagraph.

18 Subparagraph 82L(3)(a)(ii)

Repeal the subparagraph.

19 Subsection 82Q(1)

Repeal the subsection, substitute:

(1) Shares in the capital of a company to which there are attached the same rights, including the following rights:

(a) rights in respect of voting;

(b) rights in respect of dividends;

(c) rights in respect of distribution of share capital in consequence of a reduction of share capital;

(d) rights in respect of distribution of the property of the company in the event of the winding up of the company;

constitute a class of shares for the purposes of this Division, and no other shares in the capital of the company constitute a class of shares for such purposes.

20 Subparagraph 82S(1)(d)(xiii)

Omit “the amount that, for the purposes of this subsection, is the minimum amount applicable to the share, that is to say, whichever amount is the greater of the nominal value of the share or”.

21 Subparagraph 82SA(1)(d)(xi)

Omit “the amount that, for the purposes of this subsection, is the minimum amount applicable to the share, that is to say, whichever amount is the greater of the nominal value of the share or”.

22 Paragraph 103A(3)(a)

Omit all the words after “three-quarters”, substitute “of the value of the shares in the company, other than shares entitled to a fixed rate of dividend only.”.

23 Paragraph 103A(5)(b)

Omit “paid-up”, substitute “market”.

24 Subsection 109Y(2) (definition of paid-up share value)

Repeal the definition, substitute:

> ***paid-up share value*** is the paid-up share capital of the company at the end of its year of income.

25 Subsection 120(1)

Omit “paid up capital”, substitute “value”.

26 Section 121EC

Omit all the words after “except”, substitute “if the shares are redeemable preference shares”.

27 Subparagraph 128J(3)(a)(i)

After “paid-up”, insert “share”.

28 Paragraph 128K(2)(a)

After “paid-up”, insert “share”.

29 Paragraph 128TC(3)(a)

Omit “(for example in the case of a redeemable preference share, the sum of the paid-up value of the share, any premium paid on the share and any other amount payable on a redemption of the share)”.

30 Paragraph 128TC(3)(b)

Omit “nominal”, substitute “market”.

31 Subsection 128TG(3)

Omit “paid up capital”, substitute “value”.

32 Paragraph 128TJ(c)

Omit “total paid-up capital of the SME (assuming all amounts payable for the issue had been paid)”, substitute “value of the SME”.

33 Paragraph 139FB(2)(a)

Repeal the paragraph, substitute:

(a) the amount unpaid on the share; and

34 Section 159GZA (definition of paid-up value)

Repeal the definition.

35 Paragraph 159GZG(1)(a)

Repeal the paragraph.

36 Paragraph 159GZG(1)(b)

Omit “any share premium account”, substitute “the share capital account”.

37 Subparagraph 159GZG(1)(b)(ii)

Omit “by not less than the amount standing to the credit of the share premium account”.

38 Subparagraph 159GZG(1)(e)(i)

Omit “the paid-up value of”, substitute “the amount paid-up on”.

39 Subparagraph 159GZG(2)(c)(i)

Omit “the paid-up value of”, substitute “the amount paid-up on”.

40 Paragraph 159GZG(6)(a)

Omit “paragraph (1)(a) the paid-up value of”, substitute “paragraph (1)(b)”.

41 Sub-subparagraph 159GZG(6)(a)(iii)(B)

Omit “the paid-up value of the share was less”, substitute “the amount unpaid on the share was more”.

42 Sub-subparagraph 159GZG(6)(b)(i)(D)

Omit “applies;”, substitute “applies; or”.

43 Subparagraphs 159GZG(6)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) an amount is distributed out of the share capital account to, or for the benefit of, an insider;

44 Paragraph 159GZG(6)(c)

Omit all the words after "under" (first occurring), substitute "paragraph (1)(b)".

45 Subparagraphs 159GZG(6)(d)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) the greatest amount unpaid on the eligible share at any time during the year of income; and

(ii) the amount unpaid on the eligible share at the end of the year of income;

46 Sub-subparagraphs 159GZG(6)(f)(i)(A) and (B)

Repeal the sub-subparagraphs, substitute:

(A) the greatest amount unpaid on the eligible share at any time during the year of income; and

(B) the amount unpaid on the eligible share at the end of the year of income;

47 Subparagraph 159GZG(7)(a)(ii)

Repeal the subparagraph, substitute:

(ii) in any other case—the amount (if any) that was taken into account under paragraph (1)(b) in relation to the share;

48 Subsection 159GZZZP(1)

Omit "so much of the purchase price as exceeds the sum of:", substitute "the difference between:".

49 Paragraph 159GZZZP(1)(a)

Repeal the paragraph, substitute:

(a) the purchase price; and

50 Paragraph 159GZZZP(1)(b)

Omit “a share premium account”, substitute “the share capital account”.

51 Paragraph 159GZZZQ(5)(a)

Omit “a share premium account,”.

52 Subsection 159GZZZQ(6)

Repeal the subsection.

53 Subsection 159GZZZQ(7)

Omit “accounts”, substitute “account”.

54 Section 160APA (definition of tax-exempt bonus share)

Repeal the definition, substitute:

> ***tax-exempt bonus share***, in relation to a company, means a share issued by the company in the circumstances mentioned in subsection 6BA(1).

55 Subsection 160AQCBA(11)

Repeal the subsection.

56 Subsection 160AQCBA(12)

After “any other benefit”, insert “(including the provision of shares)”.

57 Paragraph 160AQCBA(15)(b)

Omit “capital paid on shares”, substitute “paid-up share capital”.

58 Paragraph 160T(1)(d)

Omit “of the issued share capital of the company (excluding any part of that share capital”, substitute “, by value, of the shares of the company (excluding any shares”.

59 Paragraph 160ZA(7A)(b)

Repeal the paragraph.

60 Subsection 160ZA(7A)

Omit all the words from and including “An account continues”, to and including “purposes of this Act”.

61 Paragraph 160ZZPA(9)(b)

Omit “cancellation, or of a reduction in the paid-up value, of that share or of any other share in the company,”, substitute “cancellation of that share or of any other share in the company, or a distribution of the share capital of the company”.

62 Paragraph 160ZZPB(9)(b)

Omit “cancellation, or of a reduction in the paid-up value, of that share or of any other share in the company,”, substitute “cancellation of that share or of any other share in the company, or a distribution of the share capital of the company”.

63 Paragraph 273(2)(a)

Omit “paid-up value”, substitute “value”.

64 Subsection 272-10(2)

Omit “paid-up capital”, substitute “the paid-up share capital”.

65 Paragraph 272-50(2)(a)

Repeal the paragraph, substitute:

(a) it pays or credits money, or transfers property, of the company to the person, where the amount paid or credited, or the amount or value of the property, is debited against an amount standing to the credit of the share capital account of the company; and

66 Paragraph 272-90(10)(d)

Omit “paid-up capital”, substitute “paid-up share capital”.

67 Application

The amendments made by this Schedule apply to things done after the commencement of this item where the relevant company has shares with no par value.

Schedule 6—Amendment of the Income Tax Assessment Act 1997

Part 1—Bonus shares

1 Subsection 109-55(1) (table item 9)

Omit “because it owes you an amount, and the”, substitute “and no”.

2 Subsection 112-60

Omit “because of a dividend or other amount it owes you” (wherever occurring).

3 Section 130-15

Omit “because of an amount owed to you where the amount is” (wherever occurring).

4 Paragraph 130-20(1)(b)

Omit “to you because it owes an amount”.

5 Paragraph 130-20(2)(a)

Omit “amount that is a *dividend”, substitute “shares that are a *dividend (or taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*)”.

6 Paragraph 130-20(2)(b)

Omit “amount that is”, substitute “other units that are”.

7 At the end of subsection 130-20(2)

Add:

Note 3: Certain capital distributions are taken to be dividends under subsections 45(2) and 45C(1) if a company has entered into a capital streaming or dividend substitution arrangement.

8 Paragraph 130-20(3)(a)

Omit “amount owed to you by the company is a *dividend”, substitute “shares are a *dividend (or taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*)”.

9 Paragraph 130-20(3)(b)

Omit “amount owed to you by the trustee is”, substitute “other units are”.

10 After paragraph 130-20(3)(b)

Insert:

Note: Certain capital distributions are taken to be dividends under subsections 45(2) and 45C(1) if a company has entered into a capital streaming or dividend substitution arrangement.

11 Subsection 130-20(3) (table heading)

Omit “**amount**”.

12 After subsection 130-20(3)

Insert:

(3A) If only a part of a capital benefit that is bonus equities is a *dividend, or is taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*, you apportion the first element of your *cost base and *reduced cost base for the original equities in a reasonable way over both the original equities and the bonus equities.

13 Subsection 995-1(1) (definition of dividend)

After “and (5)”, insert “and 6BA(5)”.

Part 2—Definitional changes

14 Paragraph 118-20(6)(b)

Repeal the paragraph.

15 Paragraph 124-240(e)

Omit “total paid-up capital”, substitute “*paid-up share capital”.

16 Section 136-25 (paragraph (b) of table item 5)

Omit “of the issued share capital (except share capital”, substitute “, by value of the shares of the company (except shares”.

17 Subsection 995-1(1)

Insert:

> ***paid-up share capital*** of a company means the amount standing to the credit of the company’s share capital account reduced by the amount (if any) that represents amounts unpaid on shares.

18 Application

(1) The amendments made by Part 1 of this Schedule apply to things done after the commencement of this item.

(2) The amendments made by Part 2 of this Schedule apply to things done after the commencement of this item where the relevant company has shares with no par value.

Schedule 7—Amendment of the Company Law Review Act 1998

1 Subsection 2(5)

After “after”, insert “section 1 of”.

[*Minister's second reading speech made in—*
House of Representatives on 8 April 1998
Senate on 23 June 1998]

(58/98)