

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 6 September 1989

(Minister Assisting the Treasurer)

A BILL

FOR

An Act to amend the law relating to taxation

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

5 **1.** (1) This Act may be cited as the *Income Tax Assessment Amendment Act 1989*.

 (2) In this Act, "Principal Act" means the *Income Tax Assessment Act 1936*¹.

Commencement

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

Interpretation

3. Section 221A of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘early remitter’ has the meaning given by section 221EC;

‘eligible employer group’ has the meaning given by section 221ED;”.

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4. Before section 221F of the Principal Act the following sections are inserted:

Certain group employers to be early remitters

“221EC. (1) Subject to this section, a group employer is an early remitter in relation to a particular month (in this subsection called the ‘deduction month’) if any of the following paragraphs applies:

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(a) the total PAYE remittances of the group employer for any financial year ending on or after 30 June 1989 and before the deduction month exceeded \$5 million;

(b) both of the following subparagraphs apply:

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(i) at the end of any financial year (in this paragraph called the ‘threshold year’) ending on or after 30 June 1989 and before the deduction month, the group employer was included in an eligible employer group;

(ii) the total PAYE remittances, for the threshold year, of the employers that were included in that eligible employer group at the end of the threshold year exceeded \$5 million;

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(c) the deduction month is covered by a notice in force under subsection (5);

and the deduction month is not covered by a notice in force under subsection (3).

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“(2) A group employer:

(a) is not an early remitter in relation to any month before December 1989; and

(b) is not an early remitter because of paragraph (1) (a) or (b) in relation to July or August in a particular financial year unless the employer was an early remitter in relation to June of the previous financial year.

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“(3) The Commissioner may, by notice in writing served on a group employer:

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(a) determine that the employer is not an early 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.

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“(4) A notice under subsection (3) does not have effect in relation to a particular month unless the notice was served before the 15th day of the preceding month.

5 “(5) The Commissioner may, by notice in writing served on a group employer:

(a) determine that the employer is an early 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

10 (b) revoke or vary any such determination.

“(6) A notice under subsection (5) does not have effect in relation to any month earlier than the second month following the month in which the notice is served.

15 “(7) In exercising powers under subsection (5), 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 subparagraph 221F (5) (a) (i) in relation to deductions made by an employer;

20 (b) the extent (if any) to which the group employer concerned pays salary or wages to persons to whom salary or wages were previously paid by another employer;

(c) such other matters as the Commissioner considers relevant.

“(8) For the purposes of this section:

25 (a) a reference to the PAYE remittances of a group employer for a financial year is a reference to amounts that the group employer was required to pay to the Commissioner (either during or after the end of the financial year) under paragraph 221F (5) (a) (including that paragraph as varied under subsection 221F (7)) in respect of deductions made during the financial year; and

30 (b) a reference to the PAYE remittances, for a financial year, of the employers that were included in an eligible employer group at the end of the financial year is a reference to amounts that those employers were required to pay to the Commissioner (either during or after the end of the financial year) under paragraph 221F (5) (a) (including that paragraph as varied under subsection 221F (7)) in respect of deductions made during the financial year (whether or not the employers concerned were included in the group at times other than the end of the financial year).

40 “(9) For the purposes of any proceedings under, or arising out of, this Division (other than subsection 221F (12A)), an employer is not to be regarded as having been an early remitter in relation to a particular month if the defendant proves that the defendant did not know, and could not

reasonably be expected to have known, before the beginning of that month, that the employer would be an early remitter in relation to that month.

Eligible employer groups for determining early remitters

“221ED. (1) For the purposes of this Division, an eligible employer group consists of any collection of 2 or more companies each of which is a group company in relation to each of the others.

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“(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 subsidiary of the other company; or

(b) each of the companies is a subsidiary of the same company.

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“(3) For the purposes of this section, a company (in this subsection called the ‘**subsidiary company**’) is a subsidiary of another company (in this subsection called the ‘**holding company**’) if all the shares in the subsidiary company are beneficially owned by:

(a) the holding company; or

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(b) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or

(c) the holding company and a company that is, or 2 or more companies each of which is, a subsidiary of the holding company.

“(4) For the purposes of this section, if a company is a subsidiary of another company (including a company that is such a subsidiary because of another application or applications of this subsection), every company that is a subsidiary of the first-mentioned company is a subsidiary of that other company.”

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Group employers

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5. Section 221F of the Principal Act is amended:

(a) by omitting paragraph (5) (a) and substituting the following paragraph:

“(a) in respect of deductions made by the employer:

(i) if the deductions were made during the first 14 days of a month and the employer is an early remitter in relation to that month—pay to the Commissioner the amount of the deductions not later than the 21st day of that month; and

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(ii) in any other case—pay to the Commissioner the amount of the deductions not later than the seventh day of the month next succeeding the month in which the deductions were made;”;

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(b) by inserting after subsection (12) the following subsections:

“(12A) If:

- (a) because of paragraph 221EC (1) (a) or (b), a group employer is an early remitter in relation to September in any year; and
- (b) the employer is not an early remitter in relation to August in that year; and
- (c) the employer has not given to the Commissioner, on or before 14 August in that year, a notice in accordance with regulations made for the purposes of this subsection;

the employer is guilty of an offence, punishable on conviction by a fine not exceeding \$50, in respect of each day (including the day of a conviction of an offence against this subsection or any subsequent day) in the period commencing on 15 August in that year and ending on the day before the day on which the employer gives notice to the Commissioner in accordance with paragraph (c) of this subsection.

“(12B) In proceedings under, or arising out of, subsection (12A) in respect of a particular day, it is a defence if the defendant proves that it did not know, and could not reasonably be expected to have known, at least 7 days before that day, that the employer concerned was an early remitter in relation to the September to which the offence relates.”.

6. After section 221YC of the Principal Act the following section is inserted:

25 **Provisional tax for 1989-90 year**

“221YCAA. (1) For the purposes of the application of subsection 221YC (1) in ascertaining the amount of provisional tax payable by a taxpayer in respect of the year of income that commenced on 1 July 1989 (in this section called the ‘**current year of income**’), being a taxpayer who would, apart from this section and subsection 221YBA (5), be liable to pay provisional tax calculated in accordance with subsection 221YC (1) or (1A) in respect of the current year of income:

- (a) if paragraph 221YC (1) (a) applies to the taxpayer—the amount of provisional tax payable by the taxpayer in respect of the current year of income by virtue of that paragraph is the amount calculated using the formula:

Adjusted preceding year’s tax—Qualifying reductions

where:

Adjusted preceding year’s tax is the amount of income tax that would have been assessed in respect of the amount that would have been the taxable income of the taxpayer of the year of

income (in this section called the 'preceding year of income') that immediately preceded the current year of income if:

- (i) the taxable income of the taxpayer of the preceding year of income had, except for the purpose of determining the notional income for the purpose of section 59AB or 86, been increased by 10%; and 5
- (ii) where, for the purposes of Division 6AA of Part III:
 - (A) in the case of a taxpayer to whom Subdivision C of Division 3 of Part II of the *Income Tax Rates Act 1986* applied—the taxpayer's eligible taxable income of the preceding year of income exceeded \$416; or 10
 - (B) in the case of a taxpayer to whom Subdivision D of Division 3 of Part II of the *Income Tax Rates Act 1986* applied—the taxpayer had an eligible taxable income of the preceding year of income; 15
 - that eligible taxable income had been increased by 10%; and
- (iii) for the purposes of Division 16A of Part III (other than the purpose of calculating the average eligible taxable income of the taxpayer of the current year of income), the eligible taxable income of the taxpayer of the preceding year of income had been increased by 10%; and 20
- (iv) for the purposes of section 156, the deemed taxable income from primary production of the taxpayer of the preceding year of income had been increased by 10%; and 25
- (v) the *Income Tax Rates Act 1986*, other than Division 4 of Part II, as that Act applies to assessments in respect of the current year of income, had been in force and applied to assessments in respect of the preceding year of income; and 30
- (vi) the *Medicare Levy Act 1986*, as that Act applies to assessments in respect of the current year of income, had been in force and applied to assessments in respect of the preceding year of income; and
- (vii) where Division 16 of Part III applied in the taxpayer's assessment in respect of the preceding year of income—that Division had applied as if the conditions set out in subparagraphs (i) to (vi) (inclusive) were applicable for the purposes of making that assessment other than for the purpose of determining the average income of the taxpayer for the purposes of the application of that Division; and 35 40
- (viii) the taxpayer had not been entitled to any rebate (other than a rebate under section 156 applicable in relation to the taxpayer in accordance with subparagraph (vii)) or credit in the taxpayer's assessment; and 45

- (ix) the assessable income of the taxpayer of the preceding year of income had not included any net capital gain within the meaning of Part IIIA;

Qualifying reductions is the sum of:

- 5 (x) the rebates (other than a rebate under section 23AB, 79A, 79B, 156, 159J, 159K, 159L, 160AQU, 160AQX, 160AQY, 160AQYA or 160AQZ) and credits (other than a credit
10 under section 160AF) to which the taxpayer was entitled in the taxpayer's assessment in respect of income of the preceding year of income; and
- (xi) where the taxpayer was entitled to a particular rebate (in this subparagraph called the '**location rebate**') under section 23AB, 79A or 79B in the taxpayer's assessment in respect
15 of income of the preceding year of income:
- (A) if the location rebate was calculated by reference to one or more rebates (in this sub-subparagraph called the '**concessional rebates**') of a particular kind to which the taxpayer was entitled in respect of the
20 preceding year of income under section 159J, 159K or 159L—the sum of the location rebate and 20% of the increase (if any) in the amount of each concessional rebate of that kind provided for by the amendments of sections 159J, 159K and 159L made by the *Taxation Laws Amendment (Rates and
25 Rebates) Act 1989*; or
- (B) in any other case—the amount of the location rebate; and
- (xii) where the taxpayer was entitled to a rebate of a particular
30 kind under section 159J, 159K or 159L in the taxpayer's assessment in respect of income of the preceding year of income—the amount that would have been the amount of that rebate if increases in the amounts of rebates provided for by the amendments of sections 159J, 159K and 159L made by the *Taxation Laws Amendment (Rates and
35 Rebates) Act 1989* had been in force and had applied to assessments in respect of the preceding year of income; and
- (xiii) where the taxpayer was entitled to a credit under section 160AF in the taxpayer's assessment in respect of income
40 of the preceding year of income—the amount of that credit increased by 10%; and
- (xiv) where the taxpayer was entitled to a rebate under section 160AQU, 160AQX, 160AQY, 160AQYA or 160AQZ in the
45 taxpayer's assessment in respect of the income of the preceding year of income—the amount of that rebate multiplied by 429; and

(b) if paragraph 221YC (1) (b) applies to the taxpayer—the amount of provisional tax payable by the taxpayer in respect of the current year of income by virtue of that paragraph is:

(i) in a case where:

(A) paragraph 221YC (1) (a) would apply to the taxpayer in relation to the current year of income but for subsection 221YA (5); and 5

(B) the taxpayer is a taxpayer to whom paragraph 221YA (5) (a) applies, but paragraph 221YA (5) (b) does not apply, in relation to the current year of income; 10

the amount that would be payable by the taxpayer under paragraph 221YC (1) (a) (as affected by paragraph (a) of this subsection) if subsection 221YA (5) were not included in this Act and Division 16C of Part III were not applicable in relation to the preceding year of income; and 15

(ii) in a case where:

(A) paragraph 221YC (1) (a) would apply to the taxpayer in relation to the current year of income but for subsection 221YA (5); and 20

(B) the taxpayer is a taxpayer to whom paragraph 221YA (5) (b) applies, but paragraph 221YA (5) (a) does not apply, in relation to the current year of income;

the amount that would be payable by the taxpayer under paragraph 221YC (1) (a) (as affected by paragraph (a) of this subsection) if subsection 221YA (5) were not included in this Act and the taxable income of the taxpayer of the preceding year of income had been increased by the sum of the deductions allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAF A in the taxpayer's assessment in respect of the preceding year of income; and 25 30

(iii) in a case where:

(A) paragraph 221YC (1) (a) would apply to the taxpayer in relation to the current year of income but for subsection 221YA (5); and 35

(B) the taxpayer is a taxpayer to whom paragraphs 221YA (5) (a) and (b) apply in relation to the current year of income;

the amount that would be payable by the taxpayer under paragraph 221YC (1) (a) (as affected by paragraph (a) of this subsection) if: 40

(C) subsection 221YA (5) were not included in this Act; and

(D) Division 16C of Part III were not applicable in relation to the preceding year of income; and

(E) the amount that, but for this sub-subparagraph, would have been the taxable income of the taxpayer of the preceding year of income had been increased by the sum of the deductions allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAFA in the taxpayer's assessment in respect of the preceding year of income; and

(iv) in any other case—the amount that would be payable by the taxpayer under paragraph (a) of this subsection if the provisions of that paragraph applied to the taxpayer in relation to the taxpayer's income of the current year of income and:

(A) the taxable income of the taxpayer of the preceding year of income had been equal to the amount that the Commissioner estimates would have been the provisional income of the taxpayer if Division 16C of Part III were not applicable in relation to the preceding year of income increased by the sum of the deductions (if any) allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAFA in the taxpayer's assessment in respect of the preceding year of income; and

(B) for the purposes of Division 16 of Part III, the deemed taxable income from primary production of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines; and

(C) for the purposes of Division 6AA of Part III, the amount of the eligible taxable income of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines; and

(D) for the purposes of Division 16A of Part III, the amount of the eligible taxable income of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines.

“(2) A reference in this section to the amount of provisional tax payable by a taxpayer includes a reference to the amount that, but for subsection 221YBA (5), would be the provisional tax payable by the taxpayer.”.

Notification of instalments of provisional tax

7. Section 221YDAA of the Principal Act is amended by omitting from paragraph (4)(b) “\$5,000” and substituting “\$8,000”.

Provisional tax to be credited against other tax

8. Section 221YE of the Principal Act is amended:

- (a) by inserting “, or an instalment of provisional tax,” after “has paid provisional tax”;
- (b) by inserting “or that instalment” after “that provisional tax” 5
(wherever occurring);
- (c) by omitting paragraph (b) and substituting the following paragraph:
 “(b) either of the following amounts:
 - (i) provisional tax notified to the taxpayer;
 - (ii) an instalment of provisional tax due and payable by 10
the taxpayer;
 being provisional tax, or an instalment of provisional tax, in
 respect of income of the year next succeeding that year of
 income; and”.

Amendments consequential on the reduction in the provisional tax uplift factor 15

9. The Principal Act is amended as set out in the Schedule.

Application of amendments

10. (1) The amendment made by section 7 applies to instalments of provisional tax in respect of income of the year of income commencing on 1 July 1989 and of all subsequent years of income. 20

(2) The amendments made by section 9 apply in relation to provisional tax in respect of income of the year of income commencing on 1 July 1989 and of all subsequent years of income. 25

Transitional—section 221YE of the Principal Act

11. During the period commencing on 21 June 1989 and ending immediately before the commencement of this section, section 221YE of the Principal Act is to be taken to have had effect as if a reference in that section to provisional tax included a reference to an instalment of provisional tax. 30

SCHEDULE

Section 9

**AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936
CONSEQUENTIAL
ON THE REDUCTION IN THE PROVISIONAL TAX UPLIFT FACTOR****Sub-subparagraph 221YHAAC (2) (e) (i) (A):**

Omit "1.11", substitute "1.1".

Sub-subparagraph 221YHAAC (2) (e) (ii) (A):

Omit "1.11", substitute "1.1".

Sub-subparagraph 221YHAAC (2) (e) (iii) (A):

Omit "1.11", substitute "1.1".

Subparagraph 221YHAAD (2) (e) (iii):

Omit "1.11", substitute "1.1".

NOTE

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 105, 107 and 000, 1989; and No. 97, 1989 (as amended by No. 105, 1989).



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