

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1990

(*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 1990*.

(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;”.

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: 5

(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; 10

(b) both of the following subparagraphs apply:

(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; 15

(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;

(c) the deduction month is covered by a notice in force under subsection (5); 20

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

“(2) A group employer:

(a) is not an early remitter in relation to any month before June 1990; and 25

(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. 30

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

(a) determine that the employer is not an early remitter in relation to:

(i) a month or months specified in the notice; or 35

(ii) all months after and including a month specified in the notice; and

(b) revoke or vary any such determination.

“(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. 40

“(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

(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.

“(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;

(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:

(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

(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).

“(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.

“(2) For the purposes of this section, a company is a group company in relation to another company if: 5

- (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.

“(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: 10

- (a) the holding company; or
- (b) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or 15
- (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.” 20

Group employers

5. Section 221F of the Principal Act is amended: 25

(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 30
- (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;” 35

(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 40

(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.

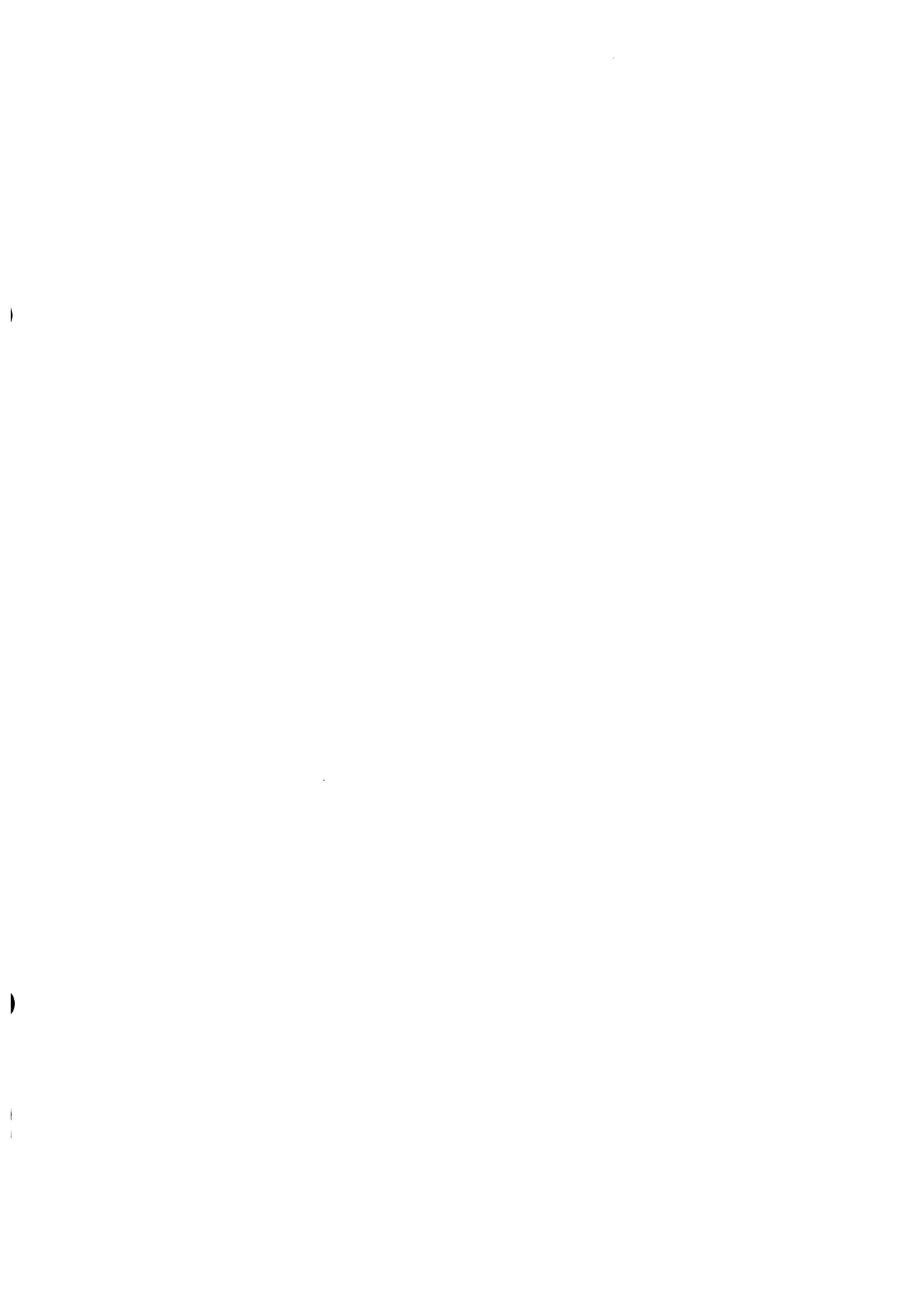
“(12B) In proceedings under, or arising out of, subsection (12A) in respect of a particular day, it is a defence if the defendant proves that it did not know, and could not reasonably be expected to have known, at least 7 days before that day, that the employer concerned was an early remitter in relation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

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,

NOTE—continued

73, 105, 107, 129, 163 and 167, 1989; and No. 97, 1989 (as amended by No. 105, 1989); and No. 20, 1990.





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