

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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(As read a first time)

**INCOME TAX ASSESSMENT AMENDMENT BILL (No. 2) 1982**

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1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 29 April 1982

*(Treasurer)*

## **A BILL**

**FOR**

### **An Act to amend the law relating to income tax**

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

#### **Short title, &c.**

5       **1.** (1) This Act may be cited as the *Income Tax Assessment Amendment Act (No. 2) 1982*.

**(2)** The *Income Tax Assessment Act 1936*<sup>1</sup> is in this Act referred to as the Principal Act.

#### **Commencement**

10       **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Officers to observe secrecy**

**3. Section 16 of the Principal Act is amended—**

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) In this section, unless the contrary intention appears—

‘officer’ means a person who is or has been appointed or employed 5  
by the Commonwealth or by a State, and who by reason of that  
appointment or employment, or in the course of that  
employment, may acquire or has acquired information  
respecting the affairs of any other person, disclosed or obtained 10  
under the provisions of this Act or of any previous law of the  
Commonwealth relating to income tax;

‘Royal Commission’ means a Commission that has been 15  
commissioned by the Governor-General, by Letters Patent in  
pursuance of the *Royal Commissions Act* 1902 or of any other  
power, to conduct an enquiry, and includes any member of such  
a Commission.”;

(b) by omitting from paragraph (4) (h) “or”;

(c) by adding at the end of sub-section (4) the following paragraphs:

“(j) the Secretary, Department of Housing and Construction, for 20  
the purpose of the administration of any law of the  
Commonwealth having an object of assisting persons to  
purchase or build their own homes; or

“(k) any of the following Royal Commissions:

(i) the Royal Commission that was commissioned, by 25  
Letters Patent dated 10 September 1980, to enquire into  
the activities of the Federated Ship Painters and  
Dockers Union;

(ii) the Royal Commission that was commissioned, by 30  
Letters Patent dated 25 June 1981, to enquire into  
certain activities involving contravention of laws of the  
Commonwealth, in particular laws relating to the  
importation, exportation or possession of drugs;

(iii) a Royal Commission in respect of which Letters Patent 35  
issued by the Governor-General declare that the Royal  
Commission is a Royal Commission to which this  
sub-paragraph applies,

for the purpose of conducting its enquiry.”;

(d) by inserting after sub-section (4) the following sub-sections:

“(4A) Where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4) (k)—

- 5 (a) the Royal Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates—
- (i) communicate the information to the Governor-General in a report by the Royal Commission; or
- 10 (ii) divulge the information in the course of a public proceeding conducted by the Royal Commission;
- (b) the Royal Commission may communicate the information to the Attorney-General if the Royal Commission is of the opinion that the information indicates that a person may have committed an offence against an Act;
- 15 (c) subject to paragraphs (a) and (b), the Royal Commission shall not divulge or communicate the information except to a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the enquiry being conducted by the Royal Commission;
- 20 (d) a person who has ceased to be the person constituting, or to be a member of, the Royal Commission shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
- 25 (e) a person to whom information has been communicated in accordance with paragraph (c) or this paragraph shall not—
- (i) while he is a person or employee under the control of the Royal Commission—divulge or communicate the information except to the Royal Commission or a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the enquiry being conducted by the Royal Commission; or
- 30 (ii) after he ceases to be a person or employee under the control of the Royal Commission—make a record of the information, or divulge or communicate the information, in any circumstances.

“(4B) Where information is communicated to the Attorney-General under paragraph (4A) (b)—

- 40 (a) the Attorney-General may communicate the information to the Commissioner of the Australian Federal Police;
- (b) subject to paragraph (a), the Attorney-General shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in

connection with, the performance by the Attorney-General of his function under paragraph (a);

(c) a person who has ceased to be the Attorney-General shall not make a record of the information, or divulge or communicate the information, in any circumstances; and 5

(d) a person to whom information has been communicated in accordance with paragraph (b) or this paragraph shall not—

(i) while he is a person or employee under the control of the Attorney-General—divulge or communicate the information except to the Attorney-General or another person or employee under the control of the Attorney-General for the purposes of, or in connection with, the performance by the Attorney-General of his function under paragraph (a); or 10

(ii) after he ceases to be a person or employee under the control of the Attorney-General—make a record of the information, or divulge or communicate the information, in any circumstances. 15

“(4C) Where information is communicated to the Commissioner of the Australian Federal Police under paragraph (4B) (a)— 20

(a) the Commissioner of the Australian Federal Police shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in connection with, the performance by that person or employee of the duties of his office or employment; 25

(b) a person who has ceased to be the Commissioner of the Australian Federal Police shall not make a record of the information, or divulge or communicate the information, in any circumstances; and

(c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not— 30

(i) while he is a person or employee under the control of the Commissioner of the Australian Federal Police—divulge or communicate the information except to the Commissioner of the Australian Federal Police or another person or employee under the control of the Commissioner of the Australian Federal Police for the purposes of, or in connection with, the performance by the Commissioner of the Australian Federal Police of the duties of his office, or the performance by that person or employee of the duties of his office or employment, as the case may be; or 35

(ii) after he ceases to be a person or employee under the control of the Commissioner of the Australian Federal Police—make a record of the information, or divulge or communicate the information, in any circumstances. 40 45

“(4D) A reference in sub-section (4B) to a person under the control of the Attorney-General includes a reference to—

- (a) an officer of, or person employed in, the Attorney-General’s Department;
- (b) a person holding office, or employed, under an Act administered by the Attorney-General; and
- (c) a person under the control of a person to whom paragraph (b) applies.

“(4E) A person to whom information is communicated under paragraph (4) (k) or under sub-section (4A), (4B) or (4C) shall not be required to divulge or communicate that information to any court.”; and

- (e) by inserting in sub-section (5) “other than paragraph (4) (k)” after “sub-section (4)”.

4. After section 159Y of the Principal Act the following Subdivision is inserted:

***“Subdivision AA—Rebate of tax in respect of home loan interest***

**Interpretation**

“159ZA. (1) In this Subdivision, unless the contrary intention appears—

‘building society’ means any body that, irrespective of the name of the body, is of a kind commonly known as a building society;

‘disentitling spouse’, in relation to a taxpayer, in relation to a particular time, means a person who is the spouse of the taxpayer at that time and who, more than 5 years before that time, occupied, as the sole or principal residence of the person, a dwelling in which the person held a relevant interest;

‘dwelling’, in relation to a taxpayer, means a unit of accommodation constituted by, or contained in, a building in Australia, being a unit that consists, in whole or in substantial part, of residential accommodation and includes a garage or store-room for use in association with the residential accommodation except where that garage or store-room is constructed after the date on which the taxpayer first occupies the residential accommodation as his sole or principal residence;

‘first occupation date’, in relation to a taxpayer, means the date on which the taxpayer first occupied, as his sole or principal residence, a dwelling in which the taxpayer held a relevant interest;

‘month’ means any of the 12 months of the year;

‘rebateable dwelling’, in relation to a taxpayer in relation to a year of income, means a dwelling in respect of which the taxpayer has paid an amount of interest that is taken into account in the calculation of a rebateable amount in relation to the taxpayer in relation to the year of income under section 159ZJ;

‘spouse’, in relation to a taxpayer, means—

- (a) the husband or wife of the taxpayer other than a person living separately and apart from the taxpayer; or
- (b) a person living with the taxpayer as the husband or wife of the taxpayer on a *bona fide* domestic basis although not legally married to the taxpayer;

‘stratum unit’, in relation to a dwelling, means a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles, being a unit that comprises—

- (a) a part of a building containing the dwelling, being a part consisting of a flat or home unit; or
- (b) a part of a parcel of land, being a part on which the building containing the dwelling is constructed;

‘taxpayer’ means a taxpayer (other than a company) who is a resident.

“(2) A reference in this Subdivision to the amount of a rebate of tax to which a taxpayer is entitled under this Subdivision in relation to a year of income is a reference to that amount calculated without regard to the question whether any tax would otherwise be payable by the taxpayer in respect of the year of income, but nothing in this sub-section affects the operation of section 160AD.

### Prescribed interests and relevant interests

“159ZB. (1) For the purposes of this Subdivision—

(a) where—

- (i) a person acquires, holds or held an estate in fee simple in land or in a stratum unit or 2 or more persons acquire, hold or held such an estate in land or in a stratum unit as joint tenants or tenants in common;
- (ii) a person acquires, holds or held an interest in land or in a stratum unit as lessee or licensee, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as lessees or licensees, under a lease or licence, and the Commissioner is satisfied that the lease or licence gives or gave reasonable security of tenure to the lessee or licensee, or to the lessees or licensees, for a period of, or for periods aggregating, not less than 10 years;
- (iii) a person acquires, holds or held an interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit, or 2 or more persons acquire, hold or held an interest in land or in a stratum unit as purchasers of such an estate in the land or in the stratum unit as joint tenants or tenants in common, under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments; or

(iv) a person acquires, holds or held an interest in land or in a stratum unit as purchaser, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as purchasers, of the right to be granted a lease of the land or of the stratum unit under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, for the lease to be made at a future time or by instalments and the Commissioner is satisfied that the lease will give or gave reasonable security of tenure to the lessee or lessees for a period of, or for periods aggregating, not less than 10 years,

that person or those persons shall be taken to acquire or hold, or to have held, as the case may be, a prescribed interest in that land or in that stratum unit, as the case requires; and

(b) where a person acquires, holds or held, or 2 or more persons acquire, hold or held jointly, a right of occupancy of a dwelling, being a flat or a home unit, arising by virtue of the acquiring or holding of shares, or by virtue of a contract to purchase shares, in a company that owns or owned the building that contains the flat or home unit, that person, or those persons, as the case requires, shall be taken to acquire or hold, or to have held, as the case may be, a proprietary right in respect of the dwelling.

“(2) For the purposes of this Subdivision, a person shall be deemed to acquire or hold, or to have held, a relevant interest in a dwelling if the person acquires, holds or held, whether alone or together with another person or other persons—

- (a) a prescribed interest in the land on which the building constituting or containing the dwelling is constructed;
- (b) a prescribed interest in a stratum unit in relation to the dwelling; or
- (c) if the dwelling is a flat or home unit—a proprietary right in respect of the dwelling.

**When interest deemed to be paid in respect of housing loan**

“159ZC. (1) In this section, ‘taxpayer’, except in reference to an amount paid by a taxpayer, includes a taxpayer and another person.

“(2) For the purposes of this Subdivision, an amount shall, except as provided in sub-sections (3) and (4), be taken to have been paid by way of interest in respect of a loan connected with a dwelling if the amount is paid by the taxpayer by way of interest on moneys lent to the taxpayer and applied by him for housing purposes connected with the dwelling.

“(3) Sub-section (2) does not apply in relation to an amount paid by a taxpayer by way of interest on moneys lent to the taxpayer by a bank by way of overdraft unless the bank maintains an account in relation to the loan that is separate and apart—

- (a) from any account kept by it in relation to any moneys deposited with it or applied by it on behalf of the taxpayer otherwise than for the

purpose of repaying the loan, in whole or in part, or of paying, in whole or in part, interest that has accrued or will accrue in respect of the loan; and

- (b) from any account kept by it in relation to any other loan made by it to the taxpayer. 5

“(4) Sub-section (2) does not apply in relation to an amount paid by a taxpayer by way of interest on moneys lent to the taxpayer where—

- (a) the taxpayer and the lender were not dealing with each other at arm’s length in relation to the making of the loan; and  
 (b) the rate at which interest is payable in respect of the loan is greater than the rate at which interest might reasonably be expected to have been payable in respect of the loan if they had been dealing with each other at arm’s length in relation to the making of the loan. 10

“(5) For the purposes of this Subdivision, an amount shall not be taken to have been paid by way of interest in respect of a loan connected with a dwelling except as provided in this section. 15

#### **When moneys deemed to be applied for housing purposes**

“159ZD. (1) For the purposes of this Subdivision, where moneys lent to a taxpayer were applied by the taxpayer wholly or partly—

- (a) to enable the taxpayer to acquire a prescribed interest in land on which a building constituting or containing a dwelling has subsequently been constructed or to acquire a prescribed interest in land and construct, or complete the construction of, such a building on the land; 20  
 (b) to enable the taxpayer to construct, or complete the construction of, a building constituting or containing a dwelling on land in which the taxpayer held a prescribed interest; 25  
 (c) to enable the taxpayer to acquire a prescribed interest in land on which there was a building constituting or containing a dwelling;  
 (d) to enable the taxpayer to acquire a prescribed interest in a stratum unit in relation to a dwelling; 30  
 (e) to enable the taxpayer to extend a building constituting or containing a dwelling, being a building constructed on land in which the taxpayer held a prescribed interest, by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be; 35  
 (f) in a case where the taxpayer held a prescribed interest in a stratum unit in relation to a dwelling—to enable the taxpayer to extend the dwelling by adding a room or part of a room to the dwelling;  
 (g) to enable the taxpayer to acquire a proprietary right in respect of a dwelling, being a flat or a home unit; or 40  
 (h) to enable the taxpayer to repay moneys that are to be taken, for the purposes of this Subdivision, to have been applied by the taxpayer for housing purposes connected with a dwelling,

the moneys shall be taken to have been applied by the taxpayer for housing purposes connected with that dwelling.

5 “(2) Subject to section 159ZE, moneys shall not be taken for the purposes of this Subdivision to have been applied for housing purposes connected with a dwelling except as provided by sub-section (1).

“(3) In this section, ‘taxpayer’ includes a taxpayer and another person.

**Moneys deemed to be lent in certain circumstances**

“159ZE. (1) Where—

- 10 (a) a person uses a dwelling as his sole or principal residence at any time during a year of income;
- (b) the person holds, or persons who include that person hold, a relevant interest in the dwelling; and
- 15 (c) that person or those persons acquired the relevant interest under an agreement that provides for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments,

an amount equal to the purchase price, or the part of the purchase price, shall be deemed, for the purposes of this Subdivision, to have been lent to that person, or to those persons, at the date of the agreement and applied by that person, or by those persons, wholly for purposes referred to in sub-section 20 159ZD (1) connected with that dwelling and to be repayable on the terms subject to which the purchase price, or the part of the purchase price, is payable.

“(2) Where a person becomes liable, or persons become liable jointly—

- 25 (a) upon acquiring a prescribed interest in land or in a stratum unit in relation to a dwelling, to repay the principal sum, or a part of the principal sum, secured by a mortgage over the land or over the stratum unit; or
- 30 (b) upon acquiring a proprietary right in a dwelling, being a flat or home unit, to repay the principal sum, or a part of the principal sum, secured by a mortgage over the shares by virtue of the holding of which he holds, or they hold, the right of occupancy of that flat or home unit,

the principal sum, or the part of the principal sum, shall be deemed, for the purposes of this Subdivision, to have been lent to that person, or to those persons, and to have been applied by that person, or by those persons, wholly 35 for purposes referred to in sub-section 159ZD (1) connected with any dwelling constituted by, or contained in, a building constructed on the land, wholly for purposes referred to in that sub-section connected with the dwelling to which the stratum unit relates or wholly for purposes referred to in that sub-section connected with the dwelling comprising the flat or home unit, as the case 40 requires.

**Eligible occupation of dwelling**

“159ZF. For the purposes of this Subdivision, a taxpayer shall be taken to be an eligible occupier of a dwelling at a particular time if, at that time—

- (a) the taxpayer occupied the dwelling as his sole or principal residence;
- (b) the taxpayer had a relevant interest in the dwelling; and 5
- (c) the taxpayer did not have a disentitling spouse.

**Occupation, &c., of dwelling for whole month**

“159ZG. For the purposes of this Subdivision—

- (a) where, during any month, a taxpayer is an eligible occupier of a dwelling for not less than 16 days, the taxpayer shall be deemed to be an eligible occupier of that dwelling for the whole of that month; and 10
- (b) where, during any month, a dwelling is a home of a person for not less than 16 days, that dwelling shall be deemed to be a home of the person for the whole of that month.

**Eligible dependant**

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“159ZH. For the purposes of the application of this Subdivision in relation to a taxpayer in relation to a year of income, a person (in this section referred to as the ‘dependant’), not being the spouse of the taxpayer, shall be taken to be an eligible dependant of a taxpayer at a particular time if—

- (a) at that time— 20
  - (i) the taxpayer was an eligible occupier of a rebatable dwelling; and
  - (ii) that rebatable dwelling was a home of the dependant;
- (b) the dependant is, in relation to the taxpayer in relation to the year of income, a person included in class 3 or class 4 in the table set out in sub-section 159J (2); and 25
- (c) but for sub-section 159J (1A), the taxpayer would be entitled to a rebate under section 159J in respect of the dependant in relation to the year of income.

**Rebatable interest**

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“159ZJ. (1) Subject to this section, where a taxpayer has, during a year of income, paid an amount or amounts by way of interest in respect of a loan connected with a dwelling of which the taxpayer was an eligible occupier at any time during the year of income, the amount, or the sum of the amounts, is a rebatable amount in relation to the taxpayer in relation to the year of income for the purposes of section 159ZK. 35

“(2) An amount paid by a taxpayer by way of interest in respect of a loan connected with a dwelling shall not be taken into account for the purpose of sub-section (1) unless—

- (a) the interest accrued while the taxpayer was an eligible occupier of the dwelling; 40
- (b) the interest was paid on or after 1 July 1982;

- (c) the first occupation date of the taxpayer is before 1 July 1985;
- (d) where the first occupation date of the taxpayer is before 1 July 1982—the interest accrued, and was paid, before the end of the year of income in which the fifth anniversary of that first occupation date occurs; and
- (e) where the first occupation date of the taxpayer is after 30 June 1982—
  - (i) the interest accrued before the fifth anniversary of that first occupation date; and
  - (ii) the interest was paid before the end of the year of income in which that fifth anniversary occurs.

“(3) Where—

- (a) moneys lent to a taxpayer or to a taxpayer and another person by a building society were applied by him or them for housing purposes connected with a dwelling;
- (b) having regard to the method in accordance with which payments to be made by borrowers from the building society in connection with their loans have been determined, the building society has credited or allowed an amount or amounts to the taxpayer or to the taxpayer and the other person, or has, or is to be regarded as having, treated an amount or amounts as having been credited or allowed to the taxpayer or to the taxpayer and the other person, in a year of income as an amount or amounts of, or in the nature of, interest on his or their subscriptions connected with the loan; and
- (c) the assessable income of the taxpayer in respect of that year of income does not include the whole or a part of that amount or of those amounts,

the amount that, by reason of the taxpayer having paid an amount or amounts by way of interest in respect of the loan, would, but for this sub-section and sub-sections (4) and (5), be a rebatable amount under sub-section (1) in relation to the taxpayer in relation to the year of income shall be reduced—

- (d) in a case to which paragraph (e) does not apply—by the amount, or the sum of the amounts, referred to in paragraph (b); or
- (e) if the loan was made to the taxpayer and another person—by an amount (not exceeding the amount, or the sum of the amounts, referred to in paragraph (b)) determined by the Commissioner.

“(4) Where—

- (a) a taxpayer has, during a year of income, paid an amount or amounts by way of interest in respect of a loan connected with a dwelling of which the taxpayer was an eligible occupier during the whole or a part of the year of income; and
- (b) the loan was not applied by the taxpayer, or by the taxpayer and another person, wholly for purposes referred to in sub-section 159ZD (1) in connection with the dwelling,

the amount that, by reason of the taxpayer having paid the amount or amounts referred to in paragraph (a), would, but for this sub-section and sub-section

(5), be a rebatable amount under sub-section (1) in relation to the taxpayer in relation to the year of income shall be taken to be a rebatable amount only to the same extent as the extent to which the loan was applied by the taxpayer, or by the taxpayer and another person, for purposes referred to in sub-section 159ZD (1) in connection with the dwelling.

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“(5) Where—

(a) a taxpayer has, during a year of income, paid an amount or amounts by way of interest in respect of a loan connected with a dwelling of which the taxpayer was an eligible occupier during the whole or a part of the year of income; and

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(b) the dwelling, a part of the dwelling, the building containing the dwelling, a part of that building, the parcel of land on which that building was constructed or a part of that parcel was, at any time during the year of income, or during that part of that year of income, as the case may be—

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(i) used or held by the taxpayer for the purpose of gaining or producing income or for carrying on a business for the purpose of gaining or producing income; or

(ii) used by the taxpayer for any other purpose not being use of the dwelling as his sole or principal residence or a use related to his use of the dwelling as his sole or principal residence,

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whether or not the dwelling was, at the same time, used by the taxpayer as his sole or principal residence,

so much only of the amount that, but for this sub-section, would be a rebatable amount under sub-section (1) in relation to the taxpayer in relation to the year of income by reason of the taxpayer having paid the amount or amounts referred to in paragraph (a) as, in the opinion of the Commissioner, is reasonable in all the circumstances is a rebatable amount in relation to the taxpayer in relation to the year of income.

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“(6) For the purposes of sub-section (5), where, in relation to a taxpayer in relation to a dwelling, any of the following conditions is satisfied:

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(a) property (in this sub-section referred to as the ‘relevant property’), being the dwelling, a part of the dwelling, the building containing the dwelling, a part of that building, the parcel of land on which that building was constructed or a part of that parcel was acquired by the taxpayer for the purpose of profit-making by sale;

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(b) an amount is included in the assessable income of the taxpayer of any year of income, or a deduction is allowable to the taxpayer under section 52 in relation to any year of income, in respect of a profit-making undertaking or scheme involving the disposal of, or the disposal of an estate or interest in, the relevant property;

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(c) an amount is included in the assessable income of the taxpayer of any year of income under section 26AAA in respect of the disposal of, or the disposal of an estate or interest in, the relevant property,

the dwelling shall be taken to have been used by the taxpayer for the purpose of gaining or producing income—

(d) in a case to which paragraph (a) or (c) applies—at all times when the taxpayer owned the relevant property or an estate or interest in the relevant property; and

(e) in a case to which paragraph (b) applies—at all times when the taxpayer owned the relevant property or an estate or interest in the relevant property and held the relevant property or the estate or interest for the purposes of, or in connection with, the profit-making undertaking or scheme referred to in that paragraph.

“(7) Where a taxpayer has, during a year of income, paid an amount on account of interest that will fall due, in respect of a loan connected with a dwelling, during a subsequent year of income, then, for the purposes of this Subdivision, the amount shall be deemed not to have been paid by the taxpayer during the first-mentioned year of income but shall be deemed to have been paid by the taxpayer during the subsequent year of income.

#### **Rebate of tax**

“159ZK. (1) Subject to this Subdivision, a taxpayer is entitled to a rebate of tax in his assessment in respect of a year of income of an amount equal to 32% of—

(a) where there is only one rebatable amount in relation to the taxpayer in relation to the year of income for the purposes of this section—that rebatable amount; or

(b) where there are 2 or more such rebatable amounts in relation to the taxpayer in relation to the year of income—the sum of those rebatable amounts.

“(2) A rebate is not allowable to a taxpayer under this Subdivision if, at any time before 1 July 1977, the taxpayer occupied, as his sole or principal residence, a dwelling in which the taxpayer held a relevant interest.

“(3) A rebate is not allowable to a taxpayer under this Subdivision in respect of any year of income after the year of income in which the fifth anniversary of the first occupation date of the taxpayer occurs.

#### **Rebate limit where first occupation date before 1 July 1982**

“159ZL. Where the first occupation date of a taxpayer is before 1 July 1982, the rebate of tax allowable to the taxpayer in relation to a year of income shall not exceed the amount calculated in accordance with the formula  $\frac{AB + CD}{12}$ , where—

$A$  is—

- (a) in the case of the year of income commencing on 1 July 1982—
- (i) where the first occupation date of the taxpayer is in the year of income that commenced on 1 July 1977—\$100;

- (ii) where the first occupation date of the taxpayer is in the year of income that commenced on 1 July 1978—\$200;
  - (iii) where the first occupation date of the taxpayer is in the year of income that commenced on 1 July 1979—\$300;
  - (iv) where the first occupation date of the taxpayer is in the year of income that commenced on 1 July 1980—\$400; and 5
  - (v) where the first occupation date of the taxpayer is in the year of income that commenced on 1 July 1981—\$500; and 10
  - (b) in the case of the year of income commencing on 1 July 1983 or a subsequent year of income—the amount that was *A* for the purposes of the application of the formula in relation to the next preceding year of income (whether or not there was a rebatable amount in relation to the taxpayer in relation to that preceding year of income) reduced by \$100; 15
- B* is the number of whole months in the year of income during which the taxpayer was an eligible occupier of a rebatable dwelling;
- C* is \$200; and
- D* is the number of whole months in the year of income during which a person was an eligible dependant of the taxpayer. 20

#### **Rebate limit where first occupation date after 30 June 1982**

“159ZM. Where the first occupation date of a taxpayer is after 30 June 1982, the rebate of tax allowable to the taxpayer in relation to a year of income shall not exceed the amount calculated in accordance with the formula  $AB + CD + EF$ , where— 25

- 12
- A* is—
- (a) in the case of the year of income in which the first occupation date of the taxpayer occurred—\$500; and 30
  - (b) in the case of a subsequent year of income—the amount that was *A* for the purposes of the application of the formula in relation to the next preceding year of income (whether or not there was a rebatable amount in relation to the taxpayer in relation to that preceding year of income) reduced by \$100; 35
- B* is—
- (a) in the case of the year of income in which the fifth anniversary of the first occupation date of the taxpayer occurred—nil; and
  - (b) in the case of a preceding year of income—the number of whole months in the year of income during which the taxpayer was an eligible occupier of a rebatable dwelling, not including— 40
    - (i) where the taxpayer was an eligible occupier of a rebatable dwelling for the whole of the month in which the first occupation date of the taxpayer occurred—any

month in the year of income before the month in which that first occupation date, or the anniversary of that first occupation date, as the case may be, occurred; or

- 5 (ii) in any other case—the month in which that first occupation date, or the anniversary of that first occupation date, as the case may be, occurred or any month in the year of income before the month in which that first occupation date, or the anniversary of that first occupation date, as the case may be, occurred;

10 *C* is—

- (a) in the case of the year of income in which the first occupation date of the taxpayer occurred—nil; and  
15 (b) in the case of a subsequent year of income—the amount that was *A* for the purposes of the application of the formula in relation to the next preceding year of income (whether or not there was a rebatable amount in relation to the taxpayer in relation to that preceding year of income);

*D* is—

- 20 (a) in the case of the year of income in which the first occupation date of the taxpayer occurred—nil; and  
25 (b) in the case of a subsequent year of income—the number of whole months in the year of income during which the taxpayer was an eligible occupier of a rebatable dwelling, not including—  
30 (i) where the taxpayer was an eligible occupier of a rebatable dwelling for the whole of the month in which the first occupation date of the taxpayer occurred—the month in the year of income in which the anniversary of that first occupation date occurred or any subsequent month in the year of income; or  
(ii) in any other case—any month in the year of income after the month in the year of income in which the anniversary of that first occupation date occurred;

*E* is \$200; and

*F* is—

- 35 (a) in the case of the year of income in which the fifth anniversary of the first occupation date of the taxpayer occurred—the number of whole months in the year of income during which the taxpayer had an eligible dependant, not including—  
40 (i) where the taxpayer was an eligible occupier of a rebatable dwelling for the whole of the month in which the first occupation date of the taxpayer occurred—the month in the year of income in which the anniversary of that first occupation date occurred or any subsequent month in the year of income; or

- (ii) in any other case—any month in the year of income after the month in the year of income in which the anniversary of that first occupation date occurred; and
- (b) in the case of a preceding year of income—the number of whole months in the year of income during which the taxpayer had an eligible dependant. 5

### Reduction of rebate limit in cases of co-ownership

“159ZN. (1) In this section—

‘annual rebate limit’, in relation to a taxpayer in relation to a year of income, means the limit applicable, but for this section, under section 159ZL or 159ZM, as the case may be, to the rebate of tax to which the taxpayer may become entitled under this Subdivision in relation to the year of income; 10

‘dwelling limit’, in relation to a taxpayer in relation to a co-ownership period in a year of income, means the amount that bears to the annual rebate limit in relation to the taxpayer in relation to the year of income the same proportion as the number of months in the co-ownership period bears to the number of whole months in the year of income during which the taxpayer was an eligible occupier of a rebatable dwelling; 15 20

‘modified dwelling limit’, in relation to a taxpayer in relation to a dwelling in relation to a co-ownership period in a year of income, means the amount ascertained in accordance with the formula  $\frac{AB}{100}$ , where— 25

*A* is the dwelling limit in relation to the taxpayer in relation to the co-ownership period; and

*B* is—

- (a) if a number is allotted to the taxpayer in pursuance of an agreement applicable under sub-section (5) to the co-ownership period in relation to the dwelling—that number; and 30

- (b) in any other case—the number that bears to 100 the same proportion as the amount of the rebatable interest that was paid by the taxpayer during the year of income in relation to the dwelling and accrued during the co-ownership period bears to the sum of the amounts of rebatable interest paid during the year of income in relation to the dwelling by the taxpayer and the other taxpayer or taxpayers to whom this section applies in relation to the co-ownership period in relation to the dwelling, being interest that accrued during the co-ownership period; 35 40

‘rebatable interest’, in relation to a dwelling, means interest paid in respect of a loan connected with the dwelling, being interest that is taken into account in the calculation of a rebatable amount under section 159ZJ.

“(2) Where—

5 (a) in a year of income, there is a period (in this section referred to as a ‘co-ownership period’) of one or more months during which, or during each of which, as the case may be, 2 or more taxpayers each of whom would, but for section 159ZO, be entitled to a rebate of tax under this Subdivision in relation to the year of income were eligible occupiers of  
10 the same dwelling at the same time for not less than 16 days; and

(b) each of those taxpayers paid rebatable interest in the year of income in relation to the dwelling being interest that accrued during the co-ownership period,

15 this section applies in relation to each of those taxpayers in relation to the year of income.

“(3) Where, by an application or applications of this section in relation to a taxpayer in relation to a year of income, there is a limit reduction amount or there are limit reduction amounts in relation to the taxpayer in relation to the year of income, the annual rebate limit in relation to the taxpayer in relation to  
20 the year of income shall, notwithstanding section 159ZL or 159ZM, as the case may be, be reduced by that limit reduction amount or by the sum of those limit reduction amounts, as the case may be.

“(4) Where the dwelling limit in relation to a taxpayer in relation to a co-ownership period exceeds the modified dwelling limit in relation to the taxpayer in relation to the co-ownership period, the amount of that excess is a limit reduction amount in relation to the taxpayer in relation to the year of  
25 income.

“(5) Where this section applies in relation to taxpayers in relation to a co-ownership period in relation to a dwelling, the taxpayers may agree that, for the purposes of the application of this Subdivision in relation to the taxpayers in relation to the co-ownership period, a number not exceeding 100 be allotted to each of the taxpayers so that the sum of the numbers so allotted equals 100.

“(6) An agreement referred to in sub-section (5) does not have effect unless notice of the agreement, in a form approved by the Commissioner and signed by each of the taxpayers, is lodged with the Commissioner on or before  
35 31 August in the year of income following the year of income to which the agreement relates or before such later date as the Commissioner allows.

### **Benefit of rebate may be transferred to spouse**

“159ZO. (1) Where—

40 (a) but for this section, a taxpayer would be entitled to a rebate of tax in relation to a year of income under this Subdivision; and

- (b) the taxpayer elects that a person who was the spouse of the taxpayer on the last day of the year of income should be entitled to the benefit of the whole or a specified part of that rebate,

the following provisions have effect:

- (c) the taxpayer is not entitled to that rebate or that part of that rebate, as the case may be; 5
- (d) the spouse of the taxpayer is entitled to that rebate, or to that part of that rebate, as the case may be.

“(2) An election referred to in sub-section (1)—

- (a) shall be exercised by notice in writing to the Commissioner; and 10
- (b) shall be lodged with the Commissioner on or before the date of lodgment of—

(i) in a case to which sub-paragraph (ii) does not apply—the return of income of the taxpayer for the year of income to which the election relates; or 15

(ii) if the taxpayer is not required to furnish a return of income for that year of income—the return of income for that year of income of the person who was the spouse of the taxpayer on the last day of that year of income,

or before such later date as the Commissioner allows. 20

### **Recoupment of expenditure**

“159ZP. (1) Subject to sub-section (2), this Subdivision does not apply, and shall be deemed never to have applied, in relation to an amount paid by a taxpayer by way of interest to the extent to which the taxpayer is recouped, or becomes entitled to be recouped, in respect of that payment by the Commonwealth, by a State, by a Territory, by an authority constituted by or under a law of the Commonwealth, of a State or of a Territory, or by any other person. 25

“(2) Sub-section (1) does not apply to an amount paid by a taxpayer by way of interest to the extent to which the recoupment in respect of that amount is or will be included in the assessable income of the taxpayer of a year of income. 30

“(3) Where a taxpayer receives, or becomes entitled to receive, an amount that constitutes to an unspecified extent a recoupment in respect of an amount paid by the taxpayer by way of interest, the Commissioner may, for the purposes of sub-section (1), determine the extent to which that amount constitutes a recoupment in respect of that payment. 35

### **Rebate where interest paid by trustee**

“159ZQ. (1) Where—

- (a) a trustee of a trust estate is liable to be assessed under section 98 in respect of a share of a beneficiary of the net income of the trust estate of a year of income; 40

(b) during the year of income, the trustee paid an amount or amounts by way of interest in respect of a loan connected with a dwelling in which the trustee held a relevant interest at any time during the year of income, being—

- 5 (i) an amount that was, or amounts that were, paid out of income to which that beneficiary was presently entitled; or
- (ii) an amount or amounts to which that beneficiary was deemed to be presently entitled by reason of the application of the amount or amounts for his benefit; and

10 (c) at any time during the year of income, the beneficiary occupied the dwelling as his sole or principal residence,

the trustee is entitled, in that assessment, to the rebate of tax (if any) to which the beneficiary would have been entitled under this Subdivision in respect of the amount or amounts referred to in paragraph (b) if—

- 15 (d) the beneficiary had held a relevant interest in the dwelling at all times during the year of income when the trustee held a relevant interest in the dwelling; and
- (e) the amount or amounts referred to in paragraph (b) had been paid by the beneficiary during the year of income.

20 “(2) Where—

(a) an amount is included in the assessable income of a taxpayer of a year of income in respect of a share of the taxpayer of, or the individual interest of the taxpayer in, the net income of a trust estate of the year of income;

25 (b) during the year of income, the trustee paid an amount or amounts by way of interest in respect of a loan connected with a dwelling in which the trustee held a relevant interest at any time during the year of income, being—

- 30 (i) an amount that was, or amounts that were, paid out of income to which that taxpayer was presently entitled; or
- (ii) an amount or amounts to which that taxpayer was deemed to be presently entitled by reason of the application of the amount or amounts for his benefit; and

35 (c) at any time during the year of income, the taxpayer occupied the dwelling as his sole or principal residence,

the taxpayer is entitled, in his assessment in respect of income of the year of income, to the rebate of tax (if any) to which the taxpayer would have been entitled under this Subdivision in that assessment if—

- 40 (d) the taxpayer had held a relevant interest in the dwelling at all times during the year of income when the trustee held a relevant interest in the dwelling; and
- (e) the amount or amounts referred to in paragraph (b) had been paid by the taxpayer during the year of income.

“(3) Where the trustee of the estate of a deceased person pays, in the year of income in which the deceased person died, an amount by way of interest in respect of a loan connected with a dwelling of which the deceased person was an eligible occupier at any time during the year of income, being interest that accrued before the death of the deceased person, that amount shall, for the purposes of this Subdivision, be deemed to have been paid by the deceased person immediately before his death.

5

“(4) A rebate of tax is not allowable to a trustee under this Subdivision except as provided in this section.”.

### **Amendment of assessments**

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5. Section 170 of the Principal Act is amended by omitting from sub-section (10) “sub-section 159R (4),” and substituting “sub-section 159R (4) or 159ZJ (6), section 159ZO or 159ZP, sub-section”.

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### **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, 60, 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, 108, 109, 110, 111, 154 and 175, 1981; and No. 000, 1982.



