

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 4 April 1984

(*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) 1984*.

      (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.

      3. (1) After section 26AF of the Principal Act the following section is inserted:

#### Assessable income to include value of certain benefits received from or in connection with section 23F superannuation funds

15     “26AFA. (1) Where—

- (a) in a year of income and on or after 1 July 1977, a taxpayer receives or obtains a benefit of any kind out of, or attributable to assets of, a section 23F fund;

- (b) the benefit—
- (i) is not a benefit that the taxpayer has a right to receive from the fund; or
  - (ii) is an excessive benefit; and
- (c) the Commissioner is satisfied that the taxpayer received or obtained the benefit—
- (i) by reason that the taxpayer was, or had been, a member of the fund;
  - (ii) by reason that the taxpayer was, or had been, a dependant of a person who was, or had been, a member of the fund;
  - (iii) by reason that the taxpayer was, or had been, associated with a person who was, or had been, a member of the fund; or
  - (iv) by reason that the taxpayer was, or had been, associated with a person who had made contributions to the fund, being contributions to which Subdivision AA of Division 3 applied,

the assessable income of the taxpayer of the year of income shall, notwithstanding paragraph 26 (d), include the amount or value of that benefit.

“(2) Where—

- (a) sub-section (1) would, but for this sub-section, apply to the amount or value of an excessive benefit received or obtained by a taxpayer out of, or attributable to assets of, a section 23F fund; and
- (b) the Commissioner, having regard to—
  - (i) the nature of the fund;
  - (ii) the circumstances by reason of which the benefit is an excessive benefit; and
  - (iii) such other matters relating to the receiving or obtaining of the benefit by the taxpayer as the Commissioner considers relevant,
 is satisfied that it would be unreasonable for sub-section (1) to apply to the whole or part of the benefit,

that sub-section does not apply to the benefit, or to that part of the benefit, as the case may be.

“(3) Where, in a year of income and on or after 1 July 1977, a taxpayer receives valuable consideration in respect of the transfer by the taxpayer to another person (whether by assignment, by declaration of trust or by any other means) of a right (whether vested or contingent) to receive a benefit from a section 23F fund, the assessable income of the taxpayer of the year of income shall include the amount or value of that consideration.

“(4) In this section—

‘dependant’, in relation to a taxpayer, includes the spouse and any child of the taxpayer;

‘excessive benefit’ means a benefit of any kind that is excessive in amount or value having regard to the matters mentioned in sub-paragraphs 23F (2) (h) (i), (ii), (iii) and (iv);

‘section 23F fund’ means a fund to which section 23F applies, or has applied, in relation to any year of income.’.

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income in which 1 July 1977 occurred and of all subsequent years of income.

(3) Nothing in section 170 of the *Income Tax Assessment Act 1936* prevents the amendment of an assessment made before the commencement of this section for the purpose of giving effect to the amendment made by sub-section (1).

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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, 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; and No. 00, 1984.

