1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 13 September 1984

(*Minister Assisting the 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.

1. (**1**) This Act may be cited as the *Income Tax Assessment Amendment Act (No. 4) 1984*.

(**2**) The *Income Tax Assessment Act 1936*[1] is in this Act referred to as the Principal Act.

Commencement

2. (**1**) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(**2**) Section 3 (other than paragraph (a)) shall be deemed to have come into operation on 1 July 1984.

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Officers to observe secrecy

3. Section 16 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

"(1A) For the purposes of the definition of 'officer' in sub-section (1), a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth."; and

(b) by omitting from paragraph (4HJ) (e) "the State" and substituting "a State".

Income of certain persons serving with an armed force under the control of the United Nations

4. (1) Section 23AB of the Principal Act is amended by omitting from sub-paragraph (7) (a) (i) "$216" and substituting "$270".

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1984 and of all subsequent years of income.

(3) In the application of section 23AB of the *Income Tax Assessment Act 1936* to assessments in respect of income of the year of income that commenced on 1 July 1984, the reference in sub-paragraph (7) (a) (i) of that section to $270 shall be read as a reference to $252.

Sale of securities purchased at a discount

5. (1) Section 23J of the Principal Act is amended by omitting from sub-section (3) "paragraph 26 (a), section 26AAA or section 26C" and substituting "section 25A, 26AAA or 26C".

(2) The amendment made by sub-section (1) (except insofar as it relates to the carrying on or carrying out of any profit-making undertaking or scheme) applies to a sale or redemption of eligible securities after 23 August 1983.

(3) The amendment made by sub-section (1), insofar as it relates to the carrying on or carrying out of any profit-making undertaking or scheme, has effect on and after 25 June 1984.

6. After section 23J of the Principal Act the following section is inserted:

Substitution of certain securities

"23K. (1) In this section—

'central borrowing authority' means—

(a) the New South Wales Treasury Corporation;

(b) the Victorian Public Authorities Finance Agency;

(c) the Victoria Transport Borrowing Agency;

(d) the Queensland Government Development Authority;

(e) the Treasurer of the State of Western Australia;

(f) the South Australian Government Financing Authority;

(g) the Local Government Finance Authority of South Australia; or

(h) any other public authority of a State, being a public authority that is empowered to issue securities in the manner referred to in paragraph (2) (a);

'public authority' includes a Minister of the Crown in right of a State, a municipal corporation and any other local government body;

'security' means stock, a bond or debenture, or any other document evidencing the indebtedness of a person, whether or not the debt is secured.

"(2) For the purposes of this section, a person shall be taken to have issued a security (in this sub-section referred to as the 'substituted security') to a taxpayer in substitution for another security (in this sub-section referred to as the 'original security') held by the taxpayer if and only if—

(a) the substituted security was issued by the person to the taxpayer in exchange for the surrender or transfer of, or otherwise in replacement or substitution for, the original security; and

(b) the terms and conditions provided for by the substituted security were identical in all material respects to those provided for by the original security.

"(3) Where—

(a) but for this sub-section, a person would be taken to have issued a security (in this sub-section referred to as the 'substituted security') to a taxpayer in substitution for another security (in this sub-section referred to as the 'original security') held by the taxpayer; and

(b) either or both of the following conditions is or are satisfied:

(i) an amount was payable by the taxpayer by way of consideration for the issue of the substituted security; or

(ii) an amount was payable to the taxpayer by way of consideration for the surrender, transfer, replacement or substitution of the original security,

the person shall not be taken for the purposes of this section to have issued the substituted security in substitution for the original security.

"(4) Where—

(a) under terms and conditions provided for by a security, the day on which interest is payable in respect of a period is different from that on which interest is payable in respect of the same period under another security; and

(b) the terms and conditions provided for by the securities are otherwise identical in all material respects,

the following provisions have effect:

(c) if the days on which the interest is payable are separated by an interval not exceeding 31 days—the terms and conditions provided for by the 2

securities shall, for the purposes of paragraph (2) (b), be taken to be identical in all material respects; and

(d) in any other case—the terms and conditions provided for by the 2 securities shall, for the purposes of paragraph (2) (b), be taken not to be identical in all material respects.

"(5) Where, on or after 8 August 1984, a central borrowing authority issued or issues a security (in this sub-section referred to as the 'substituted security') to a taxpayer in substitution for another security (in this sub-section referred to as the 'original security') held by the taxpayer that was issued by a public authority other than the central borrowing authority—

(a) the substituted security shall, for the purposes of this Act, be deemed to be a continuation of the original security on the terms and conditions provided for by the substituted security; and

(b) no amount shall, in respect of the issue of the substituted security or the surrender, transfer, replacement or substitution of the original security, be included in, allowable as a deduction from or taken into account in ascertaining any amount included in or allowable as a deduction from, the assessable income of any taxpayer in respect of any year of income.".

Special depreciation on trading ships

7. (**1**) Section 57AM of the Principal Act is amended—

(a) by inserting after the definition of "new ship" in sub-section (1) the following definition:

" 'officer' includes the master of a ship;";

(b) by omitting from paragraph (4) (h) "otherwise than in accordance with, or at a level that exceeds the level specified in," and substituting "at a level that exceeds the level specified in";

(c) by omitting from sub-section (22) "of specified designations and the number of members of the crew of specified designations with which the ship should, in the opinion of the Secretary, having regard to any relevant industrial relations considerations" and substituting "and members of the crew with which the ship should, in the opinion of the Secretary"; and

(d) by omitting from sub-section (23) ", has had regard to any relevant industrial relations considerations".

(**2**) The amendments made by sub-section (1) apply, and shall be deemed to have applied, in relation to any manning notice, or any notice of a variation of a manning notice, given after 1 July 1984.

(**3**) Nothing in sub-section (2) shall be taken to render invalid any manning notice, or any notice of a variation of a manning notice, given before the commencement of this section.

Deduction of certain expenditure on fences

8. Section 75C of the Principal Act is amended by omitting "1 July 1984" (wherever occurring) from the definition of "eligible expenditure" in sub-section (1) and substituting "1 July 1986".

Gifts, calls on afforestation shares, pensions, &c.

9. (1) Section 78 of the Principal Act is amended—

(a) by inserting after sub-paragraph (1) (a) (lxxix) the following sub-paragraphs:

"; (lxxx) the Work Skill Australia Foundation Incorporated;

(lxxxi) The Academy of the Social Sciences in Australia Incorporated,";

(b) by inserting after paragraph (1) (ab) the following paragraphs:

"(ac) gifts (not being testamentary gifts) of the value of $2 and upwards of property (being property that, at the time when the gift was made, was a place listed in the Register of the National Estate kept pursuant to the *Australian Heritage Commission Act 1975*) made by the taxpayer in the year of income to a body specified in sub-paragraph (a) (xxvi) and accepted by that body for the purpose of preserving the property for the benefit of the public;

(ad) any gift (not being a testamentary gift) of the value of $2 and upwards of property (being property of the taxpayer that is trading stock to which sub-section 36 (1) applies) where, if the property had been purchased by the taxpayer within 12 months immediately preceding the making of the gift, the gift would, but for this paragraph, be an allowable deduction under paragraph (a);";

(c) by omitting from sub-section (1A) "or (ab)" and substituting ", (ab), (ac) or (ad)";

(d) by inserting after sub-section (2) the following sub-section:

"(2A) For the purposes of paragraph (1) (ad), the value of a gift of property shall be deemed to be the value of the property that is, by virtue of sub-section 36 (1), included in the taxpayer's assessable income.";

(e) by omitting from sub-section (6B) "or (ab)" and substituting ", (ab) or (ac)";

(f) by omitting from sub-section (6E) "and (ab)" and substituting ", (ab) and (ac)";

(g) by omitting from sub-sub-paragraph (6E) (aa) (ii) (A) "or" (last occurring);

(h) by inserting after sub-sub-paragraph (6E) (aa) (ii) (B) the following word and sub-sub-paragraph:

"; or (C) a body specified in sub-paragraph (1) (a) (xxvi),";

(j) by omitting from sub-section (6F) "or (ab)" and substituting ", (ab) or (ac)";

(k) by omitting from paragraph (6H) (c) "or (ab)" and substituting ", (ab) or (ac)";

(m) by inserting after sub-section (6H) the following sub-section:

"(6J) Paragraph (1) (ad) does not apply, and shall be deemed never to have applied, in relation to a gift of property made by a taxpayer where the taxpayer has made an election under sub-section 36 (3) or section 36AAA in relation to the property.";

(n) by omitting from sub-section (12) "sub-section (8)" (first occurring) and substituting "this section"; and

(o) by adding at the end of sub-section (12) the following definition:

" 'place' has the same meaning as in the *Australian Heritage Commission Act 1975*.".

(2) Sub-paragraph 78 (1) (a) (lxxx) of the *Income Tax Assessment Act 1936* applies to gifts made after 20 March 1984.

(3) Sub-paragraph 78 (1) (a) (lxxxi), and paragraphs 78 (1) (ac) and (ad), of the *Income Tax Assessment Act 1936* apply to gifts made after 21 August 1984.

Certain gifts not to be allowable deductions

10. (1) Section 78A of the Principal Act is amended—

(a) by omitting from sub-section (2) "paragraph 78 (1) (a) or (aa)" and substituting "section 78";

(b) by omitting from sub-section (4) "paragraph 78 (1) (a) or (aa)" and substituting "section 78"; and

(c) by inserting in sub-section (5) ", (ab) or (ac)" after "paragraph 78 (1) (aa)".

(2) Subject to sub-section (3), the amendments made by sub-section (1) apply to gifts made after 21 August 1984.

(3) The amendments made by sub-section (1), insofar as they affect the application of paragraph 78 (1) (ab) of the *Income Tax Assessment Act 1936*, apply to gifts made after 13 September 1984.

Rebates for residents of isolated areas

11. (1) Section 79A of the Principal Act is amended—

(a) by omitting from paragraphs (2) (a) and (b) and sub-paragraph (2) (c) (i) "$750" and substituting "$938";

(b) by omitting from sub-paragraph (2) (c) (ii) and paragraph (2) (d) "$216" and substituting "$270";

(c) by omitting from paragraph (2) (e) "$36" and substituting "$45";

(d) by omitting paragraph (3D) (a) and substituting the following paragraph:

"(a) the special area within Zone A or Zone B is constituted by—

(i) the points in that Zone that were not, as at 1 November 1981, situated at a distance of 250 kilometres or less by the shortest practicable surface route from the centre point of the nearest urban centre (whether or not within that Zone) with a census population of not less than 2,500; and

(ii) the points in that Zone that were within the special area in that Zone for the purposes of this section as in force immediately before the commencement of the *Income Tax Assessment Amendment Act (No. 4) 1984*; and";

(e) by omitting "1976" from the definitions of "census population" and "urban centre" in sub-section (4) and substituting "1981"; and

(f) by omitting "Population and Dwellings in Local Government Areas and Urban Centres (Preliminary)" from the definitions of "census population" and "urban centre" in sub-section (4) and substituting "Persons and Dwellings in Local Government Areas and Urban Centres".

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1984 and of all subsequent years of income.

(3) In the application of section 79A of the *Income Tax Assessment Act 1936* to assessments in respect of income of the year of income that commenced on 1 July 1984—

(a) the references in paragraphs (2) (a) and (b) and sub-paragraph (2) (c) (i) of that section to $938 shall be read as references to $875;

(b) the references in sub-paragraph (2) (c) (ii) and paragraph (2) (d) of that section to $270 shall be read as references to $252; and

(c) the reference in paragraph (2) (e) of that section to $45 shall be read as a reference to $42.

Rebates for members of Defence Force serving overseas

12. (1) Section 79B of the Principal Act is amended by omitting from sub-paragraph (2) (a) (i), paragraph (4) (a) and sub-paragraph (4A) (b) (i) "$216" and substituting "$270".

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1984 and of all subsequent years of income.

(3) In the application of section 79B of the *Income Tax Assessment Act 1936* to assessments in respect of income of the year of income that commenced on 1 July 1984, the references in sub-paragraph (2) (a) (i), paragraph (4) (a)

and sub-paragraph (4A) (b) (i) of that section to $270 shall be read as references to $252.

13. After section 80F of the Principal Act the following section is inserted:

Transfer of loss within company group

"80G. (1) For the purposes of this section, a company shall be taken to be a group company in relation to another company in relation to a year of income if—

(a) one of the companies was a subsidiary of the other company; or

(b) each of the companies was a subsidiary of the same company,

during the whole of the year of income or, if either or both of those companies was not or were not in existence during part of the year of income, during that part of the year of income during which both companies were in existence.

"(2) For the purposes of this section, a company (in this sub-section referred to as the 'subsidiary company') shall be taken to be the subsidiary of another company (in this sub-section referred to as the 'holding company') during a period (in this sub-section referred to as the 'relevant period'), being the whole or a part of a year of income, if—

(a) at all times during the relevant period, all the shares in the subsidiary company were beneficially owned by—

(i) the holding company;

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

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

(b) there was no agreement, arrangement or understanding in force during any part of the relevant period by virtue of which any person was in a position, or would become in a position after the relevant period, to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

"(3) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this sub-section), every company that is a subsidiary of the first-mentioned company shall be taken to be a subsidiary of that other company.

"(4) For the purposes of sub-section (2), a person shall be taken to be in a position during a year of income, or a part of a year of income, to affect any rights of a company in relation to another company if, during the year of income, or that part of the year of income, that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies or by virtue of any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the

first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

"(5) For the purposes of this section, a company shall be taken to be in existence if it has been incorporated and has not been dissolved.

"(6) Subject to this section, where—

(a) a resident company (in this section referred to as the 'loss company') is deemed to have incurred a loss for the purposes of section 80 in the year of income that commenced on 1 July 1984 or in a subsequent year of income (in this section referred to as the 'loss year');

(b) a resident company (in this section referred to as the 'income company') has, or would but for the operation of this section have, a taxable income in the year of income that commenced on 1 July 1984 or in a subsequent year of income (in this section referred to as the 'income year');

(c) the loss company and the income company give to the Commissioner, on or before the date of lodgment of the return of income of the income company for the income year or within such further time as the Commissioner allows, a notice in writing signed by the public officer of each of those companies stating—

(i) that the right to an allowable deduction under sub-section 80 (2), 80AAA (7) or 80AA (4), as the case requires, in respect of so much of the whole or a specified part of the loss as has not been allowed as a deduction should be transferred to the income company in the income year; and

(ii) the year of income in which the loss was incurred by the loss company;

(d) in a case where the loss year is the same year of income as the income year—

(i) the loss company is a group company in relation to the income company in relation to the loss year; and

(ii) if the loss company had incurred the loss in the year of income immediately preceding the loss year and had derived sufficient assessable income (including film income) in the loss year, the loss or that part of the loss, as the case may be, would, but for this section, be allowable as a deduction from the assessable income of the loss company in the loss year (ignoring any exempt income derived by the loss company in the loss year or in that preceding year); and

(e) in a case where the income year is a year of income subsequent to the loss year—

(i) the loss company is a group company in relation to the income company in relation to the loss year and the income year and in relation to any year of income commencing after the end of the loss year and ending before the commencement of the income year; and

(ii) if the loss company had derived sufficient assessable income (including film income) in the income year, the loss or that part of the loss, as the case may be, would, but for this section, be allowable as a deduction from the assessable income of the loss company in the income year (ignoring any exempt income derived by the loss company in the income year),

the amount of the loss or of that part of the loss, as the case may be, shall, for the purposes of the application of the provisions of this Act other than this section in relation to the income company in relation to the income year, be deemed to be a loss incurred by the income company for the purposes of section 80, 80AAA or 80AA, as the case requires, in—

(f) a case to which paragraph (d) applies—the year of income immediately preceding the loss year; or

(g) a case to which paragraph (e) applies—the loss year.

"(7) A notice under paragraph (6) (c) relating to the transfer to the income company of a right to an allowable deduction under sub-section 80 (2) or 80AA (4) from the assessable income of the income company of the income year in respect of a loss or a part of a loss has no effect to the extent that the sum of the amount specified in the notice and any amounts specified in notices previously given under paragraph (6) (c) by any company in relation to allowable deductions under sub-section 80 (2), 80AAA (7) or 80AA (4) from that assessable income exceeds—

(a) in a case where the income company has not in the income year derived exempt income—the amount by which the assessable income of the income company of that year exceeds the allowable deductions (other than deductions allowable by virtue of this section) from that assessable income; or

(b) in a case where the income company has in the income year derived exempt income—the amount by which the sum of the assessable income of the income company of that year and the net exempt income of the income company of that year exceeds the allowable deductions (other than deductions allowable by virtue of this section) from that assessable income.

"(8) A notice under paragraph (6) (c) relating to the transfer to the income company of a right to an allowable deduction under sub-section 80AAA (7) from the assessable income of the income company of the income year in respect of a loss or a part of a loss has no effect to the extent that the sum of the amount specified in the notice and any amounts specified in notices previously given under paragraph (6) (c) by any company in relation to allowable deductions under that sub-section from that assessable income exceeds the sum of the net assessable film income within the meaning of section 80AAA of the income company of that year and the net exempt film income within the meaning of that section of the income company of that year.

"(9) Where Subdivision B of Division 2A applies in relation to the loss company in relation to the loss year, the right to an allowable deduction in

respect of any part of the loss incurred by the loss company in the loss year shall not be transferred to the income company in the loss year.

"(10) Where the sum of the assessable income of the loss company of the income year and the net exempt income (if any) of the loss company of that year exceeds the allowable deductions, other than—

(a) deductions under section 80, 80AAA, 80AA, 122DG, 122J, 124AD, 124ADB, 124ADD, 124ADF, 124ADG, 124AH or 159GC; or

(b) deductions under section 122D, 122DB, 122DD or 122DF where the loss company has not made an election under that section,

from that assessable income, sub-section (6) applies in relation to so much (if any) of the amount of a loss that is deemed to have been incurred by the loss company for the purposes of section 80 as is not allowable as a deduction from that assessable income under sub-section 80 (2), 80AAA (7) or 80AA (4).

"(11) Where the rights to allowable deductions in respect of 2 or more losses (other than film losses for the purposes of section 80AAA) incurred by the loss company are able to be transferred under sub-section (6), the rights to those deductions may be transferred under that sub-section only in the order in which the losses were incurred.

"(12) Where the right to an allowable deduction inrespect of a loss or a part of a loss is transferred to the income company under sub-section (6), that loss or that part of that loss shall, for the purposes of the provisions of this Act other than this section, be deemed not to have been incurred by the loss company.

"(13) Where the loss company gives to the Commissioner a notice or notices in accordance with paragraph (6) (c) in relation to a part of a loss incurred by the loss company, that company shall not give a further notice in accordance with that paragraph in relation to that loss that purports to transfer to a company the right to an allowable deduction in respect of an amount that exceeds the amount obtained by deducting from the amount of that loss the amount of that part of that loss or the sum of the amounts of those parts of that loss specified in the first-mentioned notice or notices.

"(14) Where the right to an allowable deduction in respect of a loss or a part of a loss incurred by the loss company is transferred to the income company in the year of income in which the loss was incurred, sections 80A, 80B, 80DA and 80E do not apply in relation to—

(a) the loss company for the purposes of the operation of sub-paragraph (6) (d) (ii) in relation to that company; or

(b) the income company.

"(15) Where—

(a) the right to an allowable deduction in respect of a loss or a part of a loss incurred by the loss company is transferred to the income company pursuant to sub-section (6); and

(b) that loss or a part of that loss was not deemed to have been incurred by the loss company,

nothing in section 170 prevents the amendment of an assessment of the income of the income company to disallow the whole or a part of the deduction referred to in paragraph (a).

"(16) If, as a result of the amendment of an assessment or for any other reason, a deduction is not allowable from the assessable income of the income company in respect of the whole of an amount specified in a notice under paragraph (6) (c), this section applies as if only that part of the amount specified in that notice in respect of which a deduction is allowable to the company were so specified.

"(17) Where the loss company is a shareholder in the income company and receives a payment from the income company as consideration for the right to an allowable deduction transferred to the income company pursuant to sub-section (6), then, for the purposes of this Act, so much of the payment as, in the opinion of the Commissioner, is made in consideration for the transfer of the right to the allowable deduction shall not be taken to be income derived by the loss company.

"(18) Where the income company makes a payment to the loss company as consideration for the right to an allowable deduction transferred to the income company pursuant to sub-section (6), a deduction is not allowable under this Act in respect of the payment.

"(19) In this section, 'net exempt income' has the same meaning as in section 80.".

Deduction in respect of new plant installed on or after 1 January 1976

14. Section 82AB of the Principal Act is amended by omitting from paragraphs (1) (d) and (1A) (d) "1986" and substituting "1987".

Exploration and prospecting expenditure

15. Section 122J of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-section:

"(2) A deduction is not allowable under this section in any year of income in respect of expenditure incurred on or before 21 August 1984 (including expenditure incurred on or before that date that is deemed, by virtue of sub-section (4), to be incurred during the year of income) unless, in the year of income, the taxpayer carried on a mining business or mining businesses (other than a business of mining for petroleum), and the amount of the deduction in respect of that expenditure shall not exceed the amount remaining after deducting from the assessable income derived from the carrying on of that business or those businesses, and from the activities of the taxpayer associated directly or indirectly with the carrying on by the taxpayer of that business or those businesses, all other allowable deductions (other than deductions

under this section) that directly relate to any such business or activities.";

(b) by omitting sub-section (4) and substituting the following sub-section:

"(4) Where the amount of the expenditure of the kind referred to in sub-section (1) that was incurred during the year of income, being expenditure incurred after the year of income that ended on 30 June 1974 and on or before 21 August 1984 (including any expenditure that is deemed to have been incurred during the first-mentioned year of income by any previous application or applications of this sub-section), exceeds the amount of the deduction allowable under this section in respect of that expenditure in respect of the first-mentioned year of income, the excess amount shall, for the purposes of sub-section (1), be deemed to have been incurred by the taxpayer during the first subsequent year of income in which the taxpayer carries on prescribed mining operations.";

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

"(4B) The amount of the deduction allowable under this section in respect of expenditure incurred during the year of income, being expenditure incurred after 21 August 1984, shall not exceed an amount equal to so much of the assessable income of the year of income as remains after deducting all allowable deductions, other than deductions allowable under this section in respect of expenditure incurred after that date.

"(4C) Where the amount of the expenditure of the kind referred to in sub-section (1) that was incurred during the year of income, being expenditure incurred after 21 August 1984 (including any expenditure incurred after that date that is deemed to have been incurred during the year of income by any previous application or applications of this sub-section), exceeds the amount of the deduction allowable under this section in respect of that expenditure in respect of the year of income, the excess amount shall, for the purposes of sub-section (1), be deemed to have been incurred by the taxpayer during the first subsequent year of income in which the taxpayer derives assessable income.

"(4D) A deduction is not allowable under this section in respect of expenditure incurred during the year of income, being expenditure incurred after 21 August 1984, unless—

(a) the Commissioner is satisfied that, during the year of income, the taxpayer carried on, or proposed to carry on, prescribed mining operations; or

(b) the Commissioner is satisfied that—

(i) during the year of income, the taxpayer carried on a business of, or a business that included, exploration or prospecting on any mining tenements in Australia for minerals obtainable by prescribed mining operations; and

(ii) the expenditure was necessarily incurred in carrying on that business.

"(4E) Where—

(a) an amount of income derived by the taxpayer after 21 August 1984 from the sale, transfer or assignment of rights to mine on any mining tenement is or has been exempt from income tax in a year of income (in this sub-section referred to as the 'year of sale')by virtue of paragraph 23 (pa); and

(b) in relation to that tenement there are any excess amounts of expenditure referred to in sub-section (4C) that have not been, and are not required to be, deemed, for the purposes of sub-section (1), to have been incurred by the taxpayer in the year of sale or in a prior year of income,

sub-section (4C) does not operate so as to require the taxpayer to be deemed to have incurred, in any year of income after the year of sale, any part of those excess amounts that does not exceed so much of the amount of the exempt income as has not been applied—

(c) under sub-section 122C (3A) in reduction of the residual previous capital expenditure of the taxpayer as at the end of the year of sale;

(d) under sub-section (3A) of this section in reduction of the amount of expenditure that, but for that sub-section, would be deemed to be allowable capital expenditure incurred by the taxpayer in any year of income after the year of sale; or

(e) under sub-section (4A) of this section in reduction of the amount of expenditure that, but for that sub-section, would be deemed to have been incurred by the taxpayer in any year of income after the year of sale."; and

(d) by omitting from sub-section (5) "sub-section (3) or (4)" (wherever occurring) and substituting "sub-section (3), (4) or (4C)".

Deductions not allowable under other provisions

16. Section 122N of the Principal Act is amended by inserting in sub-section (3) "or (4B)" after "122J (2)".

Deductions in respect of capital expenditure

17. Section 124ZC of the Principal Act is amended—

(a) by omitting paragraph (1) (c) and substituting the following paragraph:

"(c) in a case to which sub-paragraph (b) (i) applies—

(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying hotel expenditure was incurred commenced to be constructed on or before 21 August

1984—2½% of the amount of qualifying hotel expenditure; and

(ii) in any other case—4% of the amount of qualifying hotel expenditure; and";

(b) by omitting paragraph (2) (c) and substituting the following paragraph:

"(c) in a case to which sub-paragraph (b) (i) applies—

(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying hotel expenditure was incurred commenced to be constructed on or before 21 August 1984—2½%; and

(ii) in any other case—4%,

of so much of that amount of qualifying hotel expenditure as bears to that amount the same proportion as the number of whole days in that part of the year of income bears to the number of days in the year of income; and";

(c) by omitting paragraph (3) (c) and substituting the following paragraph:

"(c) in a case to which sub-paragraph (b) (i) applies—

(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying apartment expenditure was incurred commenced to be constructed on or before 21 August 1984—2½% of the amount of qualifying apartment expenditure; and

(ii) in any other case—4% of the amount of qualifying apartment expenditure; and";

(d) by omitting paragraph (4) (c) and substituting the following paragraph:

"(c) in a case to which sub-paragraph (b) (i) applies—

(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying apartment expenditure was incurred commenced to be constructed on or before 21 August 1984—2½%; and

(ii) in any other case—4%,

of so much of that amount of qualifying apartment expenditure as bears to that amount the same proportion as the number of whole days in that part of the year of income bears to the number of days in the year of income; and"; and

(e) by omitting sub-section (5) and substituting the following sub-section:

"(5) For the purposes of determining the amount of a deduction allowable to a taxpayer under this section in respect of an amount of

qualifying hotel expenditure or qualifying apartment expenditure in respect of an eligible building, the taxpayer shall be taken not to have dealt with any part of the hotel part or apartment part, as the case may be, in the prescribed manner at any time after the expiration of the period of—

(a) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying hotel expenditure or the qualifying apartment expenditure, as the case may be, was incurred commenced to be constructed on or before 21 August 1984—40 years; and

(b) in any other case—25 years,

commencing on the day on which the hotel part, or the apartment part, as the case may be, was first used by any person for any purpose after completion of the relevant construction.".

Deductions in respect of qualifying expenditure

18. Section 124ZH of the Principal Act is amended—

(a) by omitting paragraph (1) (c) and substituting the following paragraph:

"(c) in a case to which sub-paragraph (b) (i) applies—

(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying expenditure was incurred commenced to be constructed on or before 21 August 1984—2½% of the amount of qualifying expenditure; and

(ii) in any other case—4% of the amount of qualifying expenditure; and";

(b) by omitting paragraph (2) (c) and substituting the following paragraph:

"(c) in a case to which sub-paragraph (b) (i) applies—

(i) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying expenditure was incurred commenced to be constructed on or before 21 August 1984—2½%; and

(ii) in any other case—4%,

of so much of that amount of qualifying expenditure as bears to that amount the same proportion as the number of whole days in that part of the year of income bears to the number of days in the year of income; and"; and

(c) by omitting sub-section (3) and substituting the following sub-section:

"(3) For the purposes of determining the amount of a deduction allowable to a taxpayer under this section in respect of an amount of qualifying expenditure in respect of an eligible building, the taxpayer shall be taken not to have dealt with any part of the prescribed part in

the prescribed manner at any time after the expiration of the period of—

(a) where the building, or the extension, alteration or improvement, in respect of the construction of which the qualifying expenditure was incurred commenced to be constructed on or before 21 August 1984—40 years; and

(b) in any other case—25 years,

commencing on the day on which the prescribed part was first used by any person for any purpose after completion of the relevant construction.".

Application

19. Section 159H of the Principal Act is amended by adding at the end thereof the following sub-section:

"(3) Where, during any period, a man and a woman have lived together as husband and wife on a *bona fide* domestic basis although they were not legally married to each other, this Subdivision applies in relation to each of them as if they were legally married to each other during that period.".

Rebates for dependants

20. Section 159J of the Principal Act is amended by inserting after sub-section (5) the following sub-sections:

"(5A) Subject to sub-section (5B), where, but for this sub-section, a taxpayer would, by reason that he or she contributed to the maintenance of 2 or more dependants included in class 1 in the table in sub-section (2) during the whole or a part of the year of income, be entitled in his or her assessment in respect of income of the year of income to more than one rebate under this section, the taxpayer shall be regarded as having contributed to the maintenance of only one of those dependants during the whole or that part of the year of income, as the case may be, being the dependant in respect of whom the lesser, or least, of the rebates would, but for this sub-section, be allowable to the taxpayer under this section in respect of those dependants.

"(5B) Where sub-section (5A) applies but the Commissioner is of the opinion that, because of special circumstances, it would be reasonable to regard the taxpayer as having contributed during the whole or a part of the year of income to the maintenance of a dependant included in class 1 in the table in sub-section (2), other than the dependant in respect of whom a rebate is allowable under this section by virtue of the operation of sub-section (5A), the taxpayer shall be regarded as having contributed to the maintenance of that other dependant only and the rebate allowable to the taxpayer under this section in respect of that other dependant shall be such amount, not exceeding the relevant amount specified in column 3 of the table in sub-section (2), as is, in the opinion of the Commissioner, reasonable in the circumstances.

"(5C) Where—

(a) during the whole or a part of the year of income, a taxpayer contributed to the maintenance of 2 or more dependants included in class 1 in the table in sub-section (2); and

(b) by virtue of the operation of sub-section (4), a rebate is not allowable to the taxpayer under this section in respect of one of those dependants,

the taxpayer shall be regarded as not having contributed to the maintenance of any of those dependants during the whole or that part of the year of income, unless the Commissioner is of the opinion that, because of special circumstances, it would be unreasonable to do so, in which case the rebate (if any) allowable under this section in the assessment of the taxpayer in respect of income of the year of income in respect of a dependant included in class 1 in that table shall be such amount, not exceeding the relevant amount specified in column 3 of that table, as is, in the opinion of the Commissioner, reasonable in the circumstances.

"(5D) Where, by reason that, during the whole or a part of the year of income, a taxpayer contributes to the maintenance of a dependant included in class 1 in the table in sub-section (2), the taxpayer is entitled, or would, but for sub-section (4) be entitled, in his or her assessment in respect of income of the year of income, to a rebate under this section, a daughter of the taxpayer shall be deemed not to have been engaged in keeping house for the taxpayer during any part of the year of income.".

Sole parent rebate

21. Section 159K of the Principal Act is amended by omitting sub-section (4).

Application of amendments made by sections 19, 20 and 21

22. The amendments made by sections 19, 20 and 21 apply to assessments in respect of income of the year of income that commenced on 1 July 1984 and of all subsequent years of income.

Rebates in respect of certain pensions, &c.

23. (1) Section 160AAA of the Principal Act is amended—

(a) by omitting "Where" and substituting "Subject to sub-section (3), where";

(b) by omitting from paragraphs (g) and (h) "$5,429" and substituting "$5,595"; and

(c) by adding at the end thereof the following sub-sections:

"(2) Subject to sub-section (3), where the assessable income of a taxpayer of a year of income includes an amount paid by way of a benefit under Part VII of the *Social Security Act 1947*, the taxpayer is

entitled in his or her assessment in respect of income of the year of income to a rebate of tax of—

(a) where, at any time during the year of income, the taxpayer was married—

(i) if the taxable income of the taxpayer of the year of income does not exceed $7,989—$75; and

(ii) if the taxable income of the taxpayer of the year of income exceeds $7,989—$75 reduced by 12.5 cents for each $1 of the amount of the excess; and

(b) in any other case—

(i) if the taxable income of the taxpayer of the year of income does not exceed $4,783—$50; and

(ii) if the taxable income of the taxpayer of the year of income exceeds $4,783—$50 reduced by 12.5 cents for each $1 of the amount of the excess.

"(3) Where, but for this sub-section, ataxpayer would be entitled in his or her assessment in respect of income of a year of income to a rebate of tax under both sub-sections (1) and (2)—

(a) if the amounts of the rebates are the same—the taxpayer is entitled to only one of the rebates; and

(b) if the amounts of the rebates are not the same—the taxpayer is not entitled to the lesser of the rebates.

"(4) Where, at any time, a man and a woman have lived together as husband and wife on a *bona fide* domestic basis although they were not legally married to each other, this section applies in relation to each of them as if they were legally married to each other at that time.".

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1984 and of all subsequent years of income.

(3) In the application of section 160AAA of the *Income Tax Assessment Act 1936* to assessments in respect of income of the year of income that commenced on 1 July 1984, references in that section to $5,595 shall be read as references to $5,533.

Interpretation

24. Section 221YA of the Principal Act is amended—

(a) by omitting from paragraph (5) (b) "section 124ZAF" and substituting "section 77F, 124ZAF"; and

(b) by omitting from paragraphs (5) (d) and (e) "sections 124ZAF" and substituting "sections 77F, 124ZAF".

Provisional tax for 1984-85 year

25. For the purposes of the application of sub-section 221YC (1) of the *Income Tax Assessment Act 1936* (in this section referred to as the

"Assessment Act") in ascertaining the amount of provisional tax payable by a taxpayer in respect of the year of income that commenced on 1 July 1984 (in this section referred to as the "relevant year of income"), being a taxpayer who would, apart from this section, be liable to pay provisional tax calculated in accordance with sub-section 221YC (1) or (1A) of the Assessment Act in respect of the relevant year of income—

(a) if paragraph 221YC (1) (a) of the Assessment Act applies to the taxpayer—the amount of provisional tax payable by the taxpayer in respect of the relevant year of income by virtue of that paragraph is the amount ascertained by deducting from 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 next preceding the relevant year of income (in this section referred to as the "next preceding year of income") if—

(i) the taxable income of the taxpayer of the next preceding year of income had, except for the purpose of determining the notional income for the purpose of section 59AB, 86 or 158D of the Assessment Act, been increased by 10%;

(ii) where, for the purposes of Division 6AA of Part III of the Assessment Act—

(A) in the case of a taxpayer to whom Division 3 of Part III of the *Income Tax (Rates) Act 1982* applied—the taxpayer's eligible taxable income of the next preceding year of income exceeded $416; or

(B) in the case of a taxpayer to whom Division 4 of Part III of the *Income Tax (Rates) Act 1982* applied—the taxpayer had an eligible taxable income of the next preceding year of income,

that eligible taxable income had been increased by 10%;

(iii) for the purposes of section 156 of the Assessment Act, the deemed taxable income from primary production of the taxpayer of the next preceding year of income had been increased by 10%;

(iv) the *Income Tax (Rates) Act 1982* as that Act, as amended by the *Income Tax (Rates) Amendment Act 1984*, applies to assessments in respect of the relevant year of income, had been in force and applied to assessments in respect of the next preceding year of income;

(v) the *Medicare Levy Act 1983* had not applied in relation to assessments in respect of the next preceding year of income and the *Medicare Levy Act 1984* had applied in relation to such assessments as if references in that last-mentioned Act to the year of income or financial year that commenced on 1 July 1984 included references to the year of income or the financial year, as the case may be, that commenced on 1 July 1983;

(vi) where Division 16 of Part III of the Assessment Act applied in the taxpayer's assessment in respect of the next preceding year of income—that Division had applied as if the conditions set out in sub-paragraphs (i) to (v) (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

(vii) the taxpayer had not been entitled to any rebate (other than a rebate under section 156 of the Assessment Act applicable in relation to the taxpayer in accordance with sub-paragraph (vi)) or credit in the taxpayer's assessment,

the sum of the rebates (other than a rebate under section 156 of the Assessment Act) and credits to which the taxpayer was entitled in the taxpayer's assessment in respect of income of the next preceding year of income; and

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

(i) in a case where—

(A) paragraph 221YC (1) (a) of the Assessment Act would apply to the taxpayer in relation to the relevant year of income but for sub-section 221YA (5) of that Act; and

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

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

(ii) in the case where—

(A) paragraph 221YC (1) (a) of the Assessment Act would apply to the taxpayer in relation to the relevant year of income but for sub-section 221YA (5) of that Act; and

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

the amount that would be payable by the taxpayer under paragraph 221YC (1) (a) of the Assessment Act (as affected by paragraph (a) of this section) if sub-section 221YA (5) were not included in that Act and the taxable income of the taxpayer of the next 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 of that Act in the taxpayer's assessment in respect of the next preceding year of income;

(iii) in the case where—

(A) paragraph 221YC (1) (a) of the Assessment Act would apply to the taxpayer in relation to the relevant year of income but for sub-section 221YA (5) of that Act; and

(B) the taxpayer is a taxpayer to whom paragraphs 221YA (5) (a) and (b) of the Assessment Act apply in relation to the relevant year of income,

the amount that would be payable by the taxpayer under paragraph 221YC (1) (a) of the Assessment Act (as affected by paragraph (a) of this section) if—

(C) sub-section 221YA (5) were not included in the Assessment Act;

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

(E) the amount that, but for this sub-sub-paragraph, would have been the taxable income of the taxpayer of the next 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 of the Assessment Act in the taxpayer's assessment in respect of the next preceding year of income; and

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

(A) the taxable income of the taxpayer of the next 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 of the Assessment Act were not applicable in relation to that year of income increased by the sum of the deductions (if any) allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAFA of the Assessment Act in the taxpayer's assessment in respect of that year of income;

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

(C) for the purposes of Division 6AA of Part III of the Assessment Act, the amount of the eligible taxable

income of the taxpayer of the next preceding year of income were such amount (if any) as the Commissioner determines.

Amendment of assessments

26. Nothing in section 170 of the *Income Tax Assessment Act 1936* prevents the amendment of an assessment made before the commencement of this Act for the purpose of giving effect to the amendments made by sections 9 and 10.

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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 Nos. 14 and 47, 1984.

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